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Tuesday, December 28, 2021

Presidential Documents

Title 3—

The President

Proclamation 10325 of December 22, 2021

50th Anniversary of the National Cancer Act of 1971

By the President of the United States of America

A Proclamation

Half a century ago, on December 23, 1971, policymakers, researchers, cancer survivors, and advocates gathered at the White House for the signing of the bipartisan National Cancer Act—a landmark law that has helped transform cancer research and offered hope to millions in the years since.

For my family, and for most families, the fight against cancer is personal. As every family facing cancer does, we learned as much as we could about the illness our son Beau fought, from his diagnosis to the very end. Along the way, we came to understand just how quickly cancer-fighting science, medicine, and technology is progressing—saving more and more lives each year. It is thanks in no small part to the National Cancer Act of 1971 that so much of this progress has been possible.

Fifty years ago, cancer screening and detection were in their infancy, treatment options were limited, and researchers worked largely in the dark. The National Cancer Act helped launch programs that form the backbone of today's cancer research enterprise by bolstering the National Cancer Institute (NCI) at the National Institutes of Health; establishing NCI-designated Cancer Centers; creating national networks to conduct clinical trials; and building systems to collect, share, and advance cancer data and research.

After decades of investment and innovation—and because of the limitless ingenuity of the world's finest nurses, physicians, and researchers—today we have a much more sophisticated understanding of how best to fight cancer. Thanks to new treatments and insights that could not have been imagined in generations past, the overall cancer death rate in the United States has declined steadily since the early 1990s, with more dramatic declines in the past few years.

Cancer touches so many families across the country. It is up to all of us to continue making progress fighting cancer and ensuring that every American has access to the quality care they need. In 2016, President Obama asked me to lead the Cancer Moonshot Initiative to end cancer as we know it, and Jill and I committed to this as one of the causes of our lives. Now, as President and First Lady, we remain committed to that mission. Today, we are more hopeful than ever about America's chances to bring an end to cancer as we know it.

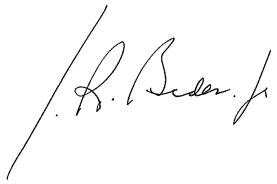
To help us get there, I have asked the Congress to launch the Advanced Research Projects Agency for Health—or ARPA–H—which will invest billions of dollars to speed breakthroughs in preventing, detecting, and treating cancer and other deadly diseases. My American Rescue Plan has also expanded access to affordable health insurance coverage, ensuring that more Americans are able to receive cancer screenings and get the treatment they need without worrying about costs. My Administration will continue to build on the Affordable Care Act, so that all Americans—particularly Americans of color, Indigenous Americans, rural Americans, and others who have been historically underserved—have access to quality, affordable health care.

As we commemorate the 50th anniversary of the National Cancer Act, I call upon all Americans to reaffirm our national commitment to accelerate

cancer research and deliver hope to more families facing a cancer diagnosis. Working together, building on the decades of progress we have made, we can and will end cancer as we know it.

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 December 23, 2021, as the 50th Anniversary of the National Cancer Act of 1971. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to redouble our pursuit of more effective and equitable access to prevention, diagnosis, treatment, and survivorship care for everyone affected by cancer.

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



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Title 3—

The President

Proclamation 10326 of December 23, 2021

To Modify the Harmonized Tariff Schedule of the United States and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (Public Law 100–418, 102 Stat. 1107, 1150 (19 U.S.C. 3005(a))) directs the United States International Trade Commission (the ''Commission'') to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and periodically to recommend to the President such modifications to the HTS as the Commission considers necessary or appropriate to accomplish the purposes set forth in that subsection. Pursuant to sections 1205(c) and (d) of the 1988 Act (19 U.S.C. 3005(c) and (d)), the Commission has recommended modifications to the HTS to conform the HTS to amendments made to the International Convention on the Harmonized Commodity Description and Coding System and the Protocol thereto (the ''Convention'') and to promote uniform application of the Convention.

2. Section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS based on the recommendations of the Commission under section 1205 of the 1988 Act, if the President determines that the modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States. I have determined that the modifications to the HTS proclaimed in this proclamation pursuant to section 1206(a) of the 1988 Act are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States.

3. Presidential Proclamation 6763 of December 23, 1994, implemented, with respect to the United States, the trade agreements resulting from the Uruguay Round of multilateral trade negotiations, including Schedule XX–United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (Schedule XX), that were entered into pursuant to sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)), and approved in section 101(a) of the Uruguay Round Agreements Act (the ''URAA'') (Public Law 103–465, 108 Stat. 4809, 4814 (19 U.S.C. 3511(a))).

4. Pursuant to the authority provided in section 111 of the URAA (19 U.S.C. 3521) and sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)), Proclamation 6763 included the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out the terms of Schedule XX. In order to ensure the continuation of such rates of duty for imported goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed, including certain technical or conforming changes within the tariff schedule.

5. Presidential Proclamations 7987 of February 28, 2006; 7991 of March 24, 2006; 7996 of March 31, 2006; 8034 of June 30, 2006; 8111 of February 28, 2007; 8331 of December 23, 2008; and 8536 of June 12, 2010, implemented

the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) with respect to the United States and, pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''CAFTA–DR Implementation Act'') (Public Law 109–53, 119 Stat. 462, 467 (19 U.S.C. 4031)), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3 (including the schedule of the United States duty reductions with respect to originating goods), 3.27, and 3.28 of the CAFTA–DR. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

6. Presidential Proclamation 8341 of January 16, 2009, implemented the United States-Peru Trade Promotion Agreement (USPTPA) with respect to the United States and, pursuant to section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (the ''USPTPA Implementation Act'') (Public Law 110–138, 121 Stat. 1455, 1459–1460 (19 U.S.C. 3805 note)), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the USPTPA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

7. Presidential Proclamation 8783 of March 6, 2012, implemented the United States-Korea Free Trade Agreement (USKFTA) with respect to the United States and, pursuant to section 201 of the United States-Korea Free Trade Agreement Implementation Act (the ''USKFTA Implementation Act'') (Public Law 112–41, 125 Stat. 428, 432–433 (19 U.S.C. 3805 note)), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, and the schedule of duty reductions with respect to Korea set forth in Annex 2–B, Annex 4–B, and Annex 22–A of the USKFTA. Presidential Proclamation 9834 of December 21, 2018, modified the staging of duty treatment for specific goods of Korea, pursuant to section 201(b) of the USKFTA Act, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Korea provided for by the USKFTA and to carry out an agreement with Korea modifying the staging of duty treatment for those goods. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

8. Presidential Proclamation 8818 of May 14, 2012, implemented the United States-Colombia Trade Promotion Agreement (USCTPA) with respect to the United States and, pursuant to section 201 of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''USCTPA Implementation Act'') (Public Law 112–42, 125 Stat. 462, 466–67 (19 U.S.C. 3805 note)), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the USCTPA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed. I have also determined that a technical correction to general note 34(o) to the HTS is necessary to provide for the intended tariff treatment accorded under the USCTPA to originating goods of Colombia.

9. Presidential Proclamation 8894 of October 29, 2012, implemented the United States-Panama Trade Promotion Agreement (PTPA) with respect to the United States and, pursuant to section 201 of the United States-Panama Trade Promotion Agreement Implementation Act (the ''PTPA Implementation Act'') (Public Law 112–43, 125 Stat. 497, 501–502 (19 U.S.C. 3805 note)), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.26, 3.27, 3.28, and 3.29, and the schedule of duty reductions with respect to Panama set forth in Annex 3.3 of the PTPA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

10. Presidential Proclamation 10053 of June 29, 2020, implemented the Agreement between the United States of America, the United Mexican States, and Canada (USMCA) with respect to the United States and, pursuant to section 103(c)(1) of the United States-Mexico-Canada Agreement Implementation Act (the ''USMCA Implementation Act'') (Public Law 116–113, 134 Stat. 11, 16 (19 U.S.C. 4513(c)(1))), it provided for the continuation of duty-free or excise treatment and staged reductions in duties as the President determined to be necessary or appropriate to carry out or apply articles 2.4, 2.5, 2.7, 2.8, 2.9, 2.10, 6.2, and 6.3, the Schedule of the United States to Annex 2–B, including the appendices to that Annex, Annex 2–C, and Annex 6–A of the USMCA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

11. The United States Trade Representative, in a *Federal Register* notice of August 23, 2017 (82 FR 40213), announced the initiation of an investigation into certain acts, policies, and practices of China related to technology transfer, intellectual property, and innovation, pursuant to section 301 of the Trade Act of 1974 (the ''Trade Act'') (Public Law 93–618, 88 Stat. 1978, 2041 (19 U.S.C 2411)). The United States Trade Representative announced in a *Federal Register* notice of April 6, 2018 (83 FR 14906), the determination that China's acts, policies, and practices related to technology transfer, intellectual property, and innovation are actionable under section 301(b) of the Trade Act (19 U.S.C. 2411(b)). The United States Trade Representative announced the determinations, pursuant to sections 301(b), 301(c), and 304(a) of the Trade Act (19 U.S.C. 2411(b), 2411(c), and 2414(a)), that appropriate and feasible action in this investigation includes the imposition of an additional ad valorem duty on products of China in *Federal Register* notices of June 20, 2018 (83 FR 28711), and August 16, 2018 (83 FR 40823). The United States Trade Representative announced the determinations, pursuant to section 307(a)(1) of the Trade Act (19 U.S.C. 2417(a)(1)), to modify the prior action in this investigation by imposing additional duties on products of China, in a *Federal Register* notice of September 21, 2018 (83 FR 47974, as modified by notices of September 28, 2018 (83 FR 49153), May 9, 2019 (84 FR 20459), and June 10, 2019 (84 FR 26930), and in a *Federal Register* notice of August 20, 2019 (84 FR 43304, as modified by notices of August 30, 2019 (84 FR 45821), and January 22, 2020 (85 FR 3741)). In order to ensure the maintenance of such duty rates for goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional conforming modifications to the HTS are necessary.

12. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in section 3 of the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Implementation Act'') (Public Law 99–47, 99 Stat. 82 (19 U.S.C. 2112 note)). Section 4(b) of the USIFTA

Implementation Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (United States-Israel Agreement Concerning Certain Aspects of Trade in Agricultural Products (the ''2004 Agreement'')).

13. In Presidential Proclamation 7826 of October 4, 2004, the President determined, pursuant to section 4(b) of the USIFTA Implementation Act and consistent with the 2004 Agreement, that, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, it was necessary to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel. Each year from 2008 through 2020, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; 8467 of December 23, 2009; 8618 of December 21, 2010; 8770 of December 29, 2011; 8921 of December 20, 2012; 9072 of December 23, 2013; 9223 of December 23, 2014; 9383 of December 21, 2015; 9555 of December 15, 2016; 9687 of December 22, 2017; 9834 of December 21, 2018; 9974 of December 26, 2019; and 10128 of December 22, 2020; modified the HTS to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period. On November 22, 2021, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2022, and to allow for further negotiations on an agreement to replace the 2004 Agreement. Pursuant to section 4(b) of the USIFTA Implementation Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2022, for specified quantities of certain agricultural products of Israel.

14. Presidential Proclamation 7747 of December 30, 2003, implemented the United States-Singapore Free Trade Agreement (USSFTA) with respect to the United States and, pursuant to section 201 of the United States-Singapore Free Trade Agreement Implementation Act (the ''USSFTA Implementation Act'') (Public Law 108–78, 117 Stat. 948, 952 (19 U.S.C. 3805 note)), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the USSFTA. A technical error was made in the modifications to general note 25 to the HTS. I have determined that a technical correction to general note 25 to the HTS is necessary to provide for the intended tariff treatment accorded under the USSFTA to originating goods of Singapore.

15. In Presidential Proclamation 7350 of October 2, 2000, the President designated Ethiopia, the Republic of Guinea (Guinea), and the Republic of Mali (Mali) as beneficiary sub-Saharan African countries for purposes of section 506A(a)(1) of the Trade Act, as added by section 111(a) of the African Growth and Opportunity Act (the ''AGOA'') (title I of Public Law 106–200, 114 Stat. 251, 257–58 (19 U.S.C. 2466a(a)(1))).

16. Section 506A(a)(3) of the Trade Act (19 U.S.C. 2466a(a)(3)) provides that the President shall terminate the designation of a country as a beneficiary

sub-Saharan African country for purposes of section 506A if the President determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act.

17. Pursuant to section 506A(a)(3) of the Trade Act, I have determined that Ethiopia, Guinea, and Mali do not meet the requirements described in section 506A(a)(1) of that Act. Accordingly, I have decided to terminate the designation of Ethiopia, Guinea, and Mali as beneficiary sub-Saharan African countries for purposes of section 506A of the Trade Act, effective January 1, 2022.

18. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. Section 1206(c) of the 1988 Act, as amended (19 U.S.C. 3006(c)), provides that any modifications proclaimed by the President under section 1206(a) of that Act may not take effect before the thirtieth day after the date on which the text of the proclamation is published in the *Federal Register*.

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 of America, including but not limited to sections 1102, 1205, and 1206 of the 1988 Act, section 111 of the URAA, section 201 of the CAFTA–DR Implementation Act, section 201 of the USPTPA Implementation Act, section 201 of the USKFTA Implementation Act, section 201 of the USCTPA Implementation Act, section 201 of the PTPA Implementation Act, section 201 of the USSFTA Implementation Act, section 103(c) of the USMCA Implementation Act, section 301 of the Trade Act, section 4(b) of the USIFTA Implementation Act, section 111(a) of the AGOA, and sections 506A(a)(1), 506A(a)(3), and 604 of the Trade Act, as amended, do proclaim that:

(1) In order to modify the HTS to conform it to the Convention or any amendment thereto recommended for adoption, to promote the uniform application of the Convention, to establish additional subordinate tariff categories, to make technical and conforming changes to existing provisions, and to maintain the duty treatment with respect to actions pursuant to section 301 of the Trade Act, the HTS is modified as set forth in Annexes I, II.A, and II.B of Publication 5240 of the United States International Trade Commission, entitled, ''Modifications to the Harmonized Tariff Schedule of the United States under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988 and for Other Purposes'' (Publication 5240). Publication 5240 is incorporated by reference into this proclamation.

(2) In order to make a technical correction necessary to provide for the intended tariff treatment accorded under the USCTPA to originating goods under the USCTPA, the HTS is modified as set forth in Annex II.C of Publication 5240.

(3) In order to make a technical correction necessary to provide for the intended tariff treatment accorded under the USSFTA to originating goods under the USSFTA, the HTS is modified as set forth in Annex II.D of Publication 5240.

(4) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1–Special subcolumn for originating goods of parties to the CAFTA–DR under the CAFTA–DR that are classifiable in the provisions modified by the amendments to the HTS to conform it to the Convention, the HTS is modified as set forth in Annex III of Publication 5240.

(5) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1–Special subcolumn for originating goods of Peru under the USPTPA that are classifiable in the provisions

modified by the amendments to the HTS to conform it to the Convention, the HTS is modified as set forth in Annex IV of Publication 5240.

(6) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1–Special subcolumn for originating goods of Korea under the USKFTA that are classifiable in the provisions modified by the amendments to the HTS to conform it to the Convention, the HTS is modified as set forth in Annex V of Publication 5240.

(7) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1–Special subcolumn for originating goods of Colombia under the USCTPA that are classifiable in the provisions modified by the amendments to the HTS to conform it to the Convention, the HTS is modified as set forth in Annex VI of Publication 5240.

(8) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1–Special subcolumn for originating goods of Panama under the PTPA that are classifiable in the provisions modified by the amendments to the HTS to conform it to the Convention, the HTS is modified as set forth in Annex VII of Publication 5240.

(9) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1–Special subcolumn for originating goods of Canada and Mexico under the USMCA that are classifiable in the provisions modified by the amendments to the HTS to conform it to the Convention, the HTS is modified as set forth in Annex VIII of Publication 5240.

(10) In order to implement tariff commitments under the 2004 Agreement through December 31, 2022, the HTS is modified as set forth in Annex IX of Publication 5240.

(11) The modifications and technical rectifications to the HTS made by paragraphs (1) through (10) of this proclamation shall enter into effect on the applicable dates set forth in Annexes I through IX of Publication 5240.

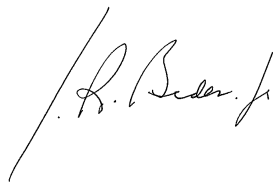
(12) The designation of Ethiopia, Guinea, and Mali as beneficiary sub-Saharan African countries for purposes of section 506A of the Trade Act is terminated, effective January 1, 2022.

(13) In order to reflect in the HTS that beginning January 1, 2022, Ethiopia, Guinea, and Mali shall no longer be designated as beneficiary sub-Saharan African countries, general note 16(a) to the HTS is modified by deleting ''Ethiopia'', ''Republic of Guinea'', and ''Republic of Mali (Mali)'' from the list of beneficiary sub-Saharan African countries. Note 7(a) to subchapter II and note 1 to subchapter XIX of chapter 98 of the HTS are each modified by deleting ''Ethiopia,'', ''Guinea,'', and ''Mali,'' from the list of beneficiary countries. Further, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by deleting ''Ethiopia;'', ''Guinea;'', and ''Republic of Mali;'' from the list of lesser developed beneficiary sub-Saharan African countries.

(14) The modifications to the HTS set forth in paragraph (13) of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2022.

(15) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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



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Presidential Documents

Executive Order 14061 of December 22, 2021

Adjustments of Certain Rates of Pay

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

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 4501) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

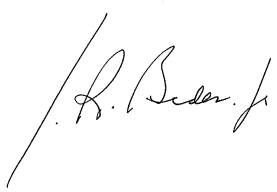
(a) Pursuant to section 5304 of title 5, United States Code, and my authority to implement an alternative level of comparability payments under section 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2022. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2022.

Sec. 8. *Prior Order Superseded.* Executive Order 13970 of December 31, 2020, is superseded as of the effective dates specified in section 7 of this order.



THE WHITE HOUSE,
December 22, 2021.

Billing code 3395–F2–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

	1	2	3	4	5	6	7	8	9	10
GS-1	$20,172	$20,849	$21,519	$22,187	$22,857	$23,249	$23,913	$24,581	$24,608	$25,234
GS-2	22,682	23,222	23,973	24,608	24,886	25,618	26,350	27,082	27,814	28,546
GS-3	24,749	25,574	26,399	27,224	28,049	28,874	29,699	30,524	31,349	32,174
GS-4	27,782	28,708	29,634	30,560	31,486	32,412	33,338	34,264	35,190	36,116
GS-5	31,083	32,119	33,155	34,191	35,227	36,263	37,299	38,335	39,371	40,407
GS-6	34,649	35,804	36,959	38,114	39,269	40,424	41,579	42,734	43,889	45,044
GS-7	38,503	39,786	41,069	42,352	43,635	44,918	46,201	47,484	48,767	50,050
GS-8	42,641	44,062	45,483	46,904	48,325	49,746	51,167	52,588	54,009	55,430
GS-9	47,097	48,667	50,237	51,807	53,377	54,947	56,517	58,087	59,657	61,227
GS-10	51,864	53,593	55,322	57,051	58,780	60,509	62,238	63,967	65,696	67,425
GS-11	56,983	58,882	60,781	62,680	64,579	66,478	68,377	70,276	72,175	74,074
GS-12	68,299	70,576	72,853	75,130	77,407	79,684	81,961	84,238	86,515	88,792
GS-13	81,216	83,923	86,630	89,337	92,044	94,751	97,458	100,165	102,872	105,579
GS-14	95,973	99,172	102,371	105,570	108,769	111,968	115,167	118,366	121,565	124,764
GS-15	112,890	116,653	120,416	124,179	127,942	131,705	135,468	139,231	142,994	146,757

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$112,890	$91,475	$74,122	$60,061	$48,667	$43,507	$38,894	$34,770	$31,083
2	116,277	94,219	76,346	61,863	50,127	44,812	40,061	35,813	32,015
3	119,765	97,046	78,636	63,719	51,631	46,157	41,263	36,887	32,976
4	123,358	99,957	80,995	65,630	53,180	47,541	42,501	37,994	33,965
5	127,059	102,956	83,425	67,599	54,775	48,968	43,776	39,134	34,984
6	130,870	106,045	85,928	69,627	56,418	50,437	45,089	40,308	36,034
7	134,797	109,226	88,506	71,716	58,111	51,950	46,441	41,517	37,115
8	138,840	112,503	91,161	73,867	59,854	53,508	47,835	42,763	38,228
9	143,006	115,878	93,896	76,083	61,650	55,113	49,270	44,046	39,375
10	146,757	119,354	96,712	78,366	63,499	56,767	50,748	45,367	40,556
11	146,757	122,935	99,614	80,717	65,404	58,470	52,270	46,728	41,773
12	146,757	126,623	102,602	83,138	67,367	60,224	53,838	48,130	43,026
13	146,757	130,421	105,680	85,633	69,388	62,031	55,454	49,574	44,317
14	146,757	134,334	108,851	88,202	71,469	63,891	57,117	51,061	45,646

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306) and Directors of Medical Centers and Veterans Integrated Service Networks (38 U.S.C. 7401(4))*

	Minimum	Maximum
	$135,468	$203,700**
Physician, Podiatrist, and Dentist Base and Longevity Pay Schedule* **		
Physician Grade	$111,035	$162,849
Dentist Grade	111,035	162,849
Podiatrist Grade	111,035	162,849
Chiropractor and Optometrist Schedule		
Chief Grade	$112,890	$146,757
Senior Grade	95,973	124,764
Intermediate Grade	81,216	105,579
Full Grade	68,299	88,792
Associate Grade	56,983	74,074
Expanded-Function Dental Auxiliary Schedule** **		
Director Grade	$112,890	$146,757
Assistant Director Grade	95,973	124,764
Chief Grade	81,216	105,579
Senior Grade	68,299	88,792
Intermediate Grade	56,983	74,074
Full Grade	47,097	61,227
Associate Grade	40,528	52,687
Junior Grade	34,649	45,044

* This schedule does not apply to the Director of Nursing Service or any incumbents who are physicians or dentists.

** Pursuant to 38 U.S.C. 7404(a)(3)(B), for positions that are covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level II of the Executive Schedule. For positions that are not covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level III of the Executive Schedule.

*** Pursuant to 38 U.S.C. 7431, Veterans Health Administration physicians, podiatrists, and dentists paid under the Physician, Podiatrist, and Dentist Base and Longevity Pay schedule may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$135,468	$203,700
Agencies without a Certified SES Performance Appraisal System	$135,468	$187,300

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

Level I	$226,300
Level II	203,700
Level III	187,300
Level IV	176,300
Level V	165,300

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

Vice President	$261,400
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

Chief Justice of the United States	$286,700
Associate Justices of the Supreme Court	274,200
Circuit Judges	236,900
District Judges	223,400
Judges of the Court of International Trade	223,400

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2022)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10*	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$11,635.50	$12,017.10	$12,270.00	$12,340.50	$12,656.10	$13,183.20	$13,306.20	$13,806.60	$13,950.90	$14,382.00	$15,006.30
O-7	9,668.40	10,117.50	10,325.40	10,490.70	10,789.80	11,085.30	11,427.00	11,767.50	12,109.50	13,183.20	14,089.80
O-6**	7,332.00	8,054.70	8,583.30	8,583.30	8,616.30	8,985.30	9,034.50	9,034.50	9,547.80	10,455.30	10,988.10
O-5	6,112.20	6,885.30	7,361.70	7,451.40	7,749.30	7,926.90	8,318.10	8,605.80	8,976.90	9,543.90	9,813.90
O-4	5,273.70	6,104.40	6,512.40	6,602.70	6,980.70	7,386.30	7,891.80	8,284.50	8,557.50	8,714.70	8,805.30
O-3***	4,636.50	5,256.00	5,672.40	6,185.40	6,482.10	6,807.30	7,017.30	7,362.90	7,543.50	7,543.50	7,543.50
O-2***	4,006.50	4,562.70	5,255.10	5,432.70	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30
O-1***	3,477.30	3,619.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$6,185.40	$6,482.10	$6,807.30	$7,017.30	$7,362.90	$7,654.80	$7,822.80	$8,050.80
O-2E	-	-	-	5,432.70	5,544.30	5,720.70	6,018.60	6,249.30	6,420.60	6,420.60	6,420.60
O-1E	-	-	-	4,375.50	4,672.20	4,845.00	5,021.70	5,194.80	5,432.70	5,432.70	5,432.70
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$4,791.90	$5,154.30	$5,302.20	$5,447.70	$5,698.50	$5,946.60	$6,198.00	$6,575.40	$6,906.60	$7,221.90	$7,480.20
W-3	4,376.40	4,558.20	4,745.70	4,806.60	5,002.20	5,388.00	5,789.40	5,978.70	6,197.70	6,422.70	6,828.30
W-2	3,872.10	4,238.40	4,350.90	4,428.60	4,679.40	5,069.70	5,263.50	5,453.70	5,686.50	5,868.60	6,033.30
W-1	3,398.70	3,765.00	3,863.10	4,071.00	4,316.40	4,678.80	4,847.70	5,084.70	5,317.20	5,500.20	5,668.50

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2022, which is $16,974.90 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2022, which is $13,775.10 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2022)
Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*	$16,974.90*
O-9	16,444.80	16,682.40	16,974.90*	16,974.90*	16,974.90*	16,974.90*	16,974.90*	16,974.90*	16,974.90*	16,974.90*	16,974.90*
O-8	15,581.40	15,965.70	15,965.70	15,965.70	15,965.70	16,365.60	16,365.60	16,774.20	16,774.20	16,774.20	16,774.20
O-7	14,089.80	14,089.80	14,089.80	14,162.10	14,162.10	14,445.60	14,445.60	14,445.60	14,445.60	14,445.60	14,445.60
O-6**	11,520.60	11,823.60	12,130.80	12,725.40	12,725.40	12,979.50	12,979.50	12,979.50	12,979.50	12,979.50	12,979.50
O-5	10,080.90	10,384.20	10,384.20	10,384.20	10,384.20	10,384.20	10,384.20	10,384.20	10,384.20	10,384.20	10,384.20
O-4	8,805.30	8,805.30	8,805.30	8,805.30	8,805.30	8,805.30	8,805.30	8,805.30	8,805.30	8,805.30	8,805.30
O-3***	7,543.50	7,543.50	7,543.50	7,543.50	7,543.50	7,543.50	7,543.50	7,543.50	7,543.50	7,543.50	7,543.50
O-2***	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30	5,544.30
O-1***	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50	4,375.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$8,050.80	$8,050.80	$8,050.80	$8,050.80	$8,050.80	$8,050.80	$8,050.80	$8,050.80	$8,050.80	$8,050.80	$8,050.80
O-2E	6,420.60	6,420.60	6,420.60	6,420.60	6,420.60	6,420.60	6,420.60	6,420.60	6,420.60	6,420.60	6,420.60
O-1E	5,432.70	5,432.70	5,432.70	5,432.70	5,432.70	5,432.70	5,432.70	5,432.70	5,432.70	5,432.70	5,432.70
WARRANT OFFICERS											
W-5	$8,520.30	$8,952.30	$9,274.50	$9,630.30	$9,630.30	$10,112.70	$10,112.70	$10,617.60	$10,617.60	$11,149.50	$11,149.50
W-4	7,731.90	8,101.20	8,404.80	8,751.00	8,751.00	8,925.60	8,925.60	8,925.60	8,925.60	8,925.60	8,925.60
W-3	7,101.60	7,265.40	7,439.10	7,676.40	7,676.40	7,676.40	7,676.40	7,676.40	7,676.40	7,676.40	7,676.40
W-2	6,230.70	6,360.30	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90
W-1	5,873.10	5,873.10	5,873.10	5,873.10	5,873.10	5,873.10	5,873.10	5,873.10	5,873.10	5,873.10	5,873.10

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2022, which is $16,974.90 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2022, which is $13,775.10 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2022)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
						ENLISTED MEMBERS					
E-9*	-	-	-	-	-	-	$5,789.10	$5,920.50	$6,085.80	$6,279.90	$6,477.00
E-8	-	-	-	-	-	$4,739.10	4,948.80	5,078.40	5,233.80	5,402.40	5,706.30
E-7	$3,294.30	$3,595.50	$3,733.50	$3,915.30	$4,058.10	4,302.60	4,440.60	4,685.10	4,888.50	5,027.40	5,175.30
E-6	2,849.40	3,135.60	3,274.20	3,408.60	3,548.70	3,864.30	3,987.60	4,225.50	4,298.40	4,351.20	4,413.30
E-5	2,610.30	2,786.10	2,920.80	3,058.50	3,273.30	3,497.70	3,682.20	3,704.40	3,704.40	3,704.40	3,704.40
E-4	2,393.40	2,515.80	2,652.00	2,786.70	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50
E-3	2,160.60	2,296.50	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70
E-2	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70
E-1**	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30
E-1***	1,695.00	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor of the Space Force, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $9,355.50 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2022)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					ENLISTED MEMBERS						
E-9*	$6,790.50	$7,056.90	$7,336.20	$7,764.30	$7,764.30	$8,151.90	$8,151.90	$8,559.90	$8,559.90	$8,988.90	$8,988.90
E-8	5,860.50	6,122.70	6,268.20	6,626.10	6,626.10	6,759.00	6,759.00	6,759.00	6,759.00	6,759.00	6,759.00
E-7	5,232.60	5,424.90	5,528.10	5,921.10	5,921.10	5,921.10	5,921.10	5,921.10	5,921.10	5,921.10	5,921.10
E-6	4,413.30	4,413.30	4,413.30	4,413.30	4,413.30	4,413.30	4,413.30	4,413.30	4,413.30	4,413.30	4,413.30
E-5	3,704.40	3,704.40	3,704.40	3,704.40	3,704.40	3,704.40	3,704.40	3,704.40	3,704.40	3,704.40	3,704.40
E-4	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50	2,905.50
E-3	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70	2,435.70
E-2	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70	2,054.70
E-1**	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30	1,833.30
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor of the Space Force, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $9,355.50 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,217.10.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

Locality Pay Area*	Rate
Alaska	30.42%
Albany-Schenectady, NY-MA	18.68%
Albuquerque-Santa Fe-Las Vegas, NM	17.14%
Atlanta—Athens-Clarke County—Sandy Springs, GA-AL	22.63%
Austin-Round Rock, TX	18.80%
Birmingham-Hoover-Talladega, AL	16.81%
Boston-Worcester-Providence, MA-RI-NH-ME	30.09%
Buffalo-Cheektowaga, NY	20.78%
Burlington-South Burlington, VT	17.62%
Charlotte-Concord, NC-SC	18.06%
Chicago-Naperville, IL-IN-WI	29.18%
Cincinnati-Wilmington-Maysville, OH-KY-IN	20.94%
Cleveland-Akron-Canton, OH	21.25%
Colorado Springs, CO	18.42%
Columbus-Marion-Zanesville, OH	20.69%
Corpus Christi-Kingsville-Alice, TX	16.82%
Dallas-Fort Worth, TX-OK	25.68%
Davenport-Moline, IA-IL	17.58%
Dayton-Springfield-Sidney, OH	19.93%
Denver-Aurora, CO	28.10%
Des Moines-Ames-West Des Moines, IA	16.52%
Detroit-Warren-Ann Arbor, MI	27.86%
Harrisburg-Lebanon, PA	17.90%
Hartford-West Hartford, CT-MA	30.20%
Hawaii	20.40%
Houston-The Woodlands, TX	33.96%
Huntsville-Decatur-Albertville, AL	20.45%
Indianapolis-Carmel-Muncie, IN	17.26%
Kansas City-Overland Park-Kansas City, MO-KS	17.67%
Laredo, TX	19.85%
Las Vegas-Henderson, NV-AZ	18.25%
Los Angeles-Long Beach, CA	33.61%
Miami-Fort Lauderdale-Port St. Lucie, FL	23.80%
Milwaukee-Racine-Waukesha, WI	21.32%
Minneapolis-St. Paul, MN-WI	25.49%
New York-Newark, NY-NJ-CT-PA	35.06%
Omaha-Council Bluffs-Fremont, NE-IA	16.93%
Palm Bay-Melbourne-Titusville, FL	17.01%
Philadelphia-Reading-Camden, PA-NJ-DE-MD	26.95%
Phoenix-Mesa-Scottsdale, AZ	20.84%
Pittsburgh-New Castle-Weirton, PA-OH-WV	19.90%
Portland-Vancouver-Salem, OR-WA	24.34%
Raleigh-Durham-Chapel Hill, NC	20.94%
Richmond, VA	20.64%
Sacramento-Roseville, CA-NV	27.30%
San Antonio-New Braunfels-Pearsall, TX	17.39%
San Diego-Carlsbad, CA	30.87%
San Jose-San Francisco-Oakland, CA	42.74%
Seattle-Tacoma, WA	28.28%
St. Louis-St. Charles-Farmington, MO-IL	18.35%
Tucson-Nogales, AZ	17.77%
Virginia Beach-Norfolk, VA-NC	17.18%
Washington-Baltimore-Arlington, DC-MD-VA-WV-PA	31.53%
Rest of U.S	16.20%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2022)

AL-3/A	$117,600
AL-3/B	126,600
AL-3/C	135,700
AL-3/D	144,900
AL-3/E	154,100
AL-3/F	162,900
AL-2	171,900
AL-1	176,300

[FR Doc. 2021–28313

Filed 12–27–21; 8:45 am]

Billing code 6325–39–C

Rules and Regulations

Federal Register
Vol. 86, No. 246
Tuesday, December 28, 2021

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[Docket No: USCIS 2020–0013]

RIN 1615–AC57

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 5283–2021]

RIN 1125–AB08

Security Bars and Processing; Delay of Effective Date

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: On December 23, 2020, the Department of Homeland Security (''DHS'') and the Department of Justice (''DOJ'') (collectively, ''the Departments'') published a final rule (''Security Bars rule''), to clarify that the ''danger to the security of the United States'' standard in the statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and to make certain other changes. That rule was scheduled to take effect on January 22, 2021, but, as of January 21, 2021, the Departments delayed the rule's effective date for 60 days to March 22, 2021. The Departments subsequently further extended and delayed the rule's effective date to December 31, 2021. In this rule, the Departments are further extending and delaying the effective date of the Security Bars rule until December 31, 2022. The Departments are soliciting comments both on the extension until December 31, 2022, and whether the effective date of the Security Bars rule should be extended beyond that date.

DATES: *Effective date:* As of December 28, 2021, the effective date of the final rule published December 23, 2020, at 85 FR 84160, which was delayed January 25, 2021, at 86 FR 6847, and March 22, 2021, at 86 FR 15069, is further delayed until December 31, 2022.

Submission of public comments: Comments must be submitted on or before February 28, 2022.

ADDRESSES: You may submit comments on this rule, identified by DHS Docket No. USCIS 2020–0013, through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rule and may not receive a response from the Departments. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. The Departments are not accepting mailed comments at this time. If you cannot submit your comment by using *http://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 (not a toll-free call) for alternate instructions.

FOR FURTHER INFORMATION CONTACT:

For USCIS: Renáa Cutlip-Mason, 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).

For EOIR: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to submit comments on this action to further extend and delay the effective date of the Security Bars rule by submitting relevant written data, views, or arguments. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommendation; and include data, information, or authority that supports the recommended course of action. Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than those listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the rule and may not receive a response from the Departments.

Instructions: If you submit a comment, you must include the agency name and the DHS Docket No. USCIS 2020–0013 for this rulemaking. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov*.

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS 2020–0013. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Background and Basis for Delay of Effective Date

A. Background

On December 23, 2020, the Departments published the Security Bars rule to amend existing regulations to clarify that in certain circumstances

there are ''reasonable grounds for regarding [an] alien as a danger to the security of the United States'' or ''reasonable grounds to believe that [an] alien is a danger to the security of the United States'' based on emergency public health concerns generated by a communicable disease, making the noncitizen ineligible to be granted asylum in the United States under section 208 of the Immigration and Nationality Act (''INA'' or ''the Act''), 8 U.S.C. 1158, or the protection of withholding of removal under the Act or subsequent regulations (because of the threat of torture). *Security Bars and Processing,* 85 FR 84160 (Dec. 23, 2020). The rule was scheduled to take effect on January 22, 2021.

On January 20, 2021, the White House Chief of Staff issued a memorandum asking agencies to consider delaying, consistent with applicable law, the effective dates of any rules that had been published and not yet gone into effect, for the purpose of allowing the President's appointees and designees to review questions of fact, law, and policy raised by those regulations. *See* Memorandum for the Heads of Executive Departments and Agencies from Ronald A. Klain, Assistant to the President and Chief of Staff, *Re: Regulatory Freeze Pending Review* (Jan. 20, 2021), *available at* 86 FR 7424 (Jan. 28, 2021). As of January 21, 2021, the Departments delayed the effective date of the Security Bars rule to March 22, 2021, and then further delayed the effective date of the Security Bars rule to December 31, 2021, consistent with that memorandum and a preliminary injunction in place with respect to a related rule, as discussed below. *See* Security Bars and Processing; Delay of Effective Date, 86 FR 6847 (Jan. 25, 2021); Security Bars and Processing; Delay of Effective Date, 86 FR 15069 (Mar. 22, 2021).

B. Reason for Delay

As stated in the *Security Bars and Processing; Delay of Effective Date* interim final rule (''March Security Bars Delay IFR'') published on March 22, 2021, the Departments had good cause to delay the Security Bars rule's effective date further without advance notice and comment because implementation of the Security Bars rule was infeasible due to a preliminary injunction against a related rule. *See* 86 FR at 15070. Specifically, the Security Bars rule relies on revisions to the Departments' regulations previously made on December 11, 2020, by a separate joint rule, *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review* (''Global Asylum final rule'').[1] The Global Asylum final rule was scheduled to become effective before the Security Bars rule. However, on January 8, 2021, 14 days prior to the effective date of the Security Bars rule, in the case of *Pangea Legal Services* v. *Department of Homeland Security* (''*Pangea II*''), a district court preliminarily enjoined the Departments ''from implementing, enforcing, or applying the [Global Asylum final] rule . . . or any related policies or procedures.'' [2] The preliminary injunction remains in place. Thus, implementation of the Security Bars rule continues to be infeasible.

Specifically, the Security Bars rule relies upon the regulatory framework that was established in the Global Asylum final rule in applying bars to asylum eligibility and withholding of removal during credible fear screenings.[3] On July 9, 2020, the Departments published a Notice of Proposed Rulemaking for the Security Bars rule (''Security Bars NPRM''), which proposed regulatory text instructing adjudicators to apply the security bars to asylum eligibility and withholding of removal during credible fear screenings.[4] This proposal would have modified the then-existing regulatory framework instructing that evidence that the individual is, or may be, subject to a bar to asylum eligibility or withholding of removal, including the ''danger to the security of the United States'' bars underlying the Security Bars rule, does not have an impact on a credible fear determination.[5] The Security Bars NPRM justified this modification as necessary to allow DHS to quickly remove individuals covered by the security bars to asylum eligibility and withholding of removal, rather than sending potentially barred individuals to full removal proceedings pursuant to section 240 of the INA, 8 U.S.C. 1229a (''section 240 removal proceedings''), for consideration of further relief or protection from removal before an immigration judge, which can take months or even years.[6] The Security Bars NPRM further explained that applying the security bars during credible fear screenings was necessary to reduce health and safety dangers to both the public at large and DHS officials.[7]

On December 11, 2020, while the Departments were reviewing the comments submitted in response to the Security Bars NPRM, the Global Asylum final rule was published.[8] The Global Asylum final rule changed the general practice described above to apply all bars to asylum eligibility and withholding of removal during credible fear screenings.[9] Most relevant, the Global Asylum final rule changed the then-existing regulatory framework described above, in which evidence of a bar to asylum eligibility or withholding of removal does not have any impact on a credible fear determination (even though the bars would be part of the ultimate adjudication of asylum eligibility or withholding of removal before the Executive Office of Immigration Review), to a framework that instead required asylum officers to apply all of the bars to asylum eligibility or withholding of removal during credible fear screenings.[10]

On December 23, 2020, the Security Bars rule was published. In this final rule, the Departments revised the text from the Security Bars NPRM to explicitly rely on the intervening changes made by the Global Asylum final rule.[11] As a result, the regulatory text of significant portions of the Security Bars rule relies upon and repeats broader regulatory text established by the Global Asylum final rule, such as applying bars to asylum eligibility and withholding of removal during credible fear screenings.[12] The Security Bars rule assumed that the Global Asylum final rule would be in effect, and, therefore, the Security Bars rule did not make additional changes to the credible fear framework.[13]

[1] *See* 85 FR 80274 (Dec. 11, 2020).

[2] *Pangea Legal Servs.* v. *U.S. Dep't of Homeland Sec.,* 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021). By issuing this rule to further extend and delay the effective date of the Security Bars rule, the Departments are not indicating a position on the outcome thus far in *Pangea II.*

[3] *See, e.g.,* 85 FR at 84176 (''As noted, the [Security Bars] final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage because, in the interim between the NPRM and the final rule, the [Global Asylum final rule] did so for all of the bars to eligibility for asylum and withholding of removal.''); *id.* at 84189 (describing changes made in the Security Bars rule ''to certain regulatory provisions not addressed in the proposed rule as necessitated by the intervening promulgation of the [Global Asylum final] Rule'').

[4] *Security Bars and Processing,* 85 FR 41201, 41216–18 (July 9, 2020).

[5] *See id.* at 41207.

[6] *Id.* at 41210–12.

[7] *Id.* at 41210.

[8] 85 FR 80274 (Dec. 11, 2020).

[9] *Id.* at 80391.

[10] *Id.*

[11] 85 FR at 84174–77.

[12] *See, e.g., id.* at 84194–98 (revising 8 CFR 208.30, 235.6, 1208.30, and 1235.6, among other provisions); *accord* 85 FR at 80390–80401 (same).

[13] *See* 85 FR at 84175 (''The Departments note that the final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at

As a result of the interplay between the two rules, implementation of the Security Bars rule would risk violating the injunction against the application, implementation, or enforcement of the Global Asylum final rule and any related policies or procedures. Effective implementation of the Security Bars rule relies on the application of the asylum and withholding of removal bars to eligibility at the credible fear screening stage, as established by the Global Asylum final rule.[14] Accordingly, implementing the Security Bars rule—and effectively reinserting or relying upon regulatory provisions that the *Pangea II* court has enjoined—may potentially violate the court's injunction. In other words, the court's injunction in *Pangea II* makes it impermissible under the current regulatory framework to apply the bars to asylum eligibility and withholding of removal outlined in the Security Bars rule to noncitizens in the credible fear screening process. Given these circumstances, the Departments believe that the Security Bars rule, which could not be implemented as designed, would not necessarily provide the framework for achieving its intended goals.

Accordingly, the Departments are further extending and delaying the effective date of the Security Bars rule until December 31, 2022, because of the aforementioned litigation. If the injunction against implementation of the Global Asylum final rule is lifted before December 31, 2022, the Departments can revise the effective date of the Security Bars rule as needed to account for this change. Similarly, if the injunction remains in effect on that date, the Departments may delay the effective date of the Security Bars rule further. The Departments have chosen this time-limited delay, rather than an indefinite delay, due to the preliminary nature of the injunction.

C. Future Rulemaking To Modify or Rescind Security Bars Rule

The Departments are reviewing and reconsidering the Security Bars rule in light of the Administration's policies of ensuring the safe and orderly reception and processing of asylum seekers consistent with public health and safety, strengthening the asylum system, and removing barriers that impede access to immigration benefits, with the additional context of the complex relationship between the Global Asylum final rule and the Security Bars rule, and the court's injunction in *Pangea II*.[15] The Departments are reevaluating whether the Security Bars rule provides the most appropriate and effective framework for achieving its goals of mitigating the spread of communicable diseases, including COVID–19, among certain noncitizens in the credible fear screening process, as well as DHS personnel and the public. The Departments plan to publish a separate NPRM to solicit public comments on whether to modify or rescind the Security Bars rule.[16]

In the March Security Bars Delay IFR, the Departments explained that they were considering amending or rescinding the Security Bars rule and noted that they may extend the delay in its effective date beyond December 31, 2021, if the injunction remained in effect at the time. 86 FR at 15071. The Departments sought public comments on whether the Security Bars rule should be revised or revoked and information on alternative approaches that may achieve the best public health outcome consistent with the Administration's immigration policy goals.[17] The Departments received 66 comments in response to the March Security Bars Delay IFR, which the Departments would address in any separate future rulemaking to modify or rescind the Security Bars rule.

The Departments recognize that the COVID–19 public health emergency is highly dynamic and continues to pose health and safety risks for noncitizens held in congregate settings, particularly at holding and detention facilities, agency personnel, and the public.[18] As the COVID–19 public health emergency has continued to evolve, the Departments continue to reconsider and reevaluate how best to mitigate the spread of COVID–19 and which actions are most appropriate in accordance with their legal authorities.

III. Request for Comment on Further Delay of the Effective Date of the Security Bars Rule

The Departments continue to welcome data, views, and information regarding the effective date of the Security Bars rule. The Departments also are soliciting comments on whether the effective date should be extended beyond December 31, 2022, if the *Pangea II* injunction is still in effect or if other intervening events occur.

IV. Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (''APA''), agencies are not required to engage in pre-promulgation notice-and-comment under 5 U.S.C. 553(b) and (c) 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). As stated above, the Departments have determined that the good cause exception applies to this rule because implementation of the Security Bars rule has not been—and continues to not be—feasible due to a preliminary injunction against a related rule. As explained above, the Security Bars rule's reliance upon—and interplay with—the Global Asylum final rule means that implementation of the Security Bars rule would risk violating the *Pangea II* injunction. The preliminary injunction remains in place. It is therefore impractical and unnecessary for the Departments to provide notice and an opportunity to comment, because any comments received cannot and will not affect the injunction underlying the need for delay. *See EME Homer City Generation, L.P.* v. *E.P.A.,* 795 F.3d 118, 134–35

the credible fear stage. In the interim between the NPRM and the final rule, the Global Asylum final rule did so for bars to eligibility for asylum and withholding of removal.'').

[14] As the Departments explained in the Security Bars rule, the intervening Global Asylum final rule made changes to the credible fear screening framework to provide that noncitizens receiving positive credible fear determinations be placed in asylum-and-withholding only proceedings, rather than section 240 removal proceedings. *See* 85 FR at 84188. The Security Bars rule relied upon this change made in the Global Asylum final rule to provide that noncitizens who receive positive credible fear determinations under the Security Bars rule will be placed in such asylum-and-withholding only proceedings rather than section 240 removal proceedings, unless they are removed to third countries. *See id.* The Security Bars rule also assumes that the Departments are using the reasonable possibility of persecution or torture standards for withholding of removal claims in the credible fear screening context, which is also a change that was made in the Global Asylum final rule. *See id.* at 84188, 84191.

[15] *See, e.g.,* Executive Order 14010 of February 2, 2021, *Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,* 86 FR 8267 (Feb. 5, 2021); Executive Order 14012 of February 2, 2021, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,* 86 FR 8277 (Feb. 5, 2021).

[16] *See* Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs, *Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, Bars to Asylum Eligibility and Procedures, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC69* (last visited Dec. 14, 2021).

[17] *See* 86 FR at 15069, 15071.

[18] *See Public Health Reassessment and Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists,* 86 FR 42828, 42830, 42833, 42835–36 (Aug. 5, 2021).

(D.C. Cir. 2015) (explaining that the good cause exception applied because ''commentators could not have said anything during a notice and comment period that would have changed'' the agency's response to a judicial decision). The Departments notified the public in March that ''if the injunction remains in effect on December 31, [2021,] the Departments may delay the effective date of the Security Bars rule further.'' 86 FR at 15071.[19]

B. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs, benefits, and transfers of available alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Pursuant to Executive Order 12866, the Office of Information and Regulatory Affairs of the Office of Management and Budget determined that this rule is ''significant'' under Executive Order 12866 and has reviewed this regulation.

C. Regulatory Flexibility Act

The Departments have reviewed this rule in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and have determined that this rule to further delay the effective date of the Security Bars rule (85 FR 84160) will not have a significant economic impact on a substantial number of small entities. Neither the Security Bars rule, nor this rule to delay its effective date, regulate ''small entities'' as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are eligible to apply for asylum and related forms of relief, and only individuals are placed in immigration proceedings.

[19] In response to the March Security Bars Delay IFR, the Departments received one comment objecting to a further delay. The commenter asserted that implementation was needed to mitigate the risk of the potential spread of deadly communicable diseases by noncitizens from countries where the disease was prevalent. As noted, however, agencies have been enjoined from applying bars to asylum eligibility and withholding of removal when making a credible fear determination.

D. Unfunded Mandates Reform Act of 1995

This rule 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 are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act (''CRA''). 5 U.S.C. 804. 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. The Departments have complied with the CRA's reporting requirements and have sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

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, the Departments believe that this rule will 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 create 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.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have ''tribal implications'' because it 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. Accordingly, Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) requires no further agency action or analysis.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Dated: December 18, 2021.

Merrick B. Garland,

Attorney General, Department of Justice.

[FR Doc. 2021–28016 Filed 12–27–21; 8:45 am]

BILLING CODE 4410–30–P; 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 251 and 258

U.S. Customs and Border Protection

19 CFR Part 4

[Docket No. USCBP–2021–0046; CBP Dec. No. 21–19]

RIN 1651–AB18

Automation of CBP Form I–418 for Vessels

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This rule amends the regulations in title 8 and title 19 of the Code of Federal Regulations (CFR) regarding the submission of U.S. Customs and Border Protection (CBP) Form I–418, Passenger List—Crew List (Form I–418) in paper form. Currently, the master or agent of every commercial vessel arriving in the United States, with limited exceptions, must submit Form I–418, along with certain information regarding longshore work, in paper form to CBP at the port where immigration inspection is performed. Most commercial vessel operators are also required to submit a paper Form I–418 to CBP at the final U.S. port prior to departing for a foreign place. DHS is modifying the applicable regulations to provide for the electronic submission of Form I–418. Under this rule, vessel operators will be required to electronically submit the data elements on Form I–418 to CBP through an electronic data interchange system (EDI) approved by CBP in lieu of submitting a paper form. This will streamline vessel arrival and departure processes by providing for the electronic submission of the information collected

on the Form I–418, eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping.

DATES:

Effective date: This rule is effective February 28, 2022.

Comments due date: Comments must be received on or before February 28, 2022.

ADDRESSES: You may submit comments, identified by docket number, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2021–0046.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to relevant COVID–19-related restrictions, CBP has temporarily suspended on-site public inspection of submitted comments.

FOR FURTHER INFORMATION CONTACT: For title 8 of the Code of Federal Regulations inquiries, contact Stephen Dearborn, Enforcement Programs Division, Admissibility and Passenger Programs, Office of Field Operations, *Stephen.M.Dearborn@cbp.dhs.gov* or (202) 344–1707; for title 19 of the Code of Federal Regulations inquiries, contact Brian Sale, Manifest and Security Division, Cargo and Conveyance Security, Office of Field Operations, *Brian.A.Sale@cbp.dhs.gov* or (202) 325–3338.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. The Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) invite comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

A. Overview

As discussed in detail below, current regulations require commercial vessels and their operators [1] to meet several data submission requirements when arriving in the United States from a foreign place or outlying possession of the United States and when departing the United States for a foreign place or outlying possession of the United States. Both CBP and the U.S. Coast Guard (USCG) collect information in these contexts, and many of the data elements that the two agencies collect overlap. Some of this data must be submitted electronically, while some of it must be submitted on paper, such as the Form I–418, Passenger List—Crew List. *See* section 251.5 of title 8 of the Code of Federal Regulations (8 CFR 251.5). Through this rule, CBP is streamlining the vessel arrival and departure processes by eliminating redundant data submissions, providing for the electronic submission of the information collected on the Form I–418, simplifying vessel inspections, and automating recordkeeping for the Form I–418.

[1] For the purposes of this document, vessel ''operators'' include masters or commanding officers, or authorized agents, owners, or consignees.

The USCG requires commercial vessel operators to submit a Notice of Arrival (NOA) to the National Vessel Movement Center (NVMC) [2] through its electronic Notice of Arrival/Departure (eNOA/D) system or via email in advance of U.S. arrival.[3] *See* 33 CFR 160.201–216. In addition to other data elements, each NOA must include information on the crew and passengers on board the vessel. *See* 33 CFR 160.206(a). Upon satisfactory submission, USCG processes the information via the eNOA/D web portal and then the system automatically transmits it to CBP as an Advance Passenger Information System (APIS) manifest. An APIS manifest is a CBP pre-arrival requirement. *See* 8 CFR 231.1(a) and 19 CFR 4.7b.

In addition to the APIS manifest data, which must be submitted electronically to CBP prior to arrival, DHS regulations require the master or agent of every vessel arriving in the United States from a foreign place or outlying possession of the United States, with the exception of certain vessels in the Great Lakes, to present a manifest of all crewmen onboard, on a Form I–418, to CBP at the port of entry where immigration inspection is performed.[4] [5] *See* 8 CFR 251.1(a)(1). Manifest information collected on the Form I–418 includes details about the passengers and crewmen on board the vessel and whether any of the crewmen will be performing longshore work at any U.S. port before the vessel departs from the United States. *See* 8 CFR 251.1. If longshore work is to be performed, Form I–418 requires the vessel operator to note which exception of the Immigration and Nationality Act permits the work. *See* 8 CFR 251.1(a)(2)(ii) and 258.2.

If manifest information changes after the initial submission, the vessel operator must update the APIS manifest electronically through the eNOA/D system. *See* 19 CFR 4.7b(b)(2)(ii). Additionally, a CBP officer at the coastwise port generally updates the vessel's original paper Form I–418 to reflect any changes.

[2] The NVMC was established by USCG in 2001 to operate as a single clearinghouse for the submission and processing of notice of arrival and departure information for vessels entering and departing U.S. ports and facilities.

[3] When a vessel operator is in an area without internet access or experiences technical difficulties, and he or she has no shore-side support available, the vessel operator may fax or phone the submission to the NVMC. *See* 33 CFR 160.210(a).

[4] For more information on the exemptions for certain Great Lakes vessels, *see* 8 CFR 251.1(a)(3).

[5] Due to the high volume of crew and passengers on cruise ships, cruise ship operators generally submit the two signature pages of the Form I–418 on paper along with a compact disc containing their passenger and crew manifest details.

Upon departure from the United States, USCG collects updated manifest information from commercial vessel operators via a Notice of Departure (NOD) submitted to the NVMC through eNOA/D or another electronic format. *See* 33 CFR 160.201–216. Also at the time of departure, CBP requires vessel operators to update their original paper Form I–418 submission to include a list of departing crew, crew changes, and trip departure details.[6] *See* 8 CFR 251.3. A CBP officer at the port of departure typically verifies any changes to the Form I–418 information and sends the updated form to the vessel's first port of arrival for final data reconciliation and recordkeeping purposes.

Despite similarities in the vessel arrival and departure data submitted in accordance with the Form I–418, APIS, and USCG requirements, data transmitted electronically, such as through eNOA/D, does not satisfy the current Form I–418 regulatory requirements, which state that Form I–418 must be submitted in paper format. *See* 8 CFR 251.5. As described in depth below, these overlapping submission requirements create a substantial burden on vessel operators, and the maintenance, verification, and storage of the paper Form I–418 is a significant burden on CBP officers and the agency as a whole.

To reduce redundant data submissions and to ease burdens on vessel operators and the agency itself, CBP is modifying its regulations to allow for the electronic submission of Form I–418 only. The updated regulations require vessel operators to submit the data elements required on Form I–418 electronically via an electronic data interchange system (EDI) approved by CBP. Presently, the CBP-approved EDI is eNOA/D. Data submitted via eNOA/D will be automatically transmitted to CBP, which will use the information to populate an electronic version of the Form I–418.[7] The information currently collected through eNOA/D will satisfy the required data elements for populating the electronic version of the Form I–418 for CBP's purposes. The act of electronically submitting the data elements required on Form I–418 constitutes the Master's certification that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel. As explained further below, CBP will no longer collect the vessel operator's signature for the Master's certification during inspection. The electronically submitted information will then be reviewed and confirmed by the inspecting CBP officer. This rule will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping. Any changes regarding the CBP-approved EDI will be announced in a notice published in the **Federal Register**.

B. Current Commercial Vessel Arrival and Departure Process

Commercial vessels arriving at and departing from U.S. ports of entry must comply with statutory and regulatory requirements to engage in U.S. trade.[8] Commercial vessels, regardless of whether they are cargo, non-cargo,[9] or cruise ships, traveling to a U.S. port of entry from a foreign port or place must begin their trip by submitting certain manifest information electronically to USCG and CBP prior to arrival. Once at a U.S. port of entry, commercial vessels must submit additional information and undergo customs and immigration inspections and processing. These arrival requirements vary by commercial vessel type and slightly differ by port of entry.

1. Cargo and Non-Cargo Vessels

In general, upon a cargo or non-cargo vessel's arrival, CBP officers at the port of entry travel to the vessel's docking station and board it. Next, CBP requests and reviews the vessel's entry and manifest documentation, along with passenger and crew passports and visas. For manifest verification, the vessel's operator or agent typically submits two copies of the vessel's passenger and crew manifest using Form I–418 to the CBP officers aboard the vessel. CBP uses the paper Form I–418 for crew and passenger admissibility inspections and processing.

During the admissibility inspection process, a CBP officer verifies the actual crew and passengers on hand and those departing the vessel using a copy of the paper Form I–418, the previously submitted APIS manifest, pre-arrival screening results, and passports and visas. Barring any unresolvable issues, the CBP officer annotates the inspection results, including any discrepancies, on the paper Form I–418 submissions. The CBP officer collects the vessel operator's signature on the form and signs and stamps the documents. The CBP officer then provides one copy of the signed, stamped, and annotated Form I–418 to the vessel operator to use during coastwise travel and upon departure from the United States. The CBP officer at the first port of arrival retains the other copy of the original signed, stamped, and annotated Form I–418 for subsequent data reconciliation and recordkeeping purposes.

After the admissibility inspections and processing are complete, the CBP officers disembark the vessel, travel back to their port office, manually record the results of their inspections and related actions into CBP data systems, and send applicable Form I–418 supporting documentation, to the next port of arrival.

Once granted entry, the vessel may engage in further coastwise travel within the territorial waters of the United States or depart the United States. If manifest information changes after initial submission, the vessel operator must update the APIS manifest electronically through the eNOA/D system. The vessel operator must also present the initial signed, stamped, and annotated Form I–418 copy to a CBP officer when requested at a coastwise port of arrival.[10] The CBP officers at these subsequent ports of arrival update the Form I–418 to reflect any manifest changes, verify new supporting documentation if applicable, take admissibility actions as necessary, and provide the updated Form I–418 to the vessel operator for further U.S. travel and ultimate departure. The CBP officers at each coastwise port send a copy of the updated Form I–418 to the vessel's first port of arrival for data reconciliation and recordkeeping purposes.

Upon departure from the United States, USCG requires commercial vessel operators to submit a NOD to

[6] Certain Great Lakes vessels are also exempt from this requirement. *See* 8 CFR 251.3(b).

[7] The embark date required on Form I–418 is transmitted to CBP via eNOA/D. The disembark date/date separated (*i.e.,* the date when a crewmember permanently departs the vessel) is calculated by CBP. This rule does not change this practice.

[8] The regulatory requirements concerning how and when a vessel operator must submit an I–418 are contained in parts 251 and 258 of title 8 of the Code of Federal Regulations, and in part 4 of title 19 of the Code of Federal Regulations.

[9] For the purposes of this document, non-cargo commercial vessels include all commercial vessels other than cargo ships and cruise ships. Tugboats fall under this classification.

[10] Per sections 235 and 252 of the Immigration and Nationality Act, CBP may board and inspect vessels at subsequent coastwise ports of arrival. *See* 8 U.S.C. 1225(d); *See also* 8 U.S.C. 1282.

NVMC through eNOA/D or another electronic format. CBP requires these vessel operators to update their APIS manifest electronically through the eNOA/D system; update their paper Form I–418 to include a list of departing crew, crew changes, and trip departure details; and submit the paper Form I–418 to CBP. A CBP officer at the port of departure verifies any additional modifications to the form information and sends the completed Form I–418 and supporting documentation to the vessel's first port of arrival. There, a CBP officer manually reconciles the original Form I–418 retained during the initial arrival inspection with the subsequently updated versions of the form and related documentation.

CBP officers spend considerable time vetting pre-arrival data, traveling to/from a vessel, boarding/disembarking the ship, and conducting admissibility inspections and processing. In addition, CBP officers typically spend 120 minutes (2 hours) performing post-inspection processing for each vessel's paper Form I–418 submission from arrival to departure.[11] This includes the time CBP spends manually recording form information and actions into CBP systems, communicating between ports of arrival and departure, manually validating and reconciling data, gathering and sending supporting documentation, physically storing and shipping the manifest package, and tracking the manifest package.

2. Cruise Ships

Cruise ships follow slightly different procedures from cargo and non-cargo vessels upon arriving at a U.S. port of entry. At their first port of arrival, cruise ship crewmembers and passengers generally offload the ship at a designated terminal, where CBP officers are stationed and readily available to conduct customs and immigration inspections and processing. Under the standard arrival process, the cruise ship operator generally provides two copies of Form I–418's complete passenger and crew manifest with all printed pages.[12] Cruise ship operators arriving at some POEs submit just two copies of the two signature pages of the paper Form I–418 and a compact disc of the manifest in lieu of submitting numerous pages of paper to CBP.

During the standard admissibility inspection process, a CBP officer validates and verifies the cruise ship's actual crew and passengers on hand and those departing the vessel generally using the Form I–418, the previously submitted APIS manifest, pre-arrival screening results, and passports and visas. Any inspection results and admission/landing rights from such processing are directly recorded into CBP data systems. During cruise ship crew and passenger processing, the CBP officer also collects the vessel operator's signature on the form copies, signs and stamps the documents. The CBP officer then provides one copy of the signed and stamped Form I–418 or signature pages for the vessel operator to retain and use in coastwise travel and upon departure from the United States. The CBP officer at the first port of arrival retains the other copy of the signed, stamped, and annotated Form I–418 or signature pages for subsequent data reconciliation and recordkeeping purposes.

Once granted entry, the cruise ship may engage in further coastwise travel or depart the United States. If manifest information changes during coastwise movement, the vessel operator must update the APIS manifest electronically through the eNOA/D system. The vessel operator must also present the initial signed, stamped, and annotated Form I–418 signature pages to a CBP officer at each coastwise port of arrival upon request. The CBP officers at these subsequent ports of arrival review the Form I–418 or signature pages and update CBP data systems to reflect any manifest changes, verify new, applicable supporting documentation, take admissibility actions as necessary, and provide the Form I–418 or signature pages to the vessel operator for further U.S. travel.

As discussed above, upon departure from the United States, USCG requires commercial vessel operators to submit a NOD to the NVMC through eNOA/D or another electronic format. CBP requires these vessel operators to update their APIS manifest electronically through an approved system (currently, the eNOA/D system) and submit the two signature pages of the signed and stamped Form I–418 to CBP. *See* 8 CFR 251.3. A CBP officer at the port of departure verifies any additional modifications to the form information and sends the completed Form I–418 signature page and supporting documentation to the vessel's first port of arrival. There, a CBP officer manually reconciles the original Form I–418 signature page, supporting documentation, and manifest compact disc with the subsequently updated versions of the form and related documentation.

In addition to time spent vetting pre-arrival data and conducting admissibility inspections and processing, CBP officers spend an average of 20 minutes (0.333 hours) performing post-inspection processing for each cruise ship's Form I–418 submission from arrival to departure.[13] This includes the time CBP spends manually validating and reconciling data, gathering supporting documentation, communicating between ports of arrival and departure (when necessary), physically storing and shipping the manifest package, and tracking the manifest package (when necessary).

3. Additional Form I–418 Requirements for Vessels Under Title 19 CFR

Part 4 of title 19 of the CFR provides additional requirements as to when and how a vessel operator must submit Form I–418. Under 19 CFR 4.7(a), the master of every vessel arriving in the United States and required to make entry must have on board a manifest that includes Form I–418. In some instances, a vessel operator may submit a Form I–418 in lieu of the Crew's Effects Declaration, CBP Form 1304, with supporting documentation. *See* 19 CFR 4.7(a), 4.7a(b)(2), and 4.81(d). However, when given the option, most vessel operators submit CBP Form 1304 instead of Form I–418 with additional supporting documentation, such as individual CBP Forms 5129, Crew Member's Declaration.

C. Form I–418 Automation Test Program

Recognizing the need to reduce redundant data collection and implement a seamless process to receive and use vessel arrival and departure information under various regulations, CBP developed a voluntary Form I–418 automation test program. The program tested CBP's ability to gather and reconcile information submitted for eNOA/D, APIS, and other electronic purposes for use in generating an automated, electronic Form I–418. CBP implemented this test in two phases as described below. The test varied somewhat across participating ports. Although the automated test program is still in operation at many ports of entry, the test program will be replaced by the regulatory program addressed in this rule.

[11] Source: Correspondence with CBP's Office of Field Operations on November 6, 2020.

[12] An unknown number of cargo and non-cargo vessel operators and cruise ship operators arriving/departing at some POEs may provide additional copies of the Form I–418 to CBP during each standard arrival/departure. Source: Email correspondence with CBP's Office of Field Operations on November 18, 2020.

[13] Source: Email correspondence with CBP's Office of Field Operations on June 2, 2020.

CBP launched the first phase of the voluntary automation test program at four ports of entry in January 2011. The first phase allowed CBP officers and ports to evaluate the submission of Form I–418 data in both electronic and paper format to verify the similarity of information captured and identify any anomalies in the methods used. Moreover, it allowed CBP officers to rely solely on electronic manifest data submissions to build a vessel's departure manifest, thus eliminating the need for vessel operators to submit the departure manifest in paper format.

By June 2011, CBP implemented the second and final phase of the voluntary test program, which fully transitioned the submission of Form I–418 data to an automated, paperless process for certain commercial vessel operators. In place of submitting the required I–418 information on the paper Form I–418, vessel operators participating in the I–418 Automation test program could transmit this data through eNOA/D and APIS data submissions. Under the automation test, CBP systems automatically compiled eNOA/D, APIS, and any other electronic manifest data submitted electronically by test participants prior to arrival and at departure into a pre-populated electronic Form I–418. Upon a participating cargo or non-cargo vessel's arrival, CBP largely pre-vetted the electronic Form I–418 and printed out a paper copy of the form for customs and immigration inspection and processing purposes.

As with current arrival requirements for cargo and non-cargo commercial vessels, a CBP officer then boarded the vessel, conducted inspections, annotated the admissibility inspection results on the paper Form I–418, collected the vessel operator's signature on the form, and signed and stamped the document. Before disembarking the vessel, the CBP officer had the vessel operator make a copy of the signed, stamped, and annotated paper Form I–418 for further coastwise travel and departure. The CBP officer then returned to the port office to manually record the inspection results and related actions annotated on the original Form I–418 into CBP data systems.

For cruise ships participating in the I–418 Automation test program, CBP generally pre-vetted the electronic Form I–418, printed out a paper copy of the Form I–418's two signature pages, and conducted passenger and crew processing like the standard process at a terminal. Instead of requiring the submission of a full paper Form I–418 or manifest CDs, CBP officers largely conducted arrival inspections and processing electronically at the terminal. CBP officers also used the two paper Form I–418 signature pages to collect the vessel operator's signature and to sign and stamp the pages to generally meet existing paper Form I–418 retention requirements.

Before departing for their next port of call, test participants could transmit any manifest changes subsequent to the initial inspection at the port of arrival via the eNOA/D system. These changes included, but were not limited to, the sign-on or sign-off of crewmembers. As under the standard commercial vessel arrival/departure process, a CBP officer at the next port of call verified that the information submitted met the vessel's regulatory requirements. Upon departure from the United States, a CBP officer at the port of departure performed an electronic reconciliation of the vessel's arrival, coastwise, and departure manifest data and addressed any discrepancies. Then, the officer sent all paper documentation, typically via fax, to the first port of arrival.

In 2015, CBP migrated to mobile devices that allowed CBP officers to electronically conduct Form I–418 processing for cargo and non-cargo vessel arrivals (including I–418 Automation test program participants and non-participants) at different ports of entry, thereby removing the need to print off a paper Form I–418. With these devices, CBP officers directly recorded the inspection results and related actions into CBP data systems at the time of inspection and processing. In 2016, CBP successfully deployed its preexisting electronic signature (hereafter, ''e-signature'') capability through its mobile devices at five major sea ports of entry. This tool allowed for the electronic collection of vessel operator and CBP officer signatures on the Form I–418, which removed the need to print off a copy of the Form I–418 and have the vessel operator sign it. Despite these streamlined electronic processing methods, CBP continued to also record vessel inspection results and signatures on the paper form and physically stamp the form to meet the regulatory requirements in place regarding the submission and retention of paper Form I–418.

Most U.S. ports of entry along with approximately 15 percent of cargo and non-cargo vessels and 56 percent of cruise ships are fully or partially participating in the above-described voluntary automation test program, including electronic submissions and e-signature capabilities.[14]

[14] Based on fiscal year (FY) 2019 data.

D. Form I–418 Automation Regulatory Program

CBP is amending its regulations to require the electronic submission of the data elements required on Form I–418 in lieu of its current paper form. This will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping. The updated regulations will require vessel operators to electronically submit the data elements required on the Form I–418 via an EDI approved by CBP. CBP will continue to use the eNOA/D system as the approved EDI. Under this process, CBP systems will compile eNOA/D, APIS, and any other electronic manifest data submitted by vessel operators to the NVMC prior to arrival and at departure into an automated CBP system. CBP will use its system for all commercial vessel crew and passenger admissibility inspections and processing, and thus generally establish a fully paperless passenger and crew list process for all commercial vessel arrivals and departures. Any changes to the CBP-approved EDI will be announced in a notice published in the **Federal Register**.

With this automated system, for each commercial vessel arrival from a foreign port or place, CBP will be able to pre-vet the vessel's electronic passenger and crew list, travel to/from and board/disembark the vessel (for cargo and non-cargo vessels only), conduct inspections, and record the admissibility inspection results and related actions in real time using a mobile device or computer station (for the majority of cruise ships).[15] During arrivals/departures processed with mobile devices, CBP officers will directly record the inspection results and related actions into CBP data systems at the time of inspection and processing, eliminating the need for CBP officers to manually input the inspection results and related actions into CBP data systems later at the port office. CBP will also use the mobile devices to verify the electronically submitted data during the inspection process. The inspecting CBP officer will no longer collect the vessel operator's signature for the Master's certification, as now the act of submitting the data electronically will constitute certification. Once the passenger and crew list is verified electronically by the inspecting CBP officer, CBP will

[15] CBP processes the majority of cruise ship arrivals at terminals using computer stations; however, CBP now processes some cruise ship arrivals using mobile devices.

generate and transmit a read-only copy of the electronic Form I–418, only upon request, with an electronic CBP receipt number, by email to the vessel operator for use during coastwise movement or upon departure from the United States. The verified electronic passenger and crew list will also be converted to a writeable file and stored in CBP data systems.

As in the automation test program, before departing for their next port of call, vessel operators will be able to transmit any manifest changes subsequent to the vessel's inspection at the first port of arrival via the NVMC. A CBP officer at the next port of arrival will verify these changes and record all updates, inspection results, and related actions in real time in the CBP system using a mobile device or computer station. The CBP officer will then save the updated electronic passenger and crew list in CBP data systems, and email a read-only copy to the vessel operator, if requested. Upon departure from the United States, a CBP officer at the port of departure will verify the vessel's arrival, coastwise, and departure manifest data, which CBP data systems will reconcile automatically, and address any discrepancies. Thereafter, the CBP officer will save the completed electronic passenger and crew lists in CBP data systems, where it will be stored electronically for at least five years. In the limited instances where a paper Form I–418 is submitted, CBP will continue its current process of collecting, verifying, and physically storing all paper Form I–418 supporting documentation.

E. Discussion of Regulatory Changes

DHS is amending parts 251 and 258 of title 8 of the CFR, as well as part 4 of title 19 of the CFR, as set forth below, to automate Form I–418 and, in some provisions, eliminate the option to submit the Form I–418 in lieu of other required forms in order to reflect current trade practices and improve efficiency in data submission. The amendments also update the regulations to incorporate ''plain language'' consistent with Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821).

1. 8 CFR Part 251

Section 251.1 addresses ''Arrival manifests and lists'' in the immigration context. Section 251.1(a) sets out the requirements for arrival manifests and lists for vessels. Specifically, this section requires the master or agent of every vessel to submit a paper Form I–418 to CBP at the port where immigration inspection is performed and that the master or agent provide certain information regarding longshore work. This section is being amended to reflect the new procedure through which the information requested on Form I–418 and about longshore work is submitted electronically through an EDI approved by CBP. Conforming amendments are being made throughout this section to accommodate the new submission process. For instance, where the regulations state that the master or agent must ''note on'' the manifest certain information about longshore work, the regulations are being amended to state that this information must now be ''indicate[d] in'' the manifest, because such additional information and annotations will generally no longer be collected on a hard copy, but will be done through an electronic interface.

Section 251.1(a) is also being amended to include two exceptions to the new general rule that I–418 and longshore work data be submitted electronically. The first exception is where the master or agent of the vessel is unable to electronically submit the data elements required on Form I–418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning, or there is no internet access, and there is no shore-side support available. The second is where CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information, or where CBP, in its discretion, determines that a paper Form I–418 is acceptable under the circumstances presented by the master or agent of a vessel. The latter includes, but is not limited to, where there is a medical or weather emergency, or, in the case of longshore work, when information and relevant data cannot be submitted through the eNOA/D system due to its format.

Lastly, additional minor amendments are being made to section 251.1 to incorporate ''plain language'' including replacing the word ''shall'' with either ''must'' or ''will'', as appropriate.

Section 251.3 addresses ''Departure manifests and lists for vessels'' in the immigration context. Specifically, this section requires the master or agent of every vessel to submit a paper Form I–418 to CBP at the port from which the vessel is to depart directly to some foreign place or outlying possession of the United States. This section is being amended to reflect the new procedure through which the information requested on the Form I–418 is submitted electronically through an EDI approved by CBP.

Section 251.3 is also being amended to include two exceptions to the new general rule that I–418 data be submitted electronically. The first is where the master or agent of the vessel is unable to electronically submit the data elements required on Form I–418 via an electronic data interchange system approved by CBP due to technical issues, such as when an onboard computer system is malfunctioning. The second exception allows for a paper Form I–418 to be submitted when CBP is experiencing technical issues or where CBP, in its discretion, determines that a paper Form I–418 is acceptable under the circumstances presented by the master or agent of a vessel.

Section 251.5 requires the master or commanding officer, or authorized agent, owner, or consignee, of a commercial vessel or commercial aircraft arriving in or departing from the United States to submit arrival and departure manifests in a paper format in accordance with §§ 251.1, 251.3, and 251.4. This section is being amended to remove references to paper, as this information will now be submitted electronically in the vessel context.

2. 8 CFR Part 258

Section 258.2 requires masters and agents who use nonimmigrant crewmen to perform longshore work under one of the exceptions listed in the section, to indicate on the crew manifest that an exception is being used and to note which exception will be performed. Among other things, it sets forth the documentation that must be presented. This section is being amended to reflect the new procedure through which the information requested on the Form I–418 is submitted electronically through an EDI approved by CBP. This rule does not make changes to any of the other documentation requirements in section 258.2. Additional minor amendments are being made to section 258.2, such as replacing the term ''shall'' with ''must.'' The term ''Immigration and Naturalization Service'' is also being updated and replaced with ''CBP.''

3. 19 CFR Part 4

Section 4.7 concerns ''Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.'' Pursuant to section 4.7(a), a paper Form I–418 is a required document for the manifest. This section is being amended to reflect the new electronic submission of the data elements required on Form I–418. Section 4.7(a) is being amended to require vessel operators to submit the data elements required on Form I–418

via the EDI approved by CBP, and to provide that the electronic submission will be considered part of the manifest required under this section.

Section 4.7a addresses ''Inward manifest; information required; alternative forms.'' Pursuant to Section 4.7a(b)(2), the master of a vessel may, in lieu of describing the articles on CBP Form 1304, furnish a CBP Form I–418. However, submitting CBP Form I–418 with the required CBP Form 5129 instead of CBP Form 1304 generally takes more time for the trade community to complete and takes more time for CBP to review and process the forms, as well as providing redundant information contained in other required forms. Therefore, to reflect current trade practices and improve data submission efficiency, this section is being amended to remove the option of filing a paper Form I–418 instead of CBP Form 1304. Conforming edits are also being made to section 4.7(a), for the same reason.

Sections 4.7a(d) and (e) are being amended to incorporate the information submission requirements contained in section 4.7b concerning the APIS data. Section 4.7a(e) is being amended to remove the certification requirements. Currently, the regulation requires a paper form certification to be attached to Form I–418. In light of the automation of CBP Form I–418, it will be impractical to require a paper form certification. Under this rule, vessel operators will be required to submit the data elements required on CBP Form I–418 via an electronic data interchange system approved by CBP. The regulation specifies that the act of electronically submitting the data will serve as the Master's certification, as described further in this preamble's discussion of the amendments to section 4.50.

Section 4.50 concerns the passenger lists that the master of every vessel arriving at a U.S. port from a foreign port or place must submit. Specifically, section 4.50(a) requires the master of the vessel to submit Form I–418 if the vessel is arriving from a noncontiguous foreign territory and is carrying steerage passengers. Section 4.50(a) is being amended to reflect the new procedure for submitting the data elements of Form I–418 through an EDI approved by CBP, including reference to the required information required under section 4.7b(b)(3) for such passengers. Section 4.50 is also being amended to include a new paragraph (c) that will replace the paper form certification requirement in section 4.7a(e). New subsection 4.50(c), provides that by the act of submitting the data elements required on CBP Form I–418 via an electronic data interchange system approved by CBP, the vessel operator certifies that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

Section 4.81 addresses ''Reports of arrivals and departures in coastwise trade.'' Section 4.81(d) provides the master of the vessel with an option of either submitting the traveling Crew's Effects Declaration, Customs Form 1304, or Form I–418 with attached Customs Form 5129, with the port director upon arrival at each port in the United States. Like the amendment to remove the option to submit Form I–418 in section 4.7a, this section is being amended to remove the option of filing a Form I–418 instead of CBP Form 1304 to reflect current trade practices and improve data submission and efficiency.

Section 4.91 concerns the diversion of a vessel and the transshipment of cargo. Section 4.91(c) requires that when inward foreign cargo or passengers are transshipped to another vessel under customs supervision, a separate traveling manifest must be used for the transshipped cargo or passengers. Section 4.91(c) provides the master of the vessel with the option of submitting either a Cargo Declaration, CBP Form 1302, or Form I–418. This section is being amended to reflect the new procedure for submitting the data elements of Form I–418 through an EDI approved by CBP.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to this prior notice and comment requirement for ''rules of agency organization, procedure, or practice'' 5 U.S.C. 553(b)(A). This interim final rule is a procedural rule promulgated for efficiency purposes that falls within this exception.

This rule is procedural because it merely automates an existing reporting requirement for vessel masters or agents pursuant to existing statutes and regulations. *See* 8 U.S.C. 1103, 1182, 1221, 1281, 1282; 8 CFR part 2; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; and 19 CFR part 4. The rule changes the format in which vessel masters or agents must present required information to CBP. Under the amended regulations, vessel masters or agents will no longer be required to complete and submit the paper Form I–418. Instead, all required information must be submitted to CBP electronically through the electronic data interchange system approved by CBP, which has been the practice for most vessel masters and agents by submitting the information through eNOA/D. This rule neither affects the substantive criteria by which CBP officers inspect vessels upon arrival or departure nor the nature of the information required by CBP.

Although this procedural rule is exempt from prior notice and comments procedures, DHS is providing the public with the opportunity to comment without delaying implementation of this rule. DHS will respond to the comments received when it issues a final rule.

B. Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and Review) 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by OMB. CBP has also prepared a regulatory impact assessment to help inform stakeholders of the impacts of this rule, which CBP has summarized below. The complete standalone analysis can be found in the public docket for this rulemaking at *http://www.regulations.gov.* The standalone analysis also focuses on the costs and benefits experienced during the I–418 Automation test program period (FY 2011 through FY 2020).

1. Executive Summary

Through the Automation of CBP Form I–418 for Vessels Interim Final Rule, CBP will amend its regulations under 8 CFR part 251, 8 CFR part 258, and 19 CFR part 4 to require the electronic submission of the data elements required from vessel operators on Form I–418 in lieu of paper form submissions. CBP will no longer require the paper Form I–418. The updated regulations will require vessel operators to electronically submit the data elements required on the Form I–418 via an EDI approved by CBP. CBP will continue to use USCG's eNOA/D system as the approved EDI. Under this process, CBP systems will compile eNOA/D and other electronic manifest data submitted by vessel operators prior to arrival and at departure into a passenger and crew list format reflective of an electronic Form I–418.[16] The act of electronically submitting the data elements required on Form I–418 will also constitute the (vessel) Master's certification that the manifest information is accurate,[17] and eliminate the current need to generally collect Form I–418's vessel master (or operator) and CBP officer signatures for certification.[18] CBP will also retain its authority to require paper Form I–418 submissions in the event of certain technical difficulties, such as system outages and disruptions, that make it impossible to submit or receive manifest data electronically, and according to CBP discretion.[19] This rule will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping.

CBP is currently operating an I–418 Automation test program, which serves as the basis for the regulatory program. The impact of the I–418 Automation regulatory program will slightly differ from the I–418 Automation test program due to its complete paper Form I–418 automation, eased administrative burdens, and elimination of signatures and paper processing. With its transition to a fully automated, electronic passenger and crew list (*i.e.,* Form I–418) process, the I–418 Automation regulatory program will discontinue the test program. Under the regulatory program, CBP systems will automatically reconcile eNOA/D and other manifest data submitted electronically by vessel operators prior to arrival and at departure into a passenger and crew list format reflective of an electronic Form I–418. This transition will affect commercial vessel operators and CBP.

Vessel operators will generally not incur any costs from this rule, though CBP will. CBP will sustain technology and printing costs from the regulatory program, including costs to maintain mobile devices for real-time, electronic processing and print paper Form I–418s until the admissibility inspection process is completely paperless. Across the period of analysis, these monetized costs will equal $45,000 in present value and $12,000 on an annualized basis. These costs represent the total costs of the rule.

Following this rule's implementation, vessel operators will enjoy $16.1 million in monetized present value cost savings from automated Form I–418 submissions and forgone printing and dual processing between FY 2021 and FY 2025 (using a 7 percent discount rate). During the same period, CBP will experience a total monetized present value cost saving of $37.2 million from the rule's forgone printing requirements, streamlined mobile processing and post-inspection tasks, and forgone storage and shipping costs (using a 7 percent discount rate). CBP may dedicate these cost savings to other agency mission areas, such as improving border security or facilitating trade. In total, the monetized cost savings of this rule will equal $53.3 million in present value and $13.9 million on an annualized basis over the period of analysis (using a 7 percent discount rate).

The Executive Summary Table outlines the estimated costs and benefits (cost savings) of the I–418 Automation regulatory program from FY 2021 to FY 2025. As illustrated, the benefits (cost savings) of this rule outweigh its costs, with the total monetized net benefit (net cost saving) of the regulatory program measuring $53.3 million in present value and $13.9 million on an annualized basis (using a 7 percent discount rate).

EXECUTIVE SUMMARY TABLE: NET BENEFIT (COST SAVING) OF I–418 AUTOMATION REGULATORY PROGRAM, FY 2021–FY 2025

[2019 U.S. Dollars]

	Present values		Annualized values	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Total Cost	$52,067	$45,458	$11,710	$11,863
Total Benefit	62,546,086	53,306,084	14,066,940	13,910,918
Total Net Benefit	62,494,018	53,260,626	14,055,230	13,899,055

Notes: The estimates in this table are contingent upon CBP's vessel arrival/departure projections as well as the discount rates applied. Estimates may not sum to total due to rounding.

[16] The embark date required on Form I–418 is transmitted to CBP via eNOA/D. The disembark date/date separated (*i.e.,* the date when a crewmember permanently departs the vessel) is calculated by CBP systems. This rule does not change this practice.

[17] This includes certifying that certification that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

[18] CBP officer signatures are generally dictated on the form as a unique receipt number tied to the officer. For the purposes of this analysis, CBP refers to these receipt numbers as signatures.

[19] The Automation of CBP Form I–418 for Vessels Interim Final Rule describes particular exceptions to the electronic submission requirement. In particular, CBP will also retain its authority to require paper submissions in the event the master or agent of the vessel is unable to electronically submit the data elements required on Form I–418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning or there is no internet access, and there is no shore-side support available; CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information; or where CBP, in its discretion, determines that a paper Form I–418 is acceptable under the circumstances presented by the master or agent of a vessel.

2. Purpose of Rule

Commercial vessels arriving at and departing from U.S. ports of entry (POEs) must comply with statutory and regulatory requirements to engage in U.S. trade. As previously mentioned, under current regulations commercial vessels, regardless of whether they are cargo, non-cargo,[20] or cruise ships, traveling to U.S. POEs from a foreign port or place must begin their trip by submitting similar manifest information electronically to USCG through eNOA/D and APIS, and then submitting the same manifest data to CBP on the paper Form I–418. At departure, commercial vessels must submit similar departure data to USCG and CBP. Despite similarities in the vessel arrival and departure data submitted per Form I–418, APIS, and eNOA/D requirements, current regulations do not allow data to be transmitted electronically, such as through eNOA/D or email, to satisfy Form I–418's passenger and crew list submission requirement. In fact, failure to submit the arrival or departure manifest in paper format may result in fines and penalties. To reduce redundant data submissions and automate manifest recordkeeping, CBP launched the I–418 Automation test program in 2011. This test has allowed for the automated, electronic submission of the data elements on Form I–418 from test participants using manifest data previously submitted electronically to the NVMC through eNOA/D, APIS, or other means. Based on the successful operation of the test, CBP now intends to establish the automated, electronic Form I–418 data submission process by regulation.

Through this rulemaking, CBP will amend its regulations under 8 CFR part 251, 8 CFR part 258, and 19 CFR part 4 to require the electronic submission of the data elements required from vessel operators on Form I–418 in lieu of paper form submissions. CBP will generally no longer require the paper Form I–418. The updated regulations will require vessel operators to electronically submit the data elements required on the Form I–418 via an EDI approved by CBP. CBP will continue to use the eNOA/D system as the approved EDI. Under this process, CBP systems will compile eNOA/D, APIS, and any other electronic manifest data submitted by vessel operators prior to arrival and at departure into a passenger and crew list format reflective of an electronic Form I–418.[21] The act of electronically submitting the data elements required on Form I–418 will also constitute the (vessel) Master's certification that the manifest information is accurate,[22] and eliminate the current need to generally collect Form I–418's vessel master (or operator) and CBP officer signatures for certification.[23] CBP will also retain its authority to require paper Form I–418 submissions in the event of certain technical difficulties, such as system outages and disruptions, that make it impossible to submit or receive manifest data electronically, and according to CBP discretion.[24] This rule will streamline vessel arrival and departure processes by eliminating redundant data submissions, simplifying vessel inspections, and automating recordkeeping.

3. Population Affected by Rule

This rule will affect commercial vessel operators and CBP, though at different magnitudes according to the arriving vessel type and I–418 Automation test program participation during the period of analysis spanning from FY 2021 to FY 2025. To determine the extent of the population affected by this rule, CBP relies on historical commercial vessel arrivals/departures and test participation data.

From FY 2015 to FY 2019, cargo and non-cargo vessel arrivals/departures of I–418 Automation test program participants grew at a compound annual rate of 6.0 percent while non-participant cargo and non-cargo vessel arrivals/departures declined at a compound annual rate of 1.9 percent. During the same period, participant and non-participant cruise ship arrivals/departures both grew at a compound annual rate of 2.4 percent (see Table 1). In the future, CBP projects that commercial vessel arrivals/departures will remain consistent with their more conservative historical trends prior to the COVID–19 pandemic beginning in 2020. Accordingly, CBP estimates that future cargo and non-cargo vessel arrivals/departures of I–418 Automation test program participants will increase increasing at a rate of 6.0 percent per year, non-participant cargo and non-cargo vessel arrivals/departures will decrease at a rate of 1.9 percent per year, and all cruise ship arrivals/departures will increase at a rate of 2.4 percent per year from their FY 2019 values between FY 2021 and FY 2025.[25] CBP believes that these projections best represent the normal, recent growth of commercial vessel arrivals/departures while still accounting for the projected economic and travel slowdowns due to the COVID–19 pandemic. CBP did not use FY 2020 data as a basis for future growth because it exhibits extreme, abnormal drops in vessel arrivals/departures due to the COVID–19 pandemic beginning during that year.

[20] For the purposes of this analysis, non-cargo commercial vessels include all commercial vessels other than cargo ships and cruise ships. Tugboats fall under this classification.

[21] The embark date required on Form I–418 is transmitted to CBP via eNOA/D. The disembark date/date separated (*i.e.,* the date when a crewmember permanently departs the vessel) is calculated by CBP systems. This rule does not change this practice.

[22] This includes certifying that certification that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

[23] CBP officer signatures are generally dictated on the form as a unique receipt number tied to the officer. For the purposes of this analysis, CBP refers to these receipt numbers as signatures.

[24] As described above, CBP will retain its authority to require paper submissions in the event the master or agent of the vessel is unable to electronically submit the data elements required on Form I–418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning or there is no internet access, and there is no shore-side support available; CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information; or where CBP, in its discretion, determines that a paper Form I–418 is acceptable under the circumstances presented by the master or agent of a vessel.

[25] Based on historical commercial vessel data and future commercial vessel demand outlooks. For future cargo and non-cargo vessel outlook information, *see:* Pallis, Athanasios A, et al. *Transport and Trade Facilitation: COVID–19 and Maritime Transport Impact and Responses,* United Nations Conference on Trade and Development (UNCTAD), Series No. 15, March 2021. Available at *https://unctad.org/system/files/official-document/dtltlb2021d1_en.pdf.* Accessed July 23, 2021; World Bank Group. *Global Economic Prospects.* Chpt. 1. World Bank Group Publishing. June 2021. Available at *https://openknowledge.worldbank.org/bitstream/handle/10986/35647/9781464816659-ch01.pdf.* Accessed July 23, 2020; ''Moody's: Outlook for US public ports revised to stable on strengthening economic activity, improving cargo volumes.'' *Moody's Investors Service,* December 7, 2020. Available at *http://www.moodys.com/research documentcontentpage.aspx?docid=PBC_1247050.* Accessed July 23, 2021; Ohse, Friedemann. ''Will 2021 bring about recovery for the global maritime industry?'' *OceanInsights,* September 30, 2020. Available at *https://www.ocean-insights.com/business-news/will-2021-bring-about-recovery-for-the-global-maritime-industry/?cli_action=1602257398.7141/8.* Accessed October 9, 2020. For future cruise ship outlook information, *see:* Giese, Monique. ''COVID–19 Impacts on Cruise Industry.'' *KPMG, July 23, 2020.* Available at *https://home.kpmg/xx/en/blogs/home/posts/2020/07/covid-19-impacts-on-global-cruise-industry.html.* Accessed October 23, 2020; McMahon, Shannon. ''5 takeaways from the cruise industry's report on a return to sailing.'' *Washington Post,* September 21, 2020. Available at *https://www.washingtonpost.com/travel/2020/09/21/cruise-return-report-covid-19/.* Accessed October 23, 2020.

However, CBP recognizes the uncertainty in this assumption and that the rate of economic recovery from the COVID–19 pandemic will depend on many factors, including how quickly businesses can recover, rates of infection, and global supply chains. CBP does not believe that this rule will directly affect the volume of future commercial vessel arrivals/departures, and thus predicts that the projected arrivals/departures will be the same with and without this rule's implementation (*i.e.,* the baseline).

To estimate future commercial vessel arrivals/departures with and without this rule, CBP first applies the projected growth rates for cargo and non-cargo vessel arrivals/departures of I–418 Automation test program participants and non-participants (6.0 percent and 1.9 percent, respectively) and cruise ship arrivals/departures (2.4 percent) to their respective FY 2019 values (see Table 1). CBP then projects the estimates forward through the period of analysis, FY 2021 to FY 2025. When making such projections, CBP presumes that the I–418 Automation test program will continue to exist during the period of analysis in the absence of any rulemaking to automate the Form I–418 process. In contrast, the test program will transition into a regulatory program in which all commercial vessel operators participate in an automated Form I–418 data submission process upon this rule's implementation.

As previously stated, CBP does not believe that this rule will directly affect the future volume of commercial vessel arrivals/departures, and thus predicts that future commercial vessel arrivals/departures will be the same with and without this rule's implementation (*i.e.,* the baseline). As Table 1 shows, CBP estimates that almost 424,000 commercial vessel arrivals/departures will occur between FY 2021 and FY 2025, including 372,000 cargo and non-cargo vessel arrivals/departures and 53,000 cruise ship arrivals/departures. Nearly 98,000 (23 percent) of these arrivals/departures will correspond to former (or ongoing in the absence of this rule) I–418 Automation test program participants, while the remaining 326,000 (77 percent) will correspond to non-former I–418 Automation test program participants (or non-test participants in the absence of this rule). Nearly all of these vessel operators will be affected by the rule. Of the arrivals/departures of former (or ongoing) I–418 Automation test program participants, CBP estimates that 50 percent will correspond to participants who fully participated in the test program and the remainder will correspond to participants who only partially participated (see Table 1). According to field interviews, the majority of vessel operators participating in the I–418 Automation test program continued to provide a paper Form I–418 upon arrival/departure despite having submitted an electronic Form I–418 to ensure full compliance with CBP regulations.[26] For the purposes of this analysis, CBP refers to these vessel operators as those who partially participated in the I–418 Automation test program. Under the baseline, non-I–418 Automation test program participants and 50 percent of test program participants will continue to submit paper Form I–418s with each projected arrival/departure, while the remaining test participants will submit only automated versions of Form I–418 with each future arrival/departure. Alternatively, with the rule, each arrival/departure will presumably result in an automated Form I–418 submission.

TABLE 1—PROJECTED COMMERCIAL VESSEL ARRIVALS AND DEPARTURES

Number of	FY 2019*		FY 2021		FY 2022		FY 2023		FY 2024		FY 2025		Total, FY 2021–FY 2025	
	Cargo & non-cargo vessels	Cruise ships	Cargo & non-cargo vessels	Cruise ships	Cargo & non-cargo vessels	Cruise ships	Cargo & non-cargo vessels	Cruise ships	Cargo & non-cargo vessels	Cruise ships	Cargo & non-cargo vessels	Cruise ships	Cargo & non-cargo vessels	Cruise ships
Non-I–418 Automation Test Program Participants														
Growth in Vessel Arrivals/Departures	.....	.....	−1.9%	2.4%	−1.9%	2.4%	−1.9%	2.4%	−1.9%	2.4%	−1.9%	2.4%	.....	.....
Vessel Arrivals/Departures	64,155	4,319	62,936	4,423	61,740	4,529	60,567	4,638	59,416	4,749	58,287	4,863	302,946	23,202
Form I–418 Submissions	64,155	4,319	62,936	4,423	61,740	4,529	60,567	4,638	59,416	4,749	58,287	4,863	302,946	23,202
I–418 Automation Test Program Participants														
Growth in Vessel Arrivals/Departures	.....	.....	6.0%	2.4%	6.0%	2.4%	6.0%	2.4%	6.0%	2.4%	6.0%	2.4%	.....	.....
Total Vessel Arrivals/Departures	11,487	5,496	12,176	5,628	12,907	5,763	13,681	5,901	14,502	6,043	15,372	6,188	68,638	29,523
Vessel Arrivals/Departures of Participants Fully Participating in Test	5,744	2,748	6,088	2,814	6,454	2,882	6,841	2,951	7,251	3,022	7,686	3,094	34,320	14,763
Vessel Arrivals/Departures of Participants *Partially* Participating in Test	5,743	2,748	6,088	2,814	6,453	2,881	6,840	2,950	7,251	3,021	7,686	3,094	34,318	14,760
Total Form I–418 Submissions+	11,487	5,496	12,176	5,628	12,907	5,763	13,681	5,901	14,502	6,043	15,372	6,188	68,638	29,523
Form I–418 Submissions from Participants Fully Participating in Test	5,744	2,748	6,088	2,814	6,454	2,882	6,841	2,951	7,251	3,022	7,686	3,094	34,320	14,763
Form I–418 Submissions from Participants *Partially* Participating in Test	5,743	2,748	6,088	2,814	6,453	2,881	6,840	2,950	7,251	3,021	7,686	3,094	34,318	14,760
Total														
Vessel Arrivals/Departures	75,642	9,815	75,112	10,051	74,647	10,292	74,248	10,539	73,918	10,792	73,659	11,051	371,584	52,725
Form I–418 Submissions	75,642	9,815	75,112	10,051	74,647	10,292	74,248	10,539	73,918	10,792	73,659	11,051	371,584	52,725

* Not in period of analysis.
+ Form I–418s submitted in both electronic and paper format only counted as one form submission.
Note: Estimates may not sum to total due to rounding.

4. Costs of Rule

This rule will automate the Form I–418 process for all commercial vessel operators and eliminate the regulatory guidelines in place regarding the submission and retention of paper Form I–418s. These changes will generally not introduce new costs to commercial vessel operators, but they will introduce some costs to CBP. If vessel operators request a copy of their stamped and annotated electronic Form I–418, which they receive by paper now for CBP processing, they will incur negligible

[26] Although the I–418 Automation test program waived the regulatory requirement to submit Form I–418s by paper, certain test participants insisted on submitting paper Form I–418s to ensure full compliance with CBP regulations. Source: Email correspondence with CBP's Office of Field Operations on February 23, 2016.

costs to do so.[27] CBP will sustain technology and printing costs from the Form I–418 Automation regulatory program, including costs to maintain mobile devices for real-time, electronic processing, and to print the paper Form I–418 until the admissibility inspection process is completely paperless. Across the period of analysis, these monetized costs will equal $46,000 in present value and $12,000 on an annualized basis (using a 7 percent discount rate). These costs represent the total costs of the rule, as illustrated in Table 2.

TABLE 2—TOTAL PRESENT VALUE AND ANNUALIZED COSTS OF I–418 AUTOMATION REGULATORY PROGRAM, FY 2020–FY 2024

[2019 U.S. Dollars]

	3% Discount rate	7% Discount rate
Present Value Cost	$52,067	$45,458
Annualized Cost	11,710	11,863

Note: The estimates in this table are contingent upon CBP's vessel arrival/departure projections as well as the discount rates applied.

5. Benefits (Cost Savings) of Rule

Besides its costs to CBP, this rule will provide considerable benefits (cost savings) to vessel operators and CBP. Following this rule's implementation, vessel operators will enjoy $16.1 million in monetized present value cost savings from forgone paper Form I–418 submissions and form printing between FY 2021 and FY 2025 (using a 7 percent discount rate). During the same period, CBP will experience a total monetized present value cost saving of $37.2 million from the rule's avoided printing, streamlined mobile post-inspection processing and electronic recordkeeping (using a 7 percent discount rate). CBP may dedicate these cost savings to other agency mission areas, such as improving border security or facilitating trade. In total, the monetized cost savings of this rule will equal $53.3 million in present value and $13.9 million on an annualized basis over the period of analysis (using a 7 percent discount rate; see Table 3).

TABLE 3—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS (COST SAVINGS) OF I–418 AUTOMATION REGULATORY PROGRAM FY 2020–FY 2024

[2019 U.S. Dollars]

	3% Discount rate	7% Discount rate
Present Value Benefit	$62,546,086	$53,306,084
Annualized Benefit	14,066,940	13,910,918

Note: The estimates in this table are contingent upon CBP's vessel arrival/departure projections as well as the discount rates applied.

6. Net Impact of Rule

Table 4 summarizes the monetized costs and benefits (cost savings) of the I–418 Automation regulatory program to vessel operators and CBP from FY 2021 to FY 2025. As illustrated, the savings from this rule outweigh its costs, with the total monetized net cost saving of the regulatory program measuring $53.3 million in present value and $13.9 million on an annualized basis (using a 7 percent discount rate).

TABLE 4—NET BENEFIT (COST SAVING) OF I–418 AUTOMATION REGULATORY PROGRAM, FY 2020–FY 2024

[2019 U.S. Dollars]

	Present values		Annualized values	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Total Cost	$52,067	$45,458	$11,710	$11,863
Total Benefit	62,546,086	53,306,084	14,066,940	13,910,918
Total Net Benefit	62,494,018	53,260,626	14,055,230	13,899,055

Notes: The estimates in this table are contingent upon CBP's vessel arrival/departure projections as well as the discount rates applied. Estimates may not sum to total due to rounding.

C. Regulatory Flexibility Act

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

[27] Source: Correspondence with CBP's Office of Field Operations on November 24, 2020.

D. Unfunded Mandates Reform Act of 1995

This rule 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.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. Executive Order 12988 requires agencies to conduct reviews on civil justice and litigation impact issues before proposing legislation or issuing proposed regulations. The order requires agencies to exert reasonable efforts to ensure that the regulation identifies clearly preemptive effects, effects on existing federal laws or regulations, identifies any retroactive effects of the regulation, and other matters. DHS has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or the other matters addressed in the Executive Order.

G. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The Form I–418 information collected under 8 CFR part 251.1 and 8 CFR part 251.3 is included under OMB control number 1651–0103. Under the Automation of CBP Form I–418 for Vessels rule, CBP systems will automatically reconcile eNOA/D, APIS, and any other manifest data submitted electronically by vessel operators prior to arrival and at departure to create an electronic version of Form I–418. CBP will use the automated, electronic Form I–418 for all commercial vessel crew and passenger admissibility inspections and processing, and thus generally establish a completely paperless Form I–418 process for all commercial vessel arrivals and departures. CBP plans to retain the paper Form I–418 and conduct paper Form I–418 processing only when the master or agent of the vessel is unable to electronically submit the data elements required on Form I–418 via an electronic data interchange system approved by CBP due to technical issues, such as when the onboard computer system is malfunctioning or there is no internet access, and there is no shore-side support available; CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information; or where CBP, in its discretion, determines that a paper Form I–418 is acceptable under the circumstances presented by the master or agent of a vessel. CBP will conduct such processing to not hinder, stop, or otherwise penalize maritime traffic. In accordance with the OMB Notice of Action dated April 3, 2018, CBP will submit a discontinuation request for OMB control number 1651–0103 along with this rule's publication because this information collection is duplicative.

H. Privacy Interests

DHS will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule, and will issue or update any necessary Privacy Impact Assessment and/or Privacy Act System of Records notice to fully outline processes that will ensure compliance with Privacy Act protections.

List of Subjects

8 CFR Part 251

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 258

Aliens, Longshore and harbor workers, Reporting and recordkeeping requirements, Seamen.

19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated in the preamble, DHS is amending 8 CFR parts 251 and 258, and 19 CFR part 4, as set forth below.

TITLE 8—ALIENS AND NATIONALITY

PART 251—ARRIVAL AND DEPARTURE MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

■ 1. The general authority citation for part 251 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282, 8 CFR part 2.

§ 251.1 [Amended]

■ 2. Amend § 251.1 as follows:
■ a. Revise paragraph (a)(1);
■ b. Revise paragraph (a)(2) introductory text;
■ c. In paragraph (a)(2)(i), remove the word ''notation'' and add in its place ''information'';
■ d. In paragraph (a)(2)(ii) introductory text, remove the words ''shall note'' and adding in their place ''must indicate'';
■ e. In paragraph (a)(2)(iii)(A), remove the words ''shall note on'' and adding in their place ''must indicate in'';
■ f. In paragraph (a)(2)(iii)(B):
■ i. Remove the words ''shall note on'' and add in their place ''must indicate in''; and
■ ii. Remove the the words ''shall show'' and add in their place ''must show'';
■ g. In paragraph (a)(2)(iv) introductory text:
■ i. In the first sentence remove the words ''shall note on'' and add in their place ''must indicate in''; and
■ ii. In the second sentence, remove the words ''shall note'' and add in their place ''must indicate'';
■ h. In paragraph (a)(2)(v):
■ i. Remove the words ''shall note on'' and add in their place ''must indicate in''; and
■ ii. Remove the words ''will note the'' and add in their place ''will indicate the'';
■ i. In paragraph (a)(3)(i) introductory text, remove the words ''shall not be'' and add in its place ''is not'';
■ j. In paragraph (a)(3)(ii), remove the words ''shall note the manifest in the manner'' and add in their place ''must follow the instructions'';
■ k. In paragraph (a)(3)(iii):
■ i. Remove the words ''shall not be'' and adding in their place ''is not''; and
■ ii. remove the words ''noted on'' and add in their place ''indicated in'';
■ l. In paragraph (a)(4), remove the words ''shall annotate Form I–418 presented at the onward port to indicate'' and add in their place ''must electronically submit via an electronic data interchange system approved by CBP'';
■ m. In paragraph (a)(5), remove the words ''accompany the manifest'' and add in their place ''be sent to CBP

electronically or be presented to CBP upon arrival at the port of immigration inspection'';

■ n. Add paragraph (a)(6);

■ o. In paragraph (b):

■ i. Remove the word ''shall'' wherever it appears and add in its place ''must'';

■ ii. Remove the words ''United States Customs Service'' and add in their place ''CBP''; and

■ iii. Remove the word ''annotate'' and add in its place ''electronically update the data in'';

■ p. In paragraph (c), remove the word ''shall'' and add in its place ''must''.

The revisions and addition read as follows:

§ 251.1 Arrival manifests and lists.

(a) * * * (1) *General.* Except as provided in paragraph (a)(6) of this section, the master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States must submit a manifest of all crewmen on board by electronically submitting the data elements required on CBP Form I–418, Passenger List—Crew List, via an electronic data interchange system approved by CBP.

(2) *Longshore work information.* Except as provided in paragraph (a)(6) of this section, the master or agent of the vessel must electronically submit via an electronic data interchange system approved by CBP an affirmation as to whether crewmen aboard the vessel will be used to perform longshore work at any United States port before the vessel departs the United States.

* * * * *

(6) *Exception to the requirement to submit Form I–418 data elements and longshore work information electronically.* The master or agent of any vessel that is arriving in the United States from a foreign place or an outlying possession of the United States, and is required to submit a manifest, may submit a paper Form I–418 to CBP upon arrival at the port where immigration inspection is performed when:

(i) The master or agent of the vessel is unable to electronically submit the data elements required on Form I–418 via an electronic data interchange system approved by CBP because there is no internet access in that location or onboard computers are experiencing technical difficulties, and there is no shore-side support available; or

(ii) CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information, or, in its discretion, CBP determines that a paper Form I–418 is acceptable under the circumstances presented by the master or agent of a vessel.

* * * * *

■ 3. Amend § 251.3 by:

■ a. Revising paragraph (a); and

■ b. Adding a new paragraph (c);

The revision and addition read as follows:

§ 251.3 Departure manifests and lists for vessels.

(a) *Form I–418, Passenger List-Crew List.* Except as provided in paragraphs (b) and (c) of this section, the master or agent of every vessel departing from the United States directly to some foreign place or outlying possession of the United States must electronically submit the data elements required on Form I–418 via an electronic data interchange system approved by CBP, except when a manifest is not required pursuant to section 251.1(a). Submission of inaccurate or incomplete data will be regarded as lack of compliance with section 251(c) of the Act.

* * * * *

(c) *Exception to the requirement to submit Form I–418 data elements electronically.* The master or agent of any vessel that is departing from the United States directly to some foreign place or outlying possession of the United States, and is required to submit a manifest, may submit a paper Form I–418 to CBP at the port from which such vessel is to depart when:

(1) The master or agent of the vessel is unable to submit the data elements required on Form I–418 electronically via an electronic data interchange system approved by CBP because there is no internet access in that location or onboard computers are experiencing technical difficulties, and there is no shore-side support available; or

(2) CBP is experiencing technical difficulties affecting its receipt or processing of electronically submitted information, or, in its discretion, CBP determines that a paper Form I–418 is acceptable under the circumstances presented by the master or agent of a vessel.

■ 4. Amend § 251.5 as follows:

■ a. Revise the section heading; and

■ b. Remove the words ''in a paper format''.

The revision reads as follows:

§ 251.5 Arrival and departure manifests for crew.

* * * * *

PART 258—LIMITATIONS ON PERFORMANCE OF LONGSHORE WORK BY ALIEN CREWMEN

■ 5. The general authority citation for part 258 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1281; 8 CFR part 2.

§ 258.2 [Amended]

■ 6. Amend § 258.2 as follows:

■ a. In the introductory text, remove the words ''shall note'' and add in their place ''must indicate'';

■ b. In paragraph (a)(2), remove the words ''shall note on'' and add in their place ''must indicate in'';

■ c. In paragraph (b)(2)(i), remove the words ''states on the manifest, Form I–418,'' and add in their place ''indicates in the manifest, or on Form I–418 if submitting the paper version,'';

■ d. In paragraph (b)(2)(ii):

■ i. Remove the words ''states on'' and add in their place ''indicates in''; and

■ ii. Remove the words ''shall present'' and add in their place ''must present'';

■ e. In paragraph (b)(2)(iii)(A), remove the word ''shall'' and add in its place ''must'';

■ f. In paragraph (b)(2)(iii)(B):

■ i. Remove the word ''shall'' and add in its place ''must''; and

■ ii. Remove the words ''Immigration and Naturalization Service'' and add in their place ''CBP'';

■ g. In paragraph (b)(2)(iv);

■ i. In the first sentence, remove the words ''states on'' and add in their place ''indicates in'';

■ ii. In the second sentence, remove the word shall and add in its place ''must'' and remove the words ''shall note on'' and add in their place ''must indicate in'';

■ h. In paragraph (b)(3), in the third sentence, remove the words ''shall annotate'' and add in their place ''must indicate in'';

■ i. In paragraph (b)(4):

■ i. In the first sentence, remove the words ''the Immigration and Naturalization Service'' wherever they appear, and add in their place ''CBP'' and remove ''258(c)(E)(i)'' and add ''258(c)(4)(E)(i)'' in its place; and

■ ii. In the second sentence, remove the words ''The Service'' and add in their place ''CBP''; and

■ j. In paragraph (e):

■ i. In the first sentence, remove the word ''shall'' and add in its place ''must''; and

■ ii. In the second sentence, remove ''noted on the Form I–410'' and add in its place ''indicated on the electronically populated, or in the circumstances specified in section 251.1 of this chapter, paper, Form I–418''.

TITLE 19—CUSTOMS DUTIES

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 7. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

■ 8. Amend § 4.7 by revising paragraph (a) to read as follows:

§ 4.7. Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

(a) The master of every vessel arriving in the United States and required to make entry must have on board the vessel a manifest, as required by section 431, Tariff Act of 1930 (19 U.S.C. 1431), and by this section. The manifest must be legible and complete. If it is in a foreign language, an English translation must be furnished with the original and with any required copies. The required manifest consists of a Vessel Entrance or Clearance Statement, CBP Form 1300, and the following documents: (1) Cargo Declaration, CBP Form 1302, (2) Ship's Stores Declaration, CBP Form 1303, and (3) Crew's Effects Declaration, CBP Form 1304, to which are attached crewmembers' declarations on CBP Form 5129, if the articles will be landed in the United States. Unless the exception at 8 CFR 251.1(a)(6) applies and a paper form is submitted, the master must also electronically submit the data elements required on CBP Form I–418 via an electronic data interchange system approved by CBP, which will be considered part of the manifest. Any document which is not required may be omitted from the manifest provided the word ''None'' is inserted in items 16, 18, and/or 19 of the Vessel Entrance or Clearance Statement, as appropriate. If a vessel arrives in ballast and therefore the Cargo Declaration is omitted, the legend ''No merchandise on board'' must be inserted in item 16 of the Vessel Entrance or Clearance Statement.

* * * * *

■ 9. Amend § 4.7a as follows:

■ a. Remove paragraph (b)(2);

■ b. Redesignate paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively;

■ c. Add paragraph (c)(5);

■ d. In paragraph (d), add the words ''§ 4.7b and with'' after ''in accordance with''; and

■ e. Revise paragraph (e).

The addition and revision read as follows:

§ 4.7a. Inward manifest; information required; alternative forms.

* * * * *

(c) * * *

(5) Unaccompanied baggage must be listed on CBP Form 1302, or transmitted via an electronic data interchange system approved by CBP.

* * * * *

(e) *Passenger List.* (1) The Passenger List must be completed in accordance with § 4.7b, § 4.50, and with the requirements of applicable DHS regulations administered by CBP (8 CFR part 231).

* * * * *

■ 10. Amend § 4.50 as follows:

■ a. In paragraph (a), remove the second sentence;

■ b. Add paragraph (c).

The addition reads as follows:

§ 4.50 Passenger lists.

* * * * *

(c) By the act of submitting the data elements required on CBP Form I–418 via an electronic data interchange system approved by CBP, the master certifies that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

§ 4.81 [Amended]

■ 11. In § 4.81, amend paragraph (d) by removing the phrase'', or Customs and Immigration Form I–418 with attached Customs Form 5129,''.

■ 12. In § 4.85 amend paragraph (c)(1) by:

■ a. In the third sentence, removing the words ''a Passenger List, Customs and Immigration Form I–418, in such number of copies as may be required for local Customs purposes, of any cargo or passengers on board manifested for discharge at that port,''; and

■ b. Adding a sentence following the third sentence.

The addition reads as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

* * * * *

(c) * * *

(1) * * * The master must also update the data elements required on CBP Form I–418 that were electronically submitted via an electronic data interchange system approved by CBP for any passengers on board that are manifested for discharge at that port.

* * *

* * * * *

§ 4.91 [Amended]

■ 13. In § 4.91 amend paragraph (c) by removing, in the second sentence, the words ''Passenger List, Customs and Immigration Form I–418'' and adding in their place ''updated data elements required on CBP Form I–418 that were submitted electronically via an electronic data interchange system approved by CBP''

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–27571 Filed 12–27–21; 8:45 am]

BILLING CODE 9111–14–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

[NRC–2020–0133]

RIN 3150–AK49

Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to update the access authorization fees charged to NRC licensees for work performed under the Material Access Authorization Program and the Information Access Authority Program. The change in fees is due to an increase in the review time for each application for access authorization. This amendment is prompted by a recent audit of fees performed by an external certified public accounting and financial management services firm and ensures that the NRC continues to recover the full costs of processing access authorization requests from NRC licensees. The direct final rule also makes two administrative changes to revise definitions to include new naming conventions for background investigation case types and to specify the electronic process for completing security forms.

DATES: The final rule is effective March 14, 2022, unless significant adverse comments are received by January 27, 2022. If the direct final rule is withdrawn as a result of such comments, timely notification of the withdrawal will be published in the **Federal Register**. Comments received

after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0133. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Emily Robbins, Office of Administration, telephone: 301–415–7000, email: *Emily.Robbins@nrc.gov* or Vanessa Cox, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–8342, email: *Vanessa.Cox@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0133 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0133.
- *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, at 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.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0133 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is using the ''direct final rule process'' for this rule. This amendment is effective on March 14, 2022. However, if the NRC receives significant adverse comments on this direct final rule by January 27, 2022, then the NRC will publish a document that withdraws this action and will address the comments received in a subsequent final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if it meets the following criteria:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required under the following circumstances:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

III. Background

Certain individuals employed by NRC licensees or their contractors require access to special nuclear material (plutonium, uranium-233, and uranium enriched in the isotopes uranium-233 or uranium-235), restricted data, or

national security information. These individuals obtain an access authorization from the NRC. When a licensee requests access authorization for an employee or a contractor, the NRC initiates an investigation of the individual seeking access authorization. Based on the results of that investigation, the NRC determines whether permitting that individual to have access to special nuclear material, restricted data, or national security information would create a security risk.

The Defense Counterintelligence and Security Agency (DCSA) conducts the access authorization background investigations for the NRC and sets the rates charged for these investigations. The combined cost of the DCSA background investigation and any related NRC processing activities (NRC processing fee) is recovered from the licensee through an access authorization fee assessed by the NRC. It is the NRC's practice to publish the fee schedule for special nuclear material access authorization in § 11.15(e) of title 10 of the *Code of Federal Regulations* (10 CFR) and the corresponding fee schedule for restricted data and national security information access authorization in appendix A to 10 CFR part 25. Both schedules are based on rates charged by DCSA for conducting the access authorization background investigations (DCSA investigation billing rates).

IV. Discussion

Updated Access Authorization Fees

This direct final rule amends 10 CFR parts 11, 25, and 95, along with appendix A to 10 CFR part 25. The NRC is revising the processing fee charged to licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP) from 55.8 percent of the DCSA investigation billing rates to 90.2 percent. A September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization showed an increase in the NRC's review time for each application. The audit also showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications; despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012.

In addition, all requests for reciprocity will be charged a flat fee rate of $95.00. Previously, the NRC did not charge a fee for reciprocity requests because certain applications from individuals with current Federal access authorizations were processed expeditiously and at a reduced cost. This flat fee will be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests and accounts for inflation as well as recovery of the appropriate cost for conducting this work. In cases where reciprocity is not acceptable and it is necessary to perform a background investigation, then the NRC will charge the appropriate fee based on the DCSA investigation billing rate. This direct final rule continues to allow licensees to calculate the NRC access authorization fee for any given application by referencing the current DCSA investigation billing rates schedule for background investigation services. Reimbursable billing rates for personnel background investigations are published by DCSA in a Federal Investigations Notice (FIN). The current DCSA investigation billing rates are published on the DCSA website and are available at *https://www.dcsa.mil/mc/pv/gov_hr_security/billing_rates/*. The NRC's licensees can also obtain the current DCSA investigation billing rates schedule by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at *Licensee_Access_Authorization_Fee.Resource@nrc.gov*.

The fee-calculation formula is designed to recover the NRC's actual in-house processing costs for each application received from a licensee. The NRC's access authorization fee for any given request is determined using the following formula: The DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC material access authorization fee. The provisions in this direct final rule set the NRC processing fee; the fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (*i.e.,* DCSA rate × 90.2 percent).

Public Law 115–439, the Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215), requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. As noted previously, the DCSA investigation billing rates are pulled directly from the current DCSA fee schedule for investigations. The tables in revised § 11.15(e)(3) and appendix A to 10 CFR part 25 cross-reference each type of NRC access authorization request to the appropriate investigation service listed in the DCSA's investigation billing rates schedule. For example, a licensee seeking a special nuclear material ''NRC–U'' access authorization requiring a Tier 5 (T5) investigation is directed by the table in § 11.15(e)(3) to calculate the NRC processing fee based on the DCSA investigation billing rates for a ''standard'' T5 investigation. According to the current DCSA investigation billing rates schedule (FIN 20–04, ''FY 2021 and FY 2022 Investigations Reimbursable Billing Rates,'' June 30, 2020), the DCSA charges $5,465 for a ''standard'' T5 investigation. The table instructs the licensee to calculate the NRC's application processing fee by multiplying $5,465 by 90.2 percent, which equals $4,929.43. The licensee then rounds the NRC's processing fee to the nearest dollar, or $4,929, and adds that amount to the DCSA investigation billing rate of $5,465 to determine the total NRC access authorization fee: $10,394.

The following table illustrates the calculation process:

Current DCSA investigation billing rate for standard T5	Plus NRC application processing fee	Equals total NRC access authorization fee for NRC-U application
	DCSA rate NRC fee × 90.2% = (rounded to nearest $)	
$5,465	$5,465 × 90.2% = $ 4,929,43 (rounded to $4,929)	= $10,394

Licensees applying for restricted data or national security information access authorization follow a similar procedure. The table in appendix A to 10 CFR part 25 cross-references each type of ''Q'' or ''L'' access authorization to the corresponding DCSA investigation type. The DCSA investigation billing rate for the type of investigation referenced is determined by consulting the current DCSA investigation billing rates schedule. This rate is then used in the formula to calculate the correct NRC access authorization fee for the type of

application submitted. Copies of the current NRC access authorization fees can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to *Licensee_Access_Authorization_Fee.Resource@nrc.gov*. Any change in the NRC's access authorization fees will be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

Administrative Changes

In Federal Investigations Notice Number 16–07, dated September 26, 2016 (*https://www.dcsa.mil/Portals/91/Documents/pv/GovHRSec/FINs/FY16/fin-16-07.pdf*), the Office of Personnel Management (OPM) implemented the Federal Investigative Standards according to the phased Federal Investigative Standards Implementation Plan issued by the Suitability and Security Executive Agents. In accordance with the plan, the Access National Agency Check with Inquiries was renamed to Tier 3 (T3) and the National Agency Check with Law and Credit was renamed to Tier 3 reinvestigation (T3R). The T3 investigation is required for positions designated as non-critical sensitive and/or requiring eligibility for ''L'' or ''R'' access or access to Confidential or Secret information. The T3R is the reinvestigation product for the same positions. The Single Scope Background Investigation was renamed to Tier 5 (T5) and the Single Scope Background Investigation-Periodic Reinvestigation was renamed to Tier 5R (T5R). The T5 investigation is required for positions designated as critical sensitive, special sensitive, and/or requiring eligibility for ''Q'' or ''U'' access or access to Top Secret or Sensitive Compartmented Information. The T5R is the reinvestigation product required for the same positions. This direct final rule revises the definitions in 10 CFR parts 11, 25, and 95 to include the new naming conventions for background investigations case types. The definitions for the NRC ''R'' and NRC ''U'' special nuclear material access authorizations include the renamed investigation types Tier 3 and Tier 5, respectively. Also, the definitions for NRC ''L'' and NRC ''Q'' access authorizations include the renamed investigation types Tier 3 and Tier 5, respectively.

In 2005, the OPM implemented the Electronic Questionnaires for Investigative Processing (e-QIP) system, which allows applicants to electronically enter, update, and release their personal investigative data over a secure internet connection to an employing agency for review and approval. The e-QIP system is a web-based automated system that facilitates the processing of standard investigative forms used when conducting background investigations for Federal security, suitability, fitness, and credentialing purposes. The NRC allows applicants to complete their security form, the Questionnaire for National Security Positions, Standard Form 86 (SF–86), electronically through the (e-QIP) system to minimize errors and expedite processing. This direct final rule updates 10 CFR parts 11 and 25 to clarify that the NRC uses the e-QIP system for applicants to provide their personal investigative data.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes in this direct final rule.

Section 11.7 Definitions

This direct final rule revises the definitions in § 11.7 for *NRC-''R'' special nuclear material access authorization* and *NRC-''U'' special nuclear material access authorization* to include the new naming conventions for background investigations case types.

Section 11.8 Information Collection Requirements: OMB Approval

This direct final rule revises § 11.8 to add a new paragraph (c) to clarify that the information collections for the electronic form ''Electronic Questionnaire for Investigations Processing (e-QIP), Questionnaire for National Positions—Standard Form 86 (SF–86)'' are approved under OMB control number 3206–0005.

Section 11.15 Application for Special Nuclear Material Access Authorization

This direct final rule revises paragraphs (b)(1) and (c)(1)(ii) to specify the electronic form of the SF–86.

This direct final rule revises paragraph (e)(1) to revise the NRC processing fee charged to licensees for work performed under the MAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

This direct final rule revises paragraph (e)(3) to (1) change the NRC processing fee charged to licensees for work performed under the MAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent, (2) indicate that MAAP requests for reciprocity will be charged at a flat fee rate of $95.00, and (3) include the new naming conventions for background investigations case types.

This direct final rule revises paragraph (e)(4) to clarify that certain applications from individuals with current Federal access authorizations may be processed expeditiously and at a reduced cost.

This direct final rule revises paragraph (f)(1) to include the new naming conventions for background investigations case types.

Section 11.16 Cancellation of Request for Special Nuclear Material Access Authorization

This direct final rule revises § 11.16 to include the new naming conventions for background investigations case types.

Section 25.5 Definitions

This direct final rule revises the definitions for *''L'' access authorization* and *''Q'' access authorization* to include the new naming conventions for background investigations case types.

Section 25.8 Information Collection Requirements: OMB Approval

This direct final rule revises § 25.8(c)(2) to clarify that the information collections for the electronic form ''Electronic Questionnaire for Investigations Processing (e-QIP), Questionnaire for National Positions—Standard Form 86 (SF–86)'' are approved under OMB control number 3206–0005.

Section 25.17 Approval for Processing Applicants for Access Authorization

This direct final rule revises paragraph (d)(1)(i) to specify the electronic form of the SF–86.

This direct final rule revises paragraph (f)(1) to change the NRC processing fee charged to licensees for work performed under the IAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

This direct final rule revises paragraph (f)(3) to indicate that IAAP requests for reciprocity will be charged a flat fee rate of $95.00.

Appendix A to 10 CFR Part 25—Fees for NRC Access Authorization

This direct final rule revises the table in appendix A to 10 CFR part 25 to include the new naming conventions for background investigations case types.

Section 95.5 Definitions

This direct final rule revises the definitions for *NRC ''L'' access authorization* and *NRC ''Q'' access authorization* to include the new naming conventions for background investigations case types.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this direct final rule amending 10 CFR parts 11, 25, and 95 does not have a significant economic impact on a substantial number of small entities. This direct final rule applies to those licensees who use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95). Two licensees, both fuel cycle facilities, are currently required to comply with 10 CFR part 11. Seventy-eight licensees and other organizations, mostly power reactors and fuel cycle facilities, are currently required to comply with 10 CFR part 25. None of these licensees are ''small entities'' as defined in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810). This direct final rule also applies to contractors of those licensees required to comply with this direct final rule who use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95). Some of these contractors may be ''small entities'' as defined in the Regulatory Flexibility Act or the NRC's size standards. However, some of these contractors are reimbursed through the contract for the cost of securing access authorization. There are not a substantial number of unreimbursed ''small entity'' contractors who apply for access authorization, nor is the NRC aware of any significant impact on these unreimbursed ''small entity'' contractors.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule. This direct final rule ensures that the NRC recovers the full cost of application processing from licensees submitting access authorization requests, as is required by statute (42 U.S.C. 2214(b)). The formula method for calculating these fees continues to provide an efficient and effective mechanism for updating the NRC access authorization fees in response to changes in the underlying DCSA investigation billing rates schedule for required personnel background investigations. The Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215) requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. These amendments will neither impose new safety requirements nor relax existing ones and, therefore, do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR–0058, Revision 4, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' dated September 2004 (ADAMS Accession No. ML042820192).

VIII. Backfitting and Issue Finality

The NRC has determined that the backfit rule does not apply to this direct final rule and that a backfit analysis is not required. Collection of fees to recover the NRC's costs is required by statute (42 U.S.C. 2214(b)). Therefore, changes to rules designating the amount to be collected are not subject to the backfitting provisions or issue finality provisions in 10 CFR chapter I.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

X. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1), which is categorically excluded from environmental review. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

XI. Paperwork Reduction Act Statement

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Numbers 3150–0046 and 3150–0062.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this direct final rule, the NRC will revise the formula for calculating the NRC's access authorization fee charged to licensees for work performed under MAAP and IAAP from 55.8 percent of the DCSA investigation billing rate for an investigation of a given type to 90.2 percent. In addition, MAAP requests for reciprocity will be charged a flat fee rate of $95.00. This action does not constitute the establishment of a standard that contains generally applicable requirements.

List of Subjects

10 CFR Part 11

Hazardous materials transportation, Investigations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11, 25, and 95:

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 1. The authority citation for part 11 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 223 (42 U.S.C. 2201, 2273); Energy

Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

Section 11.15(e) also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

■ 2. In § 11.7, revise the definitions for *NRC-''R'' special nuclear material access authorization* and *NRC-''U'' special nuclear material access authorization* to read as follows:

§ 11.7 Definitions.

* * * * *

NRC-''R'' special nuclear material access authorization means an administrative determination based upon a Tier 3 background investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

NRC-''U'' special nuclear material access authorization means an administrative determination based upon a Tier 5 background investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(1) or § 11.13.

* * * * *

■ 3. § In 11.8, add paragraph (c) to read as follows:

§ 11.8 Information collection requirements: OMB approval.

* * * * *

(c) In § 11.15, the SF–86, ''Electronic Questionnaire for Investigations Processing (e-QIP), Questionnaire for National Positions—Standard Form 86,'' is approved under control number 3206–0005.

■ 4. In § 11.15, revise paragraphs (b)(1), (c)(1)(ii), (e)(1), (3), and (4), and (f)(1) to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(b) * * *

(1) Electronic Questionnaire for Investigations Processing (e-QIP), Questionnaire for National Security Positions—Standard Form 86 (SF–86);

* * * * *

(c)(1) * * *

(ii) The Electronic Questionnaire for Investigations Processing (e-QIP), Questionnaire for National Security Positions—Standard Form 86 (SF–86);

* * * * *

(e) * * *

(1) Each application for a special nuclear material access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC material access authorization fee. This fee must be determined using the following formula: The DCSA investigation billing rates on the day of NRC receipt of the application + the NRC processing fee = the NRC material access authorization fee. The NRC processing fee is determined by multiplying the DCSA investigation billing rate on the day of NRC receipt of the application by 90.2 percent (*i.e.,* DCSA rate × 90.2 percent).

* * * * *

(3) The NRC's Material Access Authorization Program (MAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for MAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review, all MAAP requests for reciprocity will be charged a flat fee rate of $95.00 as referenced in paragraph (e)(4)(i) of this section. This flat fee would be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting this work. Copies of the current NRC material access authorization fee may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to: *Licensee_Access_Authorization_Fee.Resource@nrc.gov.* Any change in the NRC's access authorization fees will be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

(4) Certain applications from individuals having current Federal access authorizations may be processed expeditiously and at a reduced cost because the Commission, at its discretion, may decide to accept the certification of access authorizations and investigative data from other Federal Government agencies that grant personnel access authorizations.

(i) Applications for reciprocity will be processed at the NRC flat fee rate of $95 per request as referenced in the following table:

The NRC application fee for an access authorization of type . . .	NRC fee rate
(A) NRC–R based on certification of comparable investigation [1]	$95
(B) NRC–U based on certification of comparable investigation [2]	95

[1] If the NRC determines, based on its review of available data, that a Tier 3 investigation is necessary, the appropriate NRC–R fee will be assessed as shown in paragraph (e)(4)(ii) of this section before the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC–U fee will be assessed as shown in paragraph (e)(4)(ii) of this section before the conduct of the investigation.

(ii) Applicants shall, in cases where reciprocity is not acceptable and it is necessary to perform a background investigation, be charged the appropriate fee as referenced in the following table. Applicants shall calculate the access authorization fee according to the stated formula (*i.e.,* DCSA rate × 90.2 percent).

The NRC application fee for an access authorization of type . . .	Is the sum of the current DCSA investigation billing rate charged for an investigation of type . . .	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the DCSA investigation billing rate for the type of investigation referenced multiplied by . . . (%)
(A) NRC–R initial [1]	Tier 3 (T3) (Standard Service)	90.2
(B) NRC–R renewal [1]	Tier 3 Reinvestigation (T3R) (Standard Service)	90.2
(C) NRC–U initial	Tier 5 (T5) (Standard Service)	90.2
(D) NRC–U initial (expedited processing)	Tier 5 (T5) (Priority Handling)	90.2
(E) NRC–U renewal [1]	Tier 5 Reinvestigation (T5R) (Standard Service)	90.2

The NRC application fee for an access authorization of type . . .	Is the sum of the current DCSA investigation billing rate charged for an investigation of type . . .	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the DCSA investigation billing rate for the type of investigation referenced multiplied by . . . (%)
(F) NRC–U renewal [1] (expedited processing)	Tier 5 Reinvestigation (T5R) (Priority Handling)	90.2

[1] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC–U fee will be assessed before the conduct of the investigation.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–Q access authorization or an equivalent Federal security clearance granted by another Federal agency (''Top Secret'') based on a comparable T5 background investigation may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–U special nuclear material access authorization would afford.

* * * * *

§ 11.16 [Amended]

■ 5. In § 11.16, fourth sentence:

■ a. Remove the designation '' ''U'' '' and add in its place the designation '' ''U'' or ''R'' ''; and

■ b. Remove the designation ''single scope'' and add in its place the designation ''Tier 5''.

PART 25—ACCESS AUTHORIZATION

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

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, 25 FR 1583, as amended, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

Section 25.17(f) and Appendix A also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

■ 7. In § 25.5, revise the definitions for ''*L*'' *access authorization* and ''*Q*'' *access authorization* to read as follows:

§ 25.5 Definitions.

* * * * *

''*L*'' *access authorization* means an access authorization granted by the Commission that is normally based on a Tier 3 (T3) investigation conducted by the Defense Counterintelligence and Security Agency (DCSA).

* * * * *

''*Q*'' *access authorization* means an access authorization granted by the Commission normally based on a Tier 5 (T5) investigation conducted by the Defense Counterintelligence and Security Agency, the Federal Bureau of Investigation, or other U.S. Government agency that conducts personnel security investigations.

* * * * *

■ 8. In § 25.8, revise paragraph (c)(2) to read as follows:

§ 25.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(2) In §§ 25.17(c), 25.21(c), 25.27(b), 25.29, and 25.31, the ''Electronic Questionnaire for Investigations Processing (e-QIP), Questionnaire for National Positions—Standard Form 86 (SF–86)'' is approved under control number 3206–0005.

* * * * *

■ 9. In § 25.17, revise paragraphs (d)(1)(i) and (f)(1), (3), and (4) to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(d)(1) * * *

(i) Electronic Questionnaire for Investigations Processing (e-QIP), Questionnaire for National Security Positions—Standard Form 86 (SF–86).

* * * * *

(f) * * *

(1) Each application for access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC access authorization fee. This fee must be determined using the following formula: The DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC access authorization fee. The NRC processing fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (*i.e.,* DCSA rate × 90.2 percent).

* * * * *

(3) The NRC's Information Access Authority Program (IAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for IAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review, the IAAP fees are adjusted to reflect the current cost for the program. IAAP requests for reciprocity will be charged a flat fee rate of $95.00 as referenced in paragraph (f)(4) of this section. This flat fee is aligned with the level of effort that has been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting the investigations. Copies of the current NRC access authorization fee may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at: *Licensee_Access_Authorization_Fee.Resource@nrc.gov*. Any change in the NRC's access authorization fee will be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

(4) Certain applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost because the Commission, at its discretion, may decide to accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

(i) Applications for reciprocity will be processed at the NRC flat fee rate of $95 per request, as referenced in the following table:

The NRC application fee for an access authorization of type . . .	NRC fee rate
(A) NRC–L based on certification of comparable investigation [1]	$95
(B) NRC–Q based on certification of comparable investigation [2]	95

[1] If the NRC determines, based on its review of available data, that a Tier 3 investigation is necessary, the appropriate NRC–L fee will be assessed as shown in appendix A to this part before the conduct of the investigation.
[2] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC–Q fee will be assessed as shown in appendix A to this part before the conduct of the investigation.

(ii) Applicants shall, in cases where reciprocity is not acceptable and it is necessary to perform a background investigation, be charged the appropriate fee referenced in appendix A to this part. Applicants shall calculate the access authorization fee according to the stated formula (*i.e.,* DCSA rate × 90.2 percent).

■ 10. Revise appendix A to part 25 to read as follows:

Appendix A to Part 25—Fees for NRC Access Authorization

The NRC application fee for an access authorization of type . . .	Is the sum of the current DCSA investigation billing rate charged for an investigation of type . . .	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the investigation billing rate for the type of investigation referenced multiplied by . . . (%)
Initial "L" access authorization [1]	Tier 3 (T3) (Standard Service)	90.2
Reinstatement of "L" access authorization [2]	No fee assessed for most applications	
Renewal of "L" access authorization [1]	Tier 3 Reinvestigation (T3R) (Standard Service)	90.2
Initial "Q" access authorization	Tier 5 (T5) (Standard Service)	90.2
Initial "Q" access authorization (expedited processing)	T5 (Priority Handling)	90.2
Reinstatement of "Q" access authorization [2]	No fee assessed for most applications	
Renewal of "Q" access authorization [1]	Tier 5 Reinvestigation (T5R) (Standard Service)	90.2
Renewal of "Q" access authorization [1]	Tier 5 Reinvestigation (T5R) (Priority Handling)	90.2

[1] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate fee for an Initial "Q" access authorization will be assessed before the conduct of investigation.
[2] Full fee will only be charged if an investigation is required.

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 11. The authority citation for part 95 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, as amended, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

■ 12. In § 95.5, revise the definitions for *NRC ''L'' access authorization* and *NRC ''Q'' access authorization* to read as follows:

§ 95.5 Definitions.

* * * * *

NRC ''L'' access authorization means an access authorization granted by the Commission that is normally based on a Tier 3 (T3) investigation or a Tier 3 reinvestigation (T3R) conducted by the Defense Counterintelligence and Security Agency.

NRC ''Q'' access authorization means an access authorization granted by the Commission normally based on a Tier 5 (T5) investigation conducted by the Defense Counterintelligence and Security Agency, the Federal Bureau of Investigation, or other U.S. Government agency that conducts personnel security investigations.

* * * * *

Dated: December 21, 2021.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2021–28116 Filed 12–27–21; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2021–20]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Mr. Joseph P. Wenzinger, Attorney, or Ms. Terrell D. Stansbury, Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, 1301, 112 Stat. 3280.

2015 (the ''2015 Act''),[2] requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific monetary amount'' or ''has a maximum amount'' under federal law; and (2) that a federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101 through 45 (''FECA''), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 through 13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 through 42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[4] Pursuant to guidance issued by the Office of Management and Budget,[5] the Commission is now adjusting its civil monetary penalties for 2022.[6]

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedure Act (''APA'').[7] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b) through (d) do not apply because Congress has specifically exempted agencies from these requirements.[8]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the United States House of Representatives or the President of the United States Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq*. Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[9]

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[10] The COLA ratio is the percentage that the Consumer Price Index (''CPI'') [11] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[12] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[13] According to the Office of Management and Budget, the COLA ratio for 2022 is 0.01622, or 1.622%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.06222.[14]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$20,528	1.06222	21,805
11 CFR 111.24(a)(2)(i)	43,792	1.06222	46,517
11 CFR 111.24(a)(2)(ii)	71,812	1.06222	76,280
11 CFR 111.24(b)	6,141	1.06222	6,523
11 CFR 111.24(b)	15,352	1.06222	16,307

2. 11 CFR 111.43, 111.44—Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two penalty schedules: The penalty schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the penalty schedule in 11 CFR

[2] Public Law 114–74, section 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act section 3(2).

[4] Inflation Adjustment Act section 4(a).

[5] *See* Inflation Adjustment Act § 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Shalanda D. Young, Acting Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–22–07, Dec. 15, 2021, *https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf* (''OMB Memorandum'').

[6] Inflation Adjustment Act section 5.

[7] Inflation Adjustment Act section 4(b)(2).

[8] *See, e.g., Asiana Airlines* v. *FAA*, 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

[9] Inflation Adjustment Act section 6.

[10] The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, section 4(a); *see also* OMB Memorandum at 2.

[11] The Inflation Adjustment Act, section 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[12] Inflation Adjustment Act, section 5(b)(1).

[13] Inflation Adjustment Act, section 5(a), (b)(1).

[14] OMB Memorandum at 1.

111.43(b) applies to reports that are election sensitive.[15] Each penalty schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[16] In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR part 111 as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

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

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

§ 111.24 [Amended]

■ 2. In § 111.24, in the table below, for each paragraph indicated in the left column, remove the number indicated in the middle column, and add in its place the number indicated in the right column.

Section	Remove	Add
111.24(a)(1)	$20,528	$21,805
111.24(a)(2)(i)	43,792	46,517
111.24(a)(2)(ii)	71,812	76,280
111.24(b)	6,141	6,523
111.24(b)	15,352	16,307

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

TABLE 1 TO PARAGRAPH (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99[a]	[$38 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$373 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$74 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$448 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$160 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$748 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$317 + ($30 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,346 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$478 + ($120 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4,292 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$635 + ($160 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5,563 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$952 + ($199 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7,154 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1,274 + ($238 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8,743 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1,589 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,332 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2,385 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,717 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$3,180 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,306 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3,974 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,101 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4,768 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,897 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$5,563 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,691 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$6,358 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,485 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$7,154 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$ 18,280 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$7,948 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,075 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

[15] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[16] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

TABLE 2 TO PARAGRAPH (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [a]	[$74 + ($14 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$748 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$150 + ($14 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$897 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$224 + ($14 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,346 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$478 + ($38 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2,093 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$716 + ($120 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4,768 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$952 + ($160 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6,358 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$1,431 + ($199 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7,948 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1,908 + ($238 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9,537 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$2,385 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,922 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$3,576 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,306 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$4,768 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,897 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$5,961 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,485 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$7,154 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,075 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$8,346 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,665 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$9,537 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$22,255 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$10,729 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$23,843 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$11,922 + ($317 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$25,434 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $8,743.

* * * * *

§ 111.44 [Amended]

■ 4. In § 111.44, in paragraph (a)(1), remove ''$151'' and add in its place ''$160''.

Dated: December 21, 2021.

On behalf of the Commission,

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. 2021–28075 Filed 12–27–21; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AB12

2022–2024 Single-Family and 2022 Multifamily Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final rule on the single-family housing goals for Fannie Mae and Freddie Mac (the Enterprises) for 2022 through 2024, as well as the multifamily housing goals for 2022. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Safety and Soundness Act) requires FHFA to establish annual housing goals for mortgages purchased by the Enterprises. The housing goals include separate categories for single-family and multifamily mortgages on housing that is affordable to low-income and very low-income families, among other categories. The final rule establishes the benchmark levels for each of the single-family housing goals and subgoals for 2022 through 2024. The final rule also replaces the low-income areas subgoal with separate area-based subgoals targeting the individual components of the low-income areas subgoal (minority census tracts and low-income census tracts). The final rule establishes the multifamily housing goals for 2022 only. For the small low-income multifamily subgoal, the final rule establishes separate benchmarks for Fannie Mae and Freddie Mac. Finally, the final rule makes several technical changes to definitions and other provisions to conform the regulation to existing practice.

DATES: The final rule is effective on February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Associate Director, Housing & Community Investment, Division of Housing Mission and Goals, (202) 649–3157, *Ted.Wartell@fhfa.gov;* Padmasini Raman, Supervisory Policy Analyst, Housing & Community Investment, Division of Housing Mission and Goals, (202) 649–3633, *Padmasini.Raman@fhfa.gov;* Kevin Sheehan, Associate General Counsel, Office of General Counsel, (202) 649–3086, *Kevin.Sheehan@fhfa.gov;* or Marshall Adam Pecsek, Assistant General Counsel, (202) 649–3380, *Marshall.Pecsek@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background for the Existing Housing Goals

The Safety and Soundness Act requires FHFA to establish annual housing goals for several categories of both single-family and multifamily mortgages purchased by Fannie Mae and Freddie Mac.[1] The annual housing goals are one measure of the extent to which the Enterprises are meeting their public purposes, which include ''an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.'' [2] FHFA established housing goals levels for 2021 in a final rule published on December 21, 2020.[3] FHFA proposed housing goals for 2022–2024 in a proposed rule published on August 25, 2021.[4]

Single-family goals. The single-family goals as defined under the Safety and Soundness Act include separate categories for home purchase mortgages for low-income families, very low-income families, and families that reside in low-income areas. Performance on the single-family home purchase goals is measured as the percentage of the total home purchase mortgages purchased by an Enterprise each year that qualify for each goal or subgoal. There is also a separate goal for refinancing mortgages for low-income families, and performance on the refinancing goal is determined in a similar way.

Under the Safety and Soundness Act, the single-family housing goals are limited to mortgages on owner-occupied housing with one to four units total. The single-family goals cover conventional, conforming mortgages, defined as mortgages that are not insured or guaranteed by the Federal Housing Administration (FHA) or another government agency and with principal balances that do not exceed the loan limits for Enterprise mortgages.

The performance of the Enterprises on the single-family housing goals is evaluated using a two-part approach, which compares the goal-qualifying share of the Enterprise's mortgage purchases to two separate measures: A benchmark level established by FHFA regulation; and a market level that FHFA computes retrospectively based on Home Mortgage Disclosure Act (HMDA) data.

Multifamily goals. The multifamily goals as defined under the Safety and Soundness Act include separate categories for mortgages on multifamily properties (properties with five or more units) with rental units affordable to low-income families and for mortgages on multifamily properties with rental units affordable to very low-income families. FHFA has also established by regulation a small multifamily low-income subgoal for multifamily properties with 5–50 units. The multifamily goals evaluate the performance of the Enterprises based on numeric targets, not percentages, for the number of affordable units in properties backed by mortgages purchased by an Enterprise. The regulation establishes benchmark levels for the multifamily goals and subgoals, but it does not include a retrospective market level measure for the multifamily goals and subgoals, due in part to a lack of comprehensive data about the multifamily market. Thus, in contrast to the single-family goals, FHFA currently measures Enterprise multifamily goals performance against the benchmark levels only.

B. Adjusting the Housing Goals

If, after publication of this final rule, FHFA determines that any of the single-family or multifamily housing goals should be adjusted due to market conditions that are beyond current expectations, to ensure the safety and soundness of the Enterprises, or for any other reason, FHFA will take any steps that are necessary and appropriate to adjust that goal such as reducing the benchmark level through the processes in the existing regulation. FHFA may take other actions consistent with the Safety and Soundness Act and the Enterprise housing goals regulation based on new information or developments that occur after publication of the final rule.

For example, under the Safety and Soundness Act and the Enterprise housing goals regulation, FHFA may reduce the benchmark levels in response to an Enterprise petition for reduction of any of the single-family or multifamily housing goal benchmark levels in a particular year based on a determination by FHFA that: (1) Market and economic conditions or the financial condition of the Enterprise require a reduction; or (2) efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Enterprises' charter acts.[5]

The Safety and Soundness Act and the Enterprise housing goals regulation also take into account the possibility that achievement of a particular housing goal may or may not have been feasible for an Enterprise to achieve. If FHFA determines that a housing goal was not feasible for an Enterprise to achieve, then the statute and regulation provide for no further enforcement of that housing goal for that year.[6]

If FHFA determines that an Enterprise failed to meet a housing goal and that achievement of the housing goal was feasible, then the statute and regulation provide FHFA with discretionary authority to require the Enterprise to submit a housing plan describing the specific actions the Enterprise will take to improve its housing goals performance.[7]

C. Housing Goals Under Conservatorship

On September 6, 2008, FHFA placed each Enterprise into conservatorship. Although the Enterprises remain in conservatorship at this time, they continue to have the mission of supporting a stable and liquid national market for residential mortgage financing. FHFA has continued to establish annual housing goals for the Enterprises and to assess their performance under the housing goals each year during conservatorship.

[1] *See* 12 U.S.C. 4561(a).

[2] *See* 12 U.S.C. 4501(7).

[3] *See* 85 FR 82881 (Dec. 21, 2020).

[4] *See* 86 FR 47398 (Aug. 25, 2021).

[5] *See* 12 CFR 1282.14(d); 12 U.S.C. 4564(b).

[6] *See* 12 CFR 1282.21(a); 12 U.S.C. 4566(b).

[7] *See* 12 CFR 1282.21; 12 U.S.C. 4566(c).

II. Discussion of Proposed Rule and Public Comments

FHFA published a Notice of Proposed Rulemaking (NPRM or proposed rule) in the **Federal Register** on August 25, 2021 that proposed new benchmark levels for each of the single-family and multifamily housing goals. The NPRM also proposed the replacement of the existing single-family low-income areas subgoal with separate area-based subgoals targeting the individual components of the low-income areas subgoal (minority census tracts and low-income census tracts). The NPRM also included proposed technical changes to the regulation.[8] The public comment period on the proposed rule ended on October 25, 2021.

Overview. FHFA received 24 comment letters from 27 organizations and individuals in response to the proposed rule. Comments were submitted by both Fannie Mae and Freddie Mac, as well as by five nonprofit organizations, and ten trade associations representing lenders, home builders, credit unions, and other mortgage market participants. FHFA also received four comment letters from policy advocacy organizations, with one letter representing the views of three organizations and another representing the views of two organizations. Individuals submitted the remaining six comments. FHFA has reviewed and considered all of the comments. A number of comments raised issues unrelated to the housing goals or beyond the scope of the proposed rule, and those comments are not addressed in this final rule. Specific provisions of the proposed rule, and the comments received on those provisions, are discussed below and throughout this final rule.

Single-family benchmark levels. FHFA proposed increases to the benchmark levels for the single-family housing goals. FHFA also proposed establishing a new area-based subgoals structure, which divided the existing low-income area purchase subgoal into two subgoals (a minority census tracts subgoal and a low-income census tracts subgoal). A majority of commenters, including Fannie Mae and Freddie Mac, expressed overall support for the proposed benchmark levels for the single-family goals, including the area-based subgoals. Many of these commenters characterized their support for the proposed single-family benchmark levels as ''strong'' and ''enthusiastic.'' Several of these commenters specifically commended FHFA for proposing higher benchmark levels, which they described as in-line with the Enterprises' public missions and responsibilities to provide access to stable and affordable housing for all communities. Many of these commenters described the proposed increases in the benchmark levels as the type of concrete action necessary to address the affordable housing needs the country is facing, as well as to build a more equitable housing finance market. Several of them, including Fannie Mae, also described the proposed higher benchmark levels as reasonable, realistic, and achievable. Many of the commenters supporting the proposed benchmark levels described them as appropriately higher and necessary in order to support the Enterprises' mission to enable equitable and sustainable access to affordable housing. A number of these commenters focused on the critical role the goals play in providing credit for low-income and very low-income borrowers by ensuring that the Enterprises properly focus on this important aspect of their mission.

Several commenters noted that higher benchmark levels will incentivize Fannie Mae and Freddie Mac to marshal their considerable resources and market presence to address the nation's affordable housing crisis. A number of commenters found the proposed single-family benchmark levels to be reasonable in relation to the market forecast. One commenter specifically supported setting the proposed benchmark levels for the low-income and very low-income purchase goals slightly above the midpoint of the projected confidence interval in the market forecast, as discussed in the proposed rule, on the basis that this will encourage the Enterprises to expend significant effort and execute thoughtful strategies to meet meaningful, yet attainable, goals.

Single-family home purchase housing goals. Both Fannie Mae and Freddie Mac commented that the proposed increases in the benchmark levels for the single-family home purchase housing goals were substantial compared to the 2018–2020 and 2021 goals. Freddie Mac specifically noted that the proposed increases would set targets that exceed past performance by both Enterprises and the market as a whole in most of the past ten years.

Although Fannie Mae and Freddie Mac expressed support for the proposed increases to the single-family home purchase benchmark levels, both Enterprises expressed concerns about uncertainty in the housing and loan origination markets. Fannie Mae expressed cautious optimism regarding its ability to achieve the proposed single-family home purchase benchmarks based on historical performance, while Freddie Mac committed to making every effort to meet the proposed goals. However, both Fannie Mae and Freddie Mac emphasized that market factors and regulatory issues outside the Enterprises' control could pose risks to their ability to meet the proposed benchmark levels during the period covered by the final rule. Freddie Mac specifically requested a designated ''implementation period'' to adjust to the significant increases in the single-family benchmark levels in light of the current and foreseeable market conditions. Both Enterprises encouraged FHFA to consider how external factors could complicate their efforts to achieve the proposed benchmark levels given the current and forecasted conditions in the housing and origination markets. They emphasized how extreme home price appreciation, the shortfall in affordable housing supply, and disruptions in income and employment stability resulting from the COVID–19 pandemic could reduce demand and disproportionately impact lower-income borrowers' mortgage loan eligibility. The Enterprises also emphasized how secondary market dynamics, such as lender interest in holding loans in their portfolios rather than selling them, consumer demand, lender preference for conventional loans versus non-conventional loans, and the secondary market activities of other investors will influence the Enterprises' ability to achieve the proposed benchmark levels.

Area-based subgoals. The NPRM proposed establishing a new area-based subgoals structure by dividing the existing low-income areas purchase subgoal into two subgoals: A minority census tracts subgoal and a low-income census tracts subgoal. Most commenters offered strong support for the proposed area-based subgoals structure. Several commenters, including Freddie Mac, applauded FHFA for its focus on equitable housing finance and efforts to address the minority homeownership gap through these proposed subgoals. One commenter stated that the proposed minority census tracts subgoal is a necessary step toward ensuring the Enterprises fulfill their statutory duty to facilitate the financing of affordable housing for all low- and moderate-income families, including families of color. A number of commenters urged FHFA to increase the benchmark level for the minority census tracts subgoal above the proposed 10 percent. Two

[8] *See* 86 FR 47398 (Aug. 25, 2021).

commenters recommended an increase in the benchmark level for the proposed low-income census tracts subgoal above the proposed 4 percent. Two commenters suggested that restructuring the low-income areas subgoal as proposed might provide FHFA with data to determine ''whether the enterprise housing goals are unintentionally contributing to the displacement of low-income families.''

While no commenters objected to the proposed area-based subgoals structure, one commenter expressed concern that the proposed low-income census tracts subgoal would deter the Enterprises from purchasing loans in minority census tracts for moderate- to high-income minority borrowers who opt to live in minority census tracts. FHFA notes that the new subgoals would permit housing goals credit under at least one of the subgoals for many moderate- and high-income borrowers in minority census tracts. All loans to moderate-income borrowers (defined as having incomes no greater than 100 percent of area median income (AMI)) in minority census tracts would be eligible for credit under the minority census tracts subgoal, and in minority census tracts that are also low-income census tracts, loans to borrowers with incomes above 100 percent of AMI would be eligible for credit under the low-income census tracts subgoal. While it is true that loans to higher income borrowers in minority census tracts that are not low-income census tracts would not be eligible for credit under either subgoal, FHFA does not expect this to create a significant disincentive for Enterprise purchases of such loans.

Another commenter recommended future inclusion of race and ethnicity of borrowers into housing goal formulation and modification. FHFA will continue to monitor Enterprise performance on the housing goals and the demographics of borrowers with goals-qualifying loans. FHFA may explore avenues that may be permitted under applicable law in future housing goals rulemakings.

Single-family low-income refinancing goal. In addition to their support for the proposed increases in the benchmark levels for the single-family home purchase goals, a number of commenters specifically expressed support for the proposed benchmark level for the single-family low-income refinancing goal. Several of these commenters emphasized the crucial role that responsible and affordable refinance loans play in preserving homeownership and the important role the Enterprises play in ensuring that more borrowers can benefit from the current refinance boom to save money on mortgage payments. They expressed concern that, during the COVID–19 pandemic and a period of historically low interest rates, the current surge in refinancing is not adequately reaching lower-income families, lower-wealth families, and borrowers with smaller loan balances. To address these concerns, these commenters recommended that FHFA and the Enterprises help reduce the cost of refinancing by ensuring that rate-term refinances are more available, but not more costly, for lower-income families who would save greatly on mortgage payments. They also urged FHFA and the Enterprises to create a streamlined refinance program for low-balance mortgages to ensure that affordable refinances are more accessible to borrowers, and particularly those of color. One commenter that supported the proposed benchmark level for the single-family low-income refinancing goal expressed optimism that the proposed higher benchmark level would encourage the Enterprises to purchase refinance mortgages from credit unions and other financial institutions whose mission is to serve their local communities. Another commenter urged FHFA to increase the benchmark level for the low-income refinancing goal from the proposed 26 percent to 28 percent to help ensure that the Enterprises can respond to current market conditions and promote fair access to affordable housing effectively. One commenter recommended that FHFA increase the income level for mortgages eligible for the low-income refinance goal from 80 percent of AMI to 100 percent of AMI and provide more support to more low-income homeowners looking to refinance. FHFA notes that while this proposal would be beyond the scope of the current rule, FHFA will continue to consider the needs of moderate-income households that are seeking to refinance loans.

Several commenters expressed support for the higher proposed benchmark level while acknowledging that interest rates are forecast to increase in the years 2022–2024. Two of these commenters described the proposal, which set the low-income refinancing goal slightly below the midpoint of the confidence interval in the market forecast, as appropriate given the greater volatility in refinance projections and the sizable increase over the current benchmark level of 21 percent. One of these commenters endorsed FHFA's proposal to set the benchmark level lower than the projected market level due to fluctuations in interest rates.

Fannie Mae expressed concern over the proposed low-income refinance benchmark level, characterizing the proposed increase over the current benchmark level as significant. Fannie Mae stated that the unpredictability of future interest rates and refinancing volumes could have a significant impact on the low-income refinance share of the market. Fannie Mae further stated that this volatility makes it difficult to determine the likelihood of the Enterprises' ability to meet the proposed benchmark level, particularly in 2023 and 2024. Fannie Mae also stated that meeting the proposed benchmark level may be challenging if future refinance volume stalls because homeowners who have taken advantage of historically low interest rates will have less incentive to refinance their loans, especially those lower income borrowers with low loan balances. FHFA emphasizes that the Enterprises are required to meet the lower of the benchmark level or the market level for each single-family goal. Therefore, if the benchmark level that FHFA set is higher than the market level, then the Enterprise can still meet this goal by exceeding the market level, even if it falls short of the benchmark. However, if FHFA sets a low benchmark level in the context of an expected strong or high market level, then FHFA would be not be meeting its statutory obligation to set meaningful and robust goals to ensure that an appropriate share of Enterprise refinance acquisitions are loans made to low-income borrowers.

Multifamily benchmark levels. The NPRM proposed increases in the benchmark levels for all three multifamily goals. A significant number of commenters supported these proposed increases in the benchmark levels. The commenters characterized the proposed benchmark levels as reasonable and attainable, notwithstanding known market challenges, like the cost of materials, labor shortages and supply chain issues. Several of the commenters stated that the significant and growing need for affordable rental housing across the country aligns with the missions of the Enterprises and should be a priority in the near future. One commenter stated that while the proposed increases in the benchmark levels would be an improvement, FHFA should set the multifamily benchmark levels even higher, citing both the need for more affordable rental housing and the Enterprises' recent performance on these goals. Two commenters expressed concern that the proposed benchmark levels would be too high relative to previous levels.

Measuring multifamily goals. Several commenters suggested expressing the multifamily goals in percentages or dollar volumes instead of numbers of units. Those proposals are outside the scope of this rulemaking, and the final rule does not change how the multifamily goals are measured. FHFA may consider changes to the structure or measurement of the multifamily housing goals in future rulemaking to establish multifamily benchmark levels for 2023 and beyond.

Duration of goals. A number of commenters recommended that FHFA establish the housing goals more frequently than once every three years. Several of these commenters urged FHFA to set the multifamily goal benchmark levels annually, rather than for three years as set forth in the proposed rule. One of these commenters stated that because the 2022–2024 goals are subject to the lasting uncertainty in housing markets due to the COVID–19 pandemic, FHFA should issue one-year multifamily goal benchmark levels applicable to 2022. This commenter argued that a shorter goal duration could also mitigate the potential need for FHFA to adjust longer-term housing goal benchmark levels if unforeseen changes to market conditions arise. Other commenters also recommended a one-year multifamily goal duration, stating that the proposed increases to the benchmark levels may be too high and the three-year time frame too long and may cause the Enterprises to act irrationally if the market dynamics change during the three-year period. One commenter urged FHFA to set two-year benchmark levels for both the single-family and multifamily goals. The commenter reasoned that because forecasts are more accurate in shorter time frames, two-year goals could allow for more aggressive, but feasible, benchmark levels within the upper range of loan purchase forecasts.

Small multifamily subgoal. FHFA received several comment letters, including from Freddie Mac, supporting the proposed increase in the small multifamily housing goal benchmark level. Fannie Mae highlighted concerns around the proposed increase in the benchmark level and identified a potential need to change existing underwriting standards in order to meet the goal.

Other issues. A number of commenters raised concerns in response to the proposed rule that, while important to note, have limited implementation feasibility or relevance in the final housing goals rulemaking. Additionally, commenters recommended changes to the proposed rule that are outside the scope of the housing goals, such as issues related to the Enterprises' Senior Preferred Stock Purchase Agreements (PSPA) with the U.S. Department of Treasury, and recommendations for alignment with other regulatory requirements, such as the Community Reinvestment Act. These comments are further discussed below.

(i) PSPA amendments. A number of commenters expressed general concern over the impact of the covenants added to the PSPA in January 2021 on Enterprise housing goals performance. Several of the commenters recommended permanently suspending these covenants, which were temporarily suspended by the U.S. Department of Treasury in September 2021, to best support communities of color and bolster Enterprise performance. One commenter stated that while FHFA has important safety and soundness responsibilities, those responsibilities should be exercised using supervisory authority rather than as part of the PSPA.

(ii) Equitable Housing Finance Plans. Several commenters, including Fannie Mae, commended FHFA's efforts to support sustainable affordable housing—specifically, FHFA's requirement that the Enterprises prepare three-year Equitable Housing Finance Plans. The Enterprises' Equitable Housing Finance Plans, due by December 31, 2021, will identify barriers to housing opportunities, list measurable objectives and meaningful goals, and describe plans for meaningful actions to reduce the racial homeownership gap. FHFA expects that the Equitable Housing Finance Plans, together with the new housing goals area-based subgoals structure, will contribute to promoting equitable and wide-reaching credit opportunities.

(iii) Disaster-related and climate change considerations. One commenter recommended explicitly including indicators for climate change and environmental justice into the formulation of Enterprise housing goals. Citing apparent disproportionate effects of climate change on historically underserved communities, particularly those of color, the commenter pushed for consideration of environment-related risk into housing goal risk assessment. The commenter asserted that FHFA should take actions to support sustainable affordable housing initiatives in response to the risks posed by climate change to the housing finance market, and low- and moderate-income communities and communities of color in particular. FHFA has been actively engaging with industry stakeholders and working to evaluate climate and natural disaster risk management at the Enterprises and will continue to do so.[9]

(iv) Manufactured housing loans. The NPRM did not propose targets specific to the purchase of manufactured housing loans. One commenter urged FHFA to establish a new manufactured housing single-family subgoal based on the commenter's claim that the Enterprises' separate Duty to Serve plans and performance do not adequately support manufactured housing finance. Fannie Mae suggested that FHFA allow housing goals credit for rented units within manufactured housing communities.

FHFA recognizes the importance of manufactured housing as a significant source of affordable housing and homeownership. However, the final rule does not establish a new manufactured housing single-family subgoal and does not allow housing goals credit for rented units in manufactured housing communities. The multifamily Conservatorship Scorecard cap currently requires at least 50 percent of an Enterprise's multifamily loan purchases to be mission-driven, affordable housing, including manufactured housing communities. In addition, the Enterprises' proposed Duty to Serve plans include Enterprise manufactured home loan purchases for 2022–2024. FHFA will continue to evaluate the treatment of loans on manufactured housing communities and may consider changes in connection with the Enterprises' Duty to Serve efforts.

FHFA also will consider providing additional guidance to the Enterprises to permit blanket loans on manufactured housing communities that meet certain conditions to count towards the multifamily housing goals on a case-by-case basis. It is difficult to accurately determine a manufactured housing unit's affordability under the housing goals because bedroom count information on individual manufactured housing units in the communities is typically not collected by the Enterprises, and the pad rent alone does not include the full cost of housing for the residents, which includes paying for their unit financing. Therefore, the practical question of how to determine housing costs and affordability, including how to adjust household size for the number of bedrooms in a unit to accurately apply the rent estimation alternative, cannot be answered at this time given available data.

[9] *See https://www.fhfa.gov/Media/PublicAffairs/Documents/Climate-and-Natural-Disaster-RFI.pdf.*

(v) Multifamily workforce housing goal. One commenter suggested that FHFA establish a multifamily goal targeting support for multifamily properties rented to households with incomes from 60 to 120 percent of AMI (which is the common definition of incomes for workforce housing). The commenter recommended that FHFA give the Enterprises goals credit for purchasing mortgage loans on multifamily rental properties with a prescribed number of rental units that are affordable to moderate-income families with incomes between 60 and 120 percent of AMI. However, this proposal is outside the scope of this rulemaking. Therefore, the final rule does not change the structure of the multifamily housing goals to expand beyond the statutory requirements for establishing multifamily goals, which limit housing goals credit to households at or below 80 percent of AMI. FHFA acknowledges the importance of this market segment and may take workforce housing into consideration in future rulemakings.

(vi) Qualitative considerations. Fannie Mae and another commenter proposed incorporating qualitative goals in FHFA's final determinations for Enterprise annual performance. The commenters argued that analyzing the Enterprises' qualitative efforts in addition to their quantitative performance metrics will bolster FHFA's determination of appropriate remedies for Enterprise noncompliance with housing goals. The commenters recommended that FHFA give the Enterprises credit for participation in stakeholder efforts to promote affordable and sustainable housing. The commenters also suggested that FHFA explore opportunities for developing qualitative goals in conjunction with the Enterprises' development and implementation of their Equitable Housing Finance Plans and their efforts to advance equity in housing finance.

FHFA agrees that the implementation of qualitative measures plays an important role in the Enterprises' ability to achieve the quantitative housing goals. In particular, quantitative measures may not always reflect the impact of market developments outside the control of the Enterprises that may have a significant impact on the ability of the Enterprises to meet the housing goals. However, FHFA continues to believe that the establishment of quantitative benchmark levels provides clearly defined standards for objectively measuring the Enterprises' performance. FHFA notes that the qualitative efforts of the Enterprises in attempting to meet the housing goals are an appropriate consideration when assessing the feasibility of any housing goals that an Enterprise fails to achieve, as well as whether to require an Enterprise to submit a housing plan if the Enterprise fails to achieve a goal that was feasible.

III. Summary of Final Rule

A. Benchmark Levels for the Single-Family Housing Goals

The final rule establishes the benchmark levels for the single-family housing goals and subgoals for 2022–2024 as follows:

TABLE 1—SINGLE-FAMILY BENCHMARK LEVELS FOR 2022–2024

Goal	Criteria	Final benchmark level for 2022–2024 (percent)
Low-Income Home Purchase Goal	Home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes no greater than 80 percent of AMI.	28
Very Low-Income Home Purchase Goal.	Home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes no greater than 50 percent of AMI.	7
Minority Census Tracts Subgoal ...	Home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes no greater than 100 percent of AMI, in minority census tracts [1].	10
Low-Income Census Tracts Subgoal.	(i) Home purchase mortgages on single-family, owner-occupied properties to borrowers (regardless of income) in low-income census tracts [2] that are not minority census tracts, and (ii) home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes greater than 100 percent of AMI in low-income census tracts that are also minority census tracts.	4
Low-Income Refinancing Goal	Refinancing mortgages on single-family, owner-occupied properties to borrowers with incomes no greater than 80 percent of AMI.	26

[1] Census tracts that have a minority population of at least 30 percent and a median income of less than 100 percent of AMI.
[2] Census tracts where the median income is no greater than 80 percent of AMI.

B. Multifamily Housing Goal Levels

The final rule establishes the benchmark levels for the multifamily goal and subgoals for 2022 as follows:

TABLE 2—MULTIFAMILY BENCHMARK LEVELS FOR 2022

Goal	Criteria	Final benchmark level for 2022
Low-Income Goal	Units affordable to families with incomes no greater than 80 percent of AMI in multifamily rental properties with mortgages purchased by an Enterprise.	415,000 units.
Very Low-Income Subgoal	Units affordable to families with incomes no greater than 50 percent of AMI in multifamily rental properties with mortgages purchased by an Enterprise.	88,000 units.
Small Multifamily Low-Income Subgoal.	Units affordable to families with incomes no greater than 80 percent of AMI in small multifamily rental properties (5 to 50 units) with mortgages purchased by an Enterprise.	Freddie Mac: 23,000 units. Fannie Mae: 17,000 units.

C. Other Proposed Changes

The final rule makes minor technical changes to some regulatory definitions and counting rules. These changes are non-substantive changes intended to conform the regulation to existing FHFA practices in measuring the performance of the Enterprises under the housing goals.

IV. Single-Family Housing Goals

A. Factors Considered in Setting the Single-Family Housing Goal Benchmark Levels

The Safety and Soundness Act requires FHFA to consider the following seven factors in setting the single-family housing goals:

1. National housing needs;
2. Economic, housing, and demographic conditions, including expected market developments;
3. The performance and effort of the Enterprises toward achieving the housing goals in previous years;
4. The ability of the Enterprises to lead the industry in making mortgage credit available;
5. Such other reliable mortgage data as may be available;
6. The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and
7. The need to maintain the sound financial condition of the Enterprises.[10]

FHFA considered each of these required statutory factors, as described in detail in the proposed rule, in setting the benchmark levels for the single-family housing goals.[11]

FHFA's analysis and goal setting process includes developing econometric forecast models for each of the single-family housing goal segments that explicitly take some of the statutory factors into account, and then considering the other statutory factors and variables that impact affordable homeownership in selecting the specific benchmark level.[12] Many of these factors indicate that low-income and very low-income households are facing, and will continue to face, difficulties in achieving homeownership or in refinancing an existing mortgage. These factors, such as rising home prices and stagnant household incomes, also impact the Enterprises' ability to meet their mission and facilitate affordable homeownership for low-income and very low-income households. Nevertheless, FHFA expects and encourages the Enterprises to work toward meeting their housing goals requirements in a safe and sound manner.

Current market outlook. There are many factors that impact the affordable housing market as a whole, and changes to any one of them could significantly impact the ability of the Enterprises to meet the housing goals. FHFA will continue to monitor the affordable housing market and take these factors into account when considering the feasibility of the goals. In developing the market models, FHFA, as in past rulemakings, used Moody's forecasts as the source for macroeconomic variables where available.[13] In cases where Moody's forecasts were not available (for example, the share of government-insured/guaranteed home purchases and the share of government-insured/guaranteed refinances), FHFA generated and tested its own forecasts as in past rulemakings.[14] Elements that impact the models and the determination of benchmark levels are discussed in FHFA's market paper and some of these elements are discussed below.[15]

Interest rates are very important determinants of mortgage market trajectory. Moody's September 2021 forecast projects that mortgage interest rates will rise gradually from 2.9 percent in 2021 to 3.7 percent by 2024.[16] Moody's forecast also projects that the unemployment rate will gradually fall from its April 2020 peak of 14.8 percent to 3.9 percent in 2024.[17] Moody's forecast also projects a modest increase in per capita disposable nominal income growth—from $52,800 in 2020 to $59,300 in 2024. Furthermore, Moody's forecast estimates that the inflation rate will be in the 2.3–2.8 percent range from 2022 through 2024.

The combination of low interest rates, high deferred demand, and low supply fueled by the COVID–19 pandemic drove house prices up by 18.5 percent in the third quarter of 2021 relative to the third quarter of 2020, based on FHFA's purchase-only House Price Index (HPI).[18] Moody's September 2021 forecast of the same HPI index expects house prices to increase at the annual rates of 4.0, 1.2, and 0.2 percent in 2022, 2023, and 2024, respectively.

Taken together, the expected increase in mortgage interest rates and house prices will likely impact the ability of low- and very low-income households to purchase homes. Housing affordability, as measured by Moody's forecast of the National Association of Realtors' (NAR) Housing Affordability Index (HAI), is projected to decline from an index value of 166.8 in 2020 to 151.6 in 2024. Lower values of the HAI imply that housing has become less affordable.[19] Further, the supply of affordable housing has not kept pace with the growth of the demographic demand for affordable housing, even before the COVID–19 pandemic.

In many ways, 2020 was an unusual year in its record volumes of both home purchase and home refinance loans. Low interest rates coupled with rising house prices created an incentive for many homeowners to refinance, resulting in a surge in refinance activity in 2020. The refinance share of overall mortgage originations increased from 28 percent in 2018 to 61 percent in 2020. Moody's forecasts this share to decline slightly to 59 percent in 2021, subsequently increase to 64 percent in 2022, and then decline to 51 percent and 38 percent in 2023 and 2024, respectively.

[10] 12 U.S.C. 4562(e)(2)(B).

[11] *See* 86 FR 47398 (Aug. 25, 2021).

[12] *See http://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/Dec2021_Market-Estimates-2022-2024.pdf.*

[13] The macroeconomic outlook described herein is based on Moody's forecasts as of September 2021.

[14] This refers to the mortgages insured or guaranteed by government agencies such as the Federal Housing Administration, Department of Veterans Affairs, and Rural Housing Service.

[15] *See http://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/Dec2021_Market-Estimates-2022-2024.pdf.*

[16] Refer to Exhibit 1 in the ''The Size of the Affordable Mortgage Market: 2022–2024 Enterprise Single-Family Housing Goals,'' available at *http://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/Dec2021_Market-Estimates-2022-2024.pdf.*

[17] U.S. Bureau of Labor Statistics ''Labor Force Statistics from the Current Population Survey,'' available at: *https://data.bls.gov/timeseries/LNS14000000.*

[18] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/US-House-Prices-Rise-18pt5-Percent-over-the-Last-Year-Up-4pt2-Percent-from-2Q.aspx.*

[19] NAR's HAI is a national index. It measures, nationally, whether an average family could qualify for a mortgage on a typical home. A typical home is defined as the national median-priced, existing single-family home as reported by NAR. An average family is defined as one earning the median family income. The calculation assumes a down payment of 20 percent of the home price and a monthly payment that does not exceed 25 percent of the median family income. An index value of 100 means that a family earning the median family income has exactly enough income to qualify for a mortgage on a median-priced home. An index value above 100 signifies that a family earning the median family income has more than enough income to qualify for a mortgage on a median-priced home. A decrease in the index value over time indicates that housing is becoming less affordable.

B. Final Single-Family Housing Goal Benchmark Levels

The final rule sets each of the single-family housing goal benchmark levels at the same levels as in the proposed rule, which are higher than the corresponding levels that have been in place since 2018. Both Enterprise performance and the overall market shares generally have exceeded the benchmark levels in those years. FHFA recognizes that the new higher benchmark levels may require the Enterprises to expand their efforts to serve these markets in the future, particularly as market conditions continue to change. However, FHFA believes that the new benchmark levels are appropriate and feasible for the Enterprises to achieve in light of their past performance, FHFA's analysis of the market, and the statutory factors listed above. FHFA also notes that the Enterprises are required to meet the lower of the benchmark level or the market level for each single-family goal. Therefore, if the benchmark level in the final rule is higher than the market level, an Enterprise can still meet the goal by exceeding the market level, even if it falls short of the benchmark level.

FHFA continues to monitor the activities of the Enterprises, both in FHFA's capacity as regulator and as conservator. If necessary, FHFA will make appropriate changes in the benchmark levels for the single-family housing goals to ensure the Enterprises' continued safety and soundness.

1. Low-Income Home Purchase Goal

The low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of AMI.

Consistent with the proposed rule and FHFA's market model, the final rule sets the annual low-income home purchase housing goal benchmark level for 2022–2024 at 28 percent. Although the final benchmark level is significantly higher than the previous benchmark level of 24 percent and is above the midpoint of the confidence intervals of the market forecast, FHFA believes that the higher benchmark level is appropriate to ensure that the Enterprises fulfill their statutory duty to facilitate the financing of affordable housing for all low- and moderate-income families. Additionally, FHFA notes that setting the benchmark level above the midpoint of the confidence intervals in the market forecast will help ensure that the two-part benchmark/market level structure of the goal is meaningful even in a strong market for low-income borrowers.

Table 3. Low-Income Home Purchase Goal

	Historical Performance			Projected Forecast			
Year	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Actual Market	25.5%	26.6%	27.6%				
Benchmark	24.0%	24.0%	24.0%	24.0%	28.0%	28.0%	28.0%
Current Market Forecast				27.5% +/- 2.3%	26.6% +/- 3.9%	25.7% +/- 5.0%	25.5% +/- 5.9%
Fannie Mae Performance							
Low-Income Home Purchase Mortgages	294,559	298,702	374,376				
Total Home Purchase Mortgages	1,044,098	1,075,032	1,288,806				
Low-Income % of Home Purchase Mortgages	28.2%	27.8%	29.0%				
Freddie Mac Performance							
Low-Income Home Purchase Mortgages	199,429	235,811	280,561				
Total Home Purchase Mortgages	774,394	860,669	982,888				
Low-Income % of Home Purchase Mortgages	25.8%	27.4%	28.5%				

The current market forecast in Table 3 reflects a 90 percent confidence level for this goal.[20]

Recent performance and forecasts. As shown in Table 3, both Enterprises exceeded both the applicable benchmark and market levels for this goal in 2018, 2019, and 2020 while the low-income home purchase market levels were steadily increasing. FHFA's current model forecasts that the market level for this goal is expected to decline from the peak in 2020 and remain around 26 percent for each year from 2022–2024.

Proposed rule and comments. The NPRM proposed increasing the benchmark level for this goal for 2022–2024 from 24 percent, which had been in place since 2015, to 28 percent. At the time the NPRM was issued, using data through July 2021, the average market level forecast for 2022–2024 was 26.5 percent. Since the publication of the proposed rule, FHFA has updated the model using additional 2020 data from HMDA and Moody's forecasts as of September 2021. The updated FHFA model forecasts that the market level for this goal will be slightly lower, with the average forecast at 25.9 percent.

A majority of the commenters on the proposed rule supported the proposed higher benchmark levels for the single-family goals, including the low-income home purchase goal, and no commenters recommended lowering them. Commenters described the proposed benchmark levels as reasonable, realistic, and achievable. Both Enterprises expressed concern that market factors and regulatory issues outside of their control could pose risks to their ability to meet the proposed benchmark levels, including for the low-income home purchase goal, during the three-year term of the rule. FHFA will continue to monitor the market for this

[20] A 90 percent confidence interval suggests that there is a 90 percent probability that the market performance for a given year will be within the lower bound and upper bound as indicated in Table 3.

goal and take appropriate actions as needed.

One commenter recommended that FHFA raise all of the single-family benchmark levels and specifically suggested that the single-family low-income benchmark level be increased to 30 percent. The commenter stated that the recommended increase in the single-family benchmark levels would allow the Enterprises to better respond to the current market conditions and promote fair access to affordable housing effectively. The commenter further stated that an increase in the benchmark levels is necessary because the Enterprises have an even more pronounced responsibility to serve the entire market during times of crisis, including the current COVID–19 pandemic, through aggressively setting, or even surpassing, ambitious housing goals. Another commenter stated that because the Enterprises have routinely equaled or exceeded the single-family low-income benchmark levels during the last eleven years, this suggested that the benchmark levels have been too low. The commenter further noted that the single-family goals should be established at levels that would likely result in the Enterprises leading the market but did not specify what the increase to the proposed single-family low-income benchmark level should be.

FHFA determination. Consistent with the proposed rule, the final rule sets the benchmark level for the low-income home purchase housing goal at 28 percent. This is above the average market forecast for the three years, to encourage the Enterprises to continue to find ways to support low-income borrowers while not compromising safe and sound lending standards. Even though this benchmark level is slightly higher than the average market forecast for this goal, due to the two-part nature of the goals, the level that will be used to assess the Enterprises' year-end performance will be the lower of the market level or the benchmark level. Therefore, the 28 percent benchmark level is appropriate, reasonable, and supported by the current market forecast. FHFA recognizes that there may be challenges to meeting the goal, particularly in light of the recovery from the COVID–19 pandemic. FHFA will continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines that the benchmark level for the low-income home purchase goal is not feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

2. Very Low-Income Home Purchase Goal

The very low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for very low-income families, defined as families with incomes less than or equal to 50 percent of AMI. Consistent with the proposed rule and FHFA's market model, the final rule sets the annual very low-income home purchase housing goal benchmark level for 2022–2024 at 7 percent. While this benchmark level is above the previous benchmark level of 6 percent and is above the midpoint of the confidence intervals of the market forecast, FHFA has determined that the benchmark level will serve as an appropriate target that will channel Enterprise efforts in this market segment. FHFA recognizes that the various challenges to affordability highlighted above may require additional effort by the Enterprises to meet the benchmark level. As with the low-income home purchase goal discussed above, setting the benchmark level at a higher level will help ensure that the two-part structure of the goal is meaningful even in a strong purchase market for very low-income borrowers.

Table 4. Very Low-Income Home Purchase Goal

	Historical Performance			Projected Forecast			
Year	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Actual Market	6.5%	6.6%	7.0%				
Benchmark	6.0%	6.0%	6.0%	6.0%	7.0%	7.0%	7.0%
Current Market Forecast				6.7% +/- 0.8%	6.2% +/- 1.4%	6.1% +/- 1.8%	6.2% +/- 2.1%
Fannie Mae Performance							
Very Low-Income Home Purchase Mortgages	69,952	70,214	93,909				
Total Home Purchase Mortgages	1,044,098	1,075,032	1,288,806				
Very Low-Income % of Home Purchase Mortgages	6.7%	6.5%	7.3%				
Freddie Mac Performance							
Very Low-Income Home Purchase Mortgages	48,823	58,136	68,216				
Total Home Purchase Mortgages	774,394	860,669	982,888				
Very Low-Income % of Home Purchase Mortgages	6.3%	6.8%	6.9%				

The current market forecast in Table 4 reflects a 90 percent confidence level for this goal.

Recent performance and forecasts. As shown in Table 4, the market for very low-income home purchase loans has increased each year beginning in 2018 through 2020, as reflected in HMDA data. During this timeframe, both Enterprises exceeded the applicable benchmark level for this goal. Fannie Mae also exceeded the applicable market levels for this goal for 2018 and 2020 but fell slightly below the market level for 2019. Conversely, Freddie Mac fell below the applicable market levels for this goal in 2018 and 2020 but exceeded the market level for 2019. FHFA's current model forecasts that the market level for this goal is expected to

remain around 6.2 percent for 2022–2024.

Proposed rule and comments. The NPRM proposed increasing the benchmark level for this goal for 2022–2024 from 6 percent, which had been in place since 2015, to 7 percent. At the time the NPRM was issued, using data through July 2021, the average market level forecast for 2022–2024 was 6.7 percent. Since the publication of the proposed rule, FHFA has updated the model using additional 2020 data from HMDA and Moody's forecasts as of September 2021. The updated FHFA model forecasts that the market level for this goal will be slightly lower, with the average forecast at 6.2 percent.

As noted in the low-income goal discussion above, a majority of the commenters expressed support for the proposed higher benchmark levels for the single-family goals, including the very low-income home purchase goal. Several commenters emphasized the importance of establishing more aggressive targets in order to improve access to credit for lower-income home buyers. One commenter stated that setting the proposed very low-income purchase goal slightly above the midpoint of the projected confidence interval in the market forecast will encourage the Enterprises to expend significant effort and execute thoughtful strategies in order to meet meaningful, yet attainable goals. As noted in the low-income home purchase goal discussion above, both Enterprises expressed concern that market factors and regulatory issues outside Enterprise control could pose risks to their ability to meet the proposed benchmark levels, including for the very low-income home purchase goal, during the three-year term of the rule.

As previously discussed, one commenter recommended that FHFA raise all of the single-family benchmark levels. The commenter further recommended that the single-family very low-income benchmark level be increased to 10 percent in order to better respond to current market conditions and to promote fair access to affordable housing effectively. Another commenter opted not to recommend a specific increase to the proposed very low-income goal benchmark level but encouraged FHFA to establish higher single-family benchmark levels that would likely result in the Enterprises leading the market.

FHFA determination. Consistent with the proposed rule, the final rule sets the benchmark level for the very low-income home purchase housing goal at 7 percent. This level should serve as a ''stretch goal'' to encourage the Enterprises to continue their efforts to promote safe and sustainable lending to very low-income families. As noted in the low-income home purchase goal discussion above, there are significant challenges to housing affordability that may be beyond the control of the Enterprises that could make this benchmark level a challenge for the Enterprises to meet. However, given the two-part nature of the goals, the level that will be likely to constrain the Enterprises will be the lower of the market level or the benchmark level. Thus, FHFA is persuaded that setting the benchmark level at 7 percent is appropriate, reasonable, and supported by the current market forecast. FHFA will continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines that the benchmark level for the very low-income home purchase goal is not feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

3. Minority Census Tracts Subgoal

The minority census tracts subgoal is based on the percentage of home purchase mortgages on single-family, owner-occupied properties to borrowers with income no greater than 100 percent of AMI in minority census tracts. Consistent with the proposed rule and FHFA's market model, the final rule sets the annual minority census tracts home purchase subgoal benchmark level for 2022–2024 at 10 percent. While this benchmark level is above the midpoint of the confidence intervals of the market forecast, it is important that the Enterprises expand their focus on this segment of the market. FHFA has determined that the final benchmark level is reasonable, realistic, and achievable for the Enterprises.

Table 5. Minority Census Tracts Subgoal

	Historical Performance			Projected Forecast			
Year	2018	2019	2020	2021	2022	2023	2024
Actual Market	9.0%	9.2%	9.2%				
Benchmark					10.0%	10.0%	10.0%
Current Market Forecast				9.3% +/- 0.9%	9.2% +/- 1.4%	8.9% +/- 1.8%	8.7% +/- 2.1%
Fannie Mae Performance	11.0%	10.7%	10.1%				
Freddie Mac Performance	9.0%	9.5%	9.2%				

The current market forecast in Table 5 reflects a 95 percent confidence level for this subgoal.[21]

Recent performance and forecasts. Table 5 provides data on how both Enterprises would have performed had this new subgoal been in place during 2018–2020. Specifically, Fannie Mae would have exceeded the benchmark level each year by a small amount, and Freddie Mac would have missed the benchmark level each year by a small amount. FHFA's 2021 market forecast for this subgoal is at 9.3 percent, with projected decreases in 2022 (9.2 percent), 2023 (8.9 percent), and 2024 (8.7 percent). Because this is a new subgoal, the proposed rule did not include a forecast of the market levels for it. Based on the newly modeled forecasts using HMDA data and Moody's forecasts as of September 2021, the average forecast for this subgoal for 2022–2024 is 8.9 percent.

Proposed rule and comments. Commenters offered strong support for this proposed subgoal. Several commenters highlighted the positive impact the proposed subgoal would have on ensuring the Enterprises fulfill their statutory duty to facilitate the financing of affordable housing for all low- and moderate-income families, including families of color. A number of commenters urged FHFA to set a higher benchmark level for the subgoal than the proposed 10 percent to increase borrower assistance and address the

[21] A 95 percent confidence interval is used for the two new area-based subgoals, unlike the 90 percent confidence interval used for the previously established goals.

racial homeownership gap. Several commenters also cited the COVID–19 pandemic as a factor exacerbating racial disparities in homeownership and advocated for a higher benchmark level to address this issue. FHFA will continue to monitor data trends for this subgoal during 2022–2024 and will share additional data with the public as appropriate.

FHFA determination. Consistent with the proposed rule, the final rule sets the annual minority census tracts subgoal benchmark level for 2022–2024 at 10 percent. While this is above the average market forecast for the three years, the 10 percent benchmark level is appropriate for ensuring that the Enterprises target the needs of communities of color, as well as emphasizing the importance of improving access to mortgage credit in these communities. FHFA will continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines that the benchmark level for this subgoal is not feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

4. Low-Income Census Tracts Subgoal

The low-income census tracts subgoal is based on the percentage of home purchase mortgages on: (1) Single-family, owner-occupied properties to borrowers (regardless of income) in low-income census tracts that are not minority census tracts; and (2) home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes greater than 100 percent of AMI in low-income census tracts that are also minority census tracts. Consistent with the proposed rule, the final rule sets the annual low-income census tracts home purchase subgoal benchmark level for 2022–2024 at 4 percent. FHFA recognizes that this benchmark level is significantly lower than both the midpoint of the confidence intervals of the market forecast and the recent performance of the Enterprises. However, FHFA has determined that a relatively low benchmark level for this subgoal is appropriate in light of the fact that the subgoal includes housing goals credit for higher income borrowers that may have ready access to mortgage credit even when purchasing homes in low-income census tracts.

Table 6. Low-Income Census Tracts Subgoal

	Historical Performance			Projected Forecast			
Year	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Actual Market	9.1%	8.9%	8.5%				
Benchmark					4.0%	4.0%	4.0%
Current Market Forecast				9.7% +/- 0.6%	10.0% +/- 1.0%	10.2% +/- 1.2%	10.3% +/- 1.5%
Fannie Mae Performance	9.1%	8.8%	8.3%				
Freddie Mac Performance	8.3%	8.5%	8.0%				

The current market forecast in Table 6 reflects a 95 percent confidence level for this subgoal.

Recent performance and forecasts. Table 6 shows FHFA's estimates of Enterprise performance had this new subgoal been in place during 2018–2020. Specifically, each of the Enterprises would have exceeded the benchmark level each year by a meaningful amount. FHFA's 2021 market forecast is at 9.7 percent, with projected increases in 2022 (10.0 percent), 2023 (10.2 percent), and 2024 (10.3 percent). Because this is a new subgoal, the proposed rule did not include a forecast of the market levels for this subgoal. Based on the newly modeled forecasts using HMDA data and Moody's forecasts as of September 2021, the average forecast for this subgoal for 2022–2024 is 10.2 percent.

Proposed rule and comments. Most commenters were supportive of the proposed low-income census tracts subgoal benchmark level. Two commenters encouraged FHFA to increase the benchmark level above the proposed 4 percent. Two other commenters urged FHFA to gather data and monitor potential displacement trends related to the proposed low-income census tracts subgoal to determine if it would unintentionally contribute to displacement of low-income families.

FHFA determination. Consistent with the proposed rule, the final rule sets the low-income census tracts subgoal benchmark level for 2022–2024 at 4 percent. As noted above, the benchmark level is set below historic Enterprise performance to address concerns around gentrification and displacement of low-income families and the potential that the Enterprises may seek to meet the goal by purchasing loans to higher-income borrowers in lower-income areas. Thus, while the benchmark level is lower than historic market performance, FHFA has determined that 4 percent is an appropriate level. Setting this lower benchmark level addresses concerns about incentivizing purchases of loans to higher-income borrowers in low-income census tracts. However, the 4 percent benchmark level is also intended to encourage the Enterprises to continue providing critically needed access to mortgage credit in low-income census tracts. In response to commenters' concerns about displacement, FHFA will continue to monitor data trends for this subgoal during 2022–2024 and will share additional data with the public as appropriate. FHFA will also continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines that the benchmark level for this subgoal is not feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

5. Low-Income Areas Home Purchase Goal

The benchmark level for the overall low-income areas housing goal is set annually by FHFA notice based on the benchmark level for the low-income areas housing subgoal, plus an adjustment factor to include areas affected by disasters. FHFA will continue to set a benchmark level for the overall low-income areas housing goal that will include mortgages to families with incomes less than or equal to 100 percent of AMI who are located

in federally declared disaster areas.[22] The final rule defines the low-income areas housing goal to be the sum of (i) the benchmark level for the minority census tracts subgoal, (ii) the benchmark level for the low-income census tracts subgoal, and (iii) a disaster areas increment set in accordance with existing practice. Each year, FHFA notifies the Enterprises by letter of the benchmark level for the overall low-income areas housing goal for that year, and this practice will continue.

6. Low-Income Refinancing Goal

The low-income refinancing goal is based on the percentage of all single-family, owner-occupied refinance mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of AMI. Consistent with the proposed rule and FHFA's market model, the final rule sets the annual low-income refinancing goal benchmark level for 2022–2024 at 26 percent. FHFA has determined that, despite the various challenges associated with forecasting the low-income refinancing highlighted above, a 26 percent benchmark level will serve as an appropriate target that will channel Enterprise efforts in this segment.

Table 7. Low-Income Refinancing Goal

	Historical Performance			Projected Forecast			
Year	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Actual Market	30.7%	24.0%	21.0%				
Benchmark	21.0%	21.0%	21.0%	21.0%	26.0%	26.0%	26.0%
Current Market Forecast				24.2% +/- 2.9%	22.3% +/- 5.0%	25.5% +/- 6.4%	29.1% +/- 7.4%
Fannie Mae Performance							
Low-Income Refinance Mortgages	196,230	234,249	663,667				
Total Refinance Mortgages	629,816	985,932	3,133,931				
Low-Income % of Refinance Mortgages	31.2%	23.8%	21.2%				
Freddie Mac Performance							
Low-Income Refinance Mortgages	104,843	159,322	490,176				
Total Refinance Mortgages	384,593	712,376	2,485,748				
Low-Income % of Refinance Mortgages	27.3%	22.4%	19.7%				

The current market forecast in Table 7 reflects a 90 percent confidence level for this goal.

Recent performance and forecasts. As shown in Table 7, the market for low-income refinancing has fluctuated during the period 2018 to 2020, as reflected in HMDA data. For example, the market level for low-income refinancing was 30.7 percent in 2018 (in a strong purchase market), 24.0 percent in 2019 (in a market that was transitioning away from being strongly purchase), and 21.0 percent in 2020 (notable refinance market). The performance of the Enterprises also fluctuated during the 2018–2020 timeframe as the market turned from a predominantly purchase money market to a refinance market. For example, Fannie Mae exceeded the market levels for this goal in 2018 and 2020, but not in 2019, and exceeded the benchmark level for each of the three years. Freddie Mac exceeded the benchmark but not the market level in 2019, exceeded both the market and benchmark levels for 2019, and fell short of both the benchmark and market levels for 2020.

Proposed rule and comments. The NPRM proposed increasing the low-income refinancing benchmark level for 2022–2024 from 21 percent, which had been in place since 2015, to 26 percent. FHFA noted that this proposed benchmark level was close to the market forecast and well within the confidence interval for each year during the period 2022–2024. At that time, using data through July 2021, the average market level forecast for 2022–2024 was 27.6 percent. Since the publication of the NPRM, FHFA has updated the model using 2020 data from HMDA and Moody's forecasts as of September 2021. The current model forecasts that the average market level for 2022–2024 for this goal will be lower, at 25.6 percent.

As previously noted, a majority of the commenters supported the proposed benchmark levels for the single-family goals, including the low-income refinancing goal. A number of these commenters stated that the proposed higher benchmark level for the low-income refinancing housing goal is necessary due to the crucial role the Enterprises play in ensuring that low-income homeowners are able to refinance their loans so they can save money on their mortgage payments. Several commenters acknowledged the challenges associated with establishing the benchmark level for the years 2022–2024 due to the volatility in refinance projections and the sizable increase over the current benchmark level. Nevertheless, none of the commenters recommended that FHFA lower the proposed benchmark level. One commenter recommended that FHFA increase the proposed benchmark level from 26 to 28 percent. Fannie Mae commented that it may be challenged to meet the proposed low-income refinance benchmark level if future refinance volume stalls due to changes in interest rates.

FHFA determination. Consistent with the proposed rule, the final rule sets the benchmark level for the low-income refinancing goal at 26 percent. This decision is supported by the Enterprises' year-to-date performance for 2021. While the low-income refinancing goal is difficult to forecast due to its sensitivity to interest rates, a 26 percent benchmark level is reasonable given the current forecast and the two-part goal structure allowing the Enterprises to achieve the goal by meeting either the benchmark level or the market level. For this reason, FHFA

[22] Disaster declarations are listed on the FEMA website at *https://www.fema.gov/disasters.*

encourages the Enterprises to carefully monitor market conditions in pursuing this goal. FHFA also notes that during periods of increased refinance activity, the market, without additional intervention, would typically refinance more higher balance transactions which also tend to be made to higher income borrowers. Thus, the low-income share of refinances, other things remaining the same, is lower in times of high refinance activity than in times when the market is a purchase money market. FHFA will also continue to monitor the Enterprises in its capacities as regulator and as conservator, and if FHFA determines that the benchmark level for the low-income refinancing goal is not feasible for the Enterprises to achieve in light of market conditions, or for any other reason, FHFA will take appropriate steps to adjust the benchmark level.

V. Multifamily Housing Goals

A. Factors Considered in Setting the Multifamily Housing Goal Benchmark Levels

The Safety and Soundness Act requires FHFA to consider the following six factors in setting the multifamily housing goals:

1. National multifamily mortgage credit needs and the ability of the Enterprises to provide additional liquidity and stability for the multifamily mortgage market;

2. The performance and effort of the Enterprises in making mortgage credit available for multifamily housing in previous years;

3. The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

4. The ability of the Enterprises to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

5. The availability of public subsidies; and

6. The need to maintain the sound financial condition of the Enterprises.

FHFA considered each of these required statutory factors, as described in detail in the proposed rule, in setting the benchmark levels for the multifamily housing goals.[23] The analysis below describes trends in the overall multifamily mortgage market as they apply to setting the final benchmark levels. Additional detailed analyses of the trends in the overall multifamily mortgage market can be found in the proposed rule's preamble.

Current market outlook. Affordability for families living in rental units has decreased in recent years for many families. According to the Joint Center for Housing Studies (JCHS), in its 2021 State of the Nation's Housing Report, the share of new multifamily completions of buildings with at least 50 units significantly increased from 30 percent in 2011 to a peak of 62 percent in 2018.[24] That share remained high and was at 56 percent in 2020.[25] The units in larger multifamily buildings tend to have higher median rents, as noted in the JCHS 2020 State of the Nation's Housing Report.[26] In addition, according to that JCHS Report, the supply of apartments with rents of $600 or lower declined by 2.5 million between 2004 and 2019, unlike apartments with rents of over $1,000, which increased by 10.4 million within the same time period.[27]

The JCHS report of the rental market noted the growing presence of cost-burdened renters in certain income segments. According to the 2021 JCHS report, 19 percent of households earning $25,000–$34,999 reported being behind on housing payments in the first quarter of 2021. In higher income households, 16 percent of households earning $35,000–$44,999 and 11 percent for those earning $50,000–$74,999 reported being behind on housing payments in the first quarter of 2021.[28] However, many households were already cost-burdened prior to the COVID–19 pandemic. For example, close to 50 percent of renter households spent more than 30 percent of their incomes on housing in 2019. Specifically, almost 82 percent of renter households earning less than $25,000 and 58 percent of renter households earning $25,000–$49,999 spent more than 30 percent of their incomes on housing in 2019.[29] This is significant because while the Safety and Soundness Act defines affordability for the multifamily housing goals based on rents that are affordable at the 30 percent threshold, many low-income households are paying rents that are significantly above that level.[30]

FHFA's consideration of the multifamily mortgage market addresses the size of the multifamily mortgage market, as well as the subset of the multifamily mortgage market affordable to low-income and very low-income families. In August 2021, the Mortgage Bankers Association (MBA) estimated 2020 multifamily mortgage originations to be $360 billion, a slight decline of 1 percent relative to the previous year.[31] This was an upward revision from MBA's prior estimate (from February 2021) that 2020 multifamily originations had declined by 17 percent in dollar terms from the previous year.[32] MBA also forecasted in August 2021 that there would be a 13 percent increase in total multifamily mortgage originations to $409 billion in 2021 and a more modest increase of 3 percent to $421 billion in 2022.

Based on nationwide CoStar data that FHFA obtains, on a year-over-year basis, after rent growth slowed to 0.3 percent in 2020, it accelerated in 2021, growing by 10.6 percent as of the end of the third quarter compared to the end of the third quarter one year earlier.[33] Significant rent increases were apparent in all subsegments of the rental market based on building ratings defined by CoStar (*i.e.,* ''1, 2, 3, 4, & 5 Star'' property designations).[34] Rent increases were most significant for 4 & 5 Star properties, at 13.6 percent, while rents increased for 3 Star and 1 & 2 Star properties by 10.8 percent and 4.3 percent, respectively, according to CoStar data. After rising earlier in the COVID–19 pandemic, at 4.5 percent, vacancy rates are at historic lows as of the third quarter of 2021, according to CoStar data. Vacancies at 4 & 5 Star properties have declined from the COVID–19 pandemic high of 10.6

[23] *See https://www.govinfo.gov/content/pkg/FR-2021-08-25/pdf/2021-18008.pdf.*

[24] ''The State of the Nation's Housing 2021,'' Joint Center for Housing Studies of Harvard University, June 2021, p. 28, available at *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.*

[25] *Ibid.*

[26] ''The State of the Nation's Housing 2020,'' Joint Center for Housing Studies of Harvard University, December 2020, p. 32, available at *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Revised_120720.pdf.*

[27] *Ibid.*

[28] ''The State of the Nation's Housing 2021,'' Joint Center for Housing Studies of Harvard University, June 2021, p. 30, available at *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.*

[29] ''The State of the Nation's Housing 2021,'' Joint Center for Housing Studies of Harvard University, June 2021, Figure 31, available at *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.*

[30] *See* 12 U.S.C. 4563(c).

[31] *See https://www.mba.org/2021-press-releases/august/mba-forecast-commercial/multifamily-lending-on-track-to-increase-31-percent-to-578-billion-in-2021.*

[32] *See https://www.mba.org/2021-press-releases/february/mba-forecast-commercial/multifamily-lending-to-increase-11-percent-to-486-billion-in-2021.*

[33] FHFA tabulations of CoStar data.

[34] CoStar building ratings definitions are available at *https://www.costar.com/docs/default-source/brs-lib/costar_buildingratingsystem-definition.pdf.*

percent to 6.2 percent in the third quarter of 2021. Vacancies in 3 Star properties also reached a historic low of 4.0 percent, as did vacancies at 1 & 2 Star properties, which are the tightest, at 3.8 percent.

Multifamily volume caps. As conservator for the Enterprises, FHFA has set a yearly cap under the Conservatorship Scorecard that limits the total amount by dollar volume unpaid principal balance of multifamily loans each Enterprise may purchase. The multifamily mortgage purchase cap furthers FHFA's conservatorship goals of maintaining the presence of the Enterprises as a backstop for the multifamily finance market while not impeding the participation of private capital. In October 2021, FHFA announced the new multifamily loan purchase cap for the 2022 calendar year of $78 billion for each Enterprise, a combined total of $156 billion.[35]

The Conservatorship Scorecard cap applies to the entire multifamily business for each Enterprise without any exclusions. To ensure a strong focus on affordable housing and underserved markets, the 2022 Conservatorship Scorecard requires that at least 50 percent of each Enterprises' multifamily loan purchases be mission-driven, affordable housing. In addition, 25 percent of their business must be affordable to households at 60 percent of AMI or below. Loans may qualify as mission-driven under the Conservatorship Scorecard even if the loans do not meet the criteria for counting units as affordable for purposes of the Enterprise housing goals. Details about the multifamily cap and the mission-driven requirements can be found in Appendix A of the 2022 Conservatorship Scorecard.[36]

B. Final Multifamily Housing Goal Benchmark Levels for 2022

This final rule establishes multifamily housing goal benchmark levels for 2022 only. FHFA considered comments recommending the establishment of benchmark levels for fewer than three years, and the differential impact of the COVID–19 pandemic on the various multifamily origination market segments, and FHFA has concluded that establishing multifamily housing goal benchmark levels for 2022 only is the prudent course of action at this time. Several commenters recommended annual multifamily goal benchmark levels, and one commenter encouraged two-year benchmark levels for both single-family and multifamily goals. By setting the multifamily goal benchmark levels for 2022 only, FHFA will be able to take more recent economic data and conditions into account when setting benchmark levels for the following year. FHFA plans to publish an NPRM in the **Federal Register** in 2022 with proposed benchmark levels for each of the multifamily housing goals. The NPRM will also request additional information about the Enterprises' role in the small multifamily market, along with any other issues that FHFA finds appropriate to address in the rulemaking.

This final rule sets the multifamily housing goals at benchmark levels intended to encourage the Enterprises to provide liquidity and to support various multifamily finance market segments in a safe and sound manner. The Enterprises have served as a stabilizing force in the multifamily market, particularly throughout the COVID–19 pandemic. Since 2008, the Enterprises' portfolios of loans on multifamily affordable housing properties have experienced low levels of delinquency and default, similar to the performance of the Enterprises' portfolios of loans on market rate properties. In light of this performance, the Enterprises should be able to sustain or increase their volume of purchases of loans on affordable multifamily housing properties without adversely impacting the Enterprises' safety and soundness or negatively affecting the performance of their total loan portfolios.

1. Multifamily Low-Income Housing Goal

The multifamily low-income housing goal is based on the total number of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The final rule sets the multifamily low-income housing goal benchmark level for both Enterprises for 2022 at 415,000 units, consistent with the benchmark level that was proposed for 2022–2024. FHFA has determined that this benchmark level is reasonable and achievable for each Enterprise based on the multifamily volume cap for 2022, the comments received, and FHFA's consideration of the statutory factors discussed above.

Table 8. Multifamily Low-Income Housing Goal

	Historical Performance						
Year	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
Low-Income Multifamily Benchmark	300,000	300,000	315,000	315,000	315,000	315,000	415,000
Fannie Mae Performance							
Low-Income Multifamily Units	352,368	401,145	421,813	385,763	441,773		
Total Multifamily Units	552,785	630,868	628,230	596,137	637,696		
Low-Income % Total	63.7%	63.6%	67.1%	64.7%	69.3%		
Freddie Mac Performance							
Low-Income Multifamily Units	406,958	408,096	474,062	455,451	473,338		
Total Multifamily Units	597,399	630,037	695,587	661,417	667,451		
Low-Income % of Total Units	68.1%	64.8%	68.2%	68.9%	70.9%		

Recent performance. As shown in Table 8, both Enterprises have exceeded the applicable multifamily low-income goal benchmark levels by a significant amount each year since 2016. In most years, each Enterprise has also come close to or exceeded the new benchmark level of 415,000 units that will apply in 2022. Freddie Mac historically has

[35] FHFA Announces 2022 Multifamily Loan Purchase Caps for Fannie Mae and Freddie Mac, October 13, 2021: *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-2022-Multifamily-Loan-Purchase-Caps-for-Fannie-Mae-and-Freddie-Mac.aspx.*

[36] *See https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/2022-Appendix-A-10132021.pdf.*

outperformed Fannie Mae on the multifamily low-income goal in terms of volume of low-income multifamily units.

Proposed rule and comments. A number of commenters, including Freddie Mac, supported the proposal to increase the multifamily low-income benchmark level, describing it as ambitious but attainable for the Enterprises. Overall, commenters supported FHFA making affordable rental housing a priority by setting higher multifamily housing goal benchmark levels. While one commenter advocated for higher multifamily goal benchmark levels than proposed, two commenters stated that the proposed benchmark levels were too high. Fannie Mae commented that the proposed multifamily low-income benchmark level would only be attainable if the Conservatorship Scorecard multifamily volume cap is maintained at or increased from $78 billion in 2022 and future years.

FHFA determination. Based on FHFA's consideration of the statutory factors for the multifamily housing goals, as well as the general support from some commenters for the proposed increase in the multifamily low-income housing goal benchmark level, FHFA has determined that benchmark level for this goal for both Enterprises for 2022 should be set at 415,000 units, consistent with the proposed rule. While this benchmark level is a significant increase from the benchmark level of 315,000 units for 2021, the increase reflects FHFA's commitment to ensuring that the Enterprises provide substantial support for affordable multifamily housing.

2. Multifamily Very Low-Income Housing Subgoal

The multifamily very low-income housing subgoal is based on the total number of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to very low-income families, defined as families with incomes no greater than 50 percent of AMI. The final rule sets the multifamily very low-income housing subgoal benchmark level for both Enterprises for 2022 at 88,000 units, consistent with the benchmark level that was proposed for 2022–2024. FHFA has determined that this benchmark level is reasonable and achievable for each Enterprise based on the multifamily volume cap for 2022, the comments received, and FHFA's consideration of the statutory factors discussed above.

Table 9. Multifamily Very Low-Income Subgoal

	Historical Performance						
Year	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
Very Low-Income Multifamily Benchmark	60,000	60,000	60,000	60,000	60,000	60,000	88,000
Fannie Mae Performance							
Very Low-Income Multifamily Units	65,910	82,674	80,891	79,649	95,416		
Total Multifamily Units	552,785	630,868	628,230	596,137	637,696		
Very Low-Income % of Total Units	11.9%	13.1%	12.9%	13.4%	15.0%		
Freddie Mac Performance							
Very Low-Income Multifamily Units	73,030	92,274	105,612	112,773	107,105		
Total Home Purchase Mortgages	597,399	630,037	695,587	661,417	667,451		
Very Low-Income % of Total Units	12.2%	14.6%	15.2%	17.1%	16.0%		

Recent performance. As shown in Table 9, both Enterprises have exceeded the applicable multifamily very low-income subgoal benchmark levels by a significant amount almost every year from 2016–2020. In most years, one or both Enterprises have also come close to or exceeded the new benchmark level that will apply in 2022.

Proposed rule and comments. A number of commenters generally supported the proposed increased benchmark level for the multifamily very low-income housing subgoal, with some commenters describing it as reasonable and meaningful. Freddie Mac praised the proposed benchmark level as requiring Enterprises to maintain a strong and meaningful commitment to supporting affordable housing. While one commenter viewed the proposed benchmark level as too low, two commenters stated that the proposed benchmark level was too high. Fannie Mae expressed concern that the proposed benchmark level would be achievable only if the current Conservatorship Scorecard multifamily cap is maintained at or increased from $78 billion in 2022.

FHFA determination. Based on FHFA's consideration of the statutory factors for the multifamily housing goals, as well as the general support from some commenters for the proposed increased benchmark level for the multifamily very low-income housing subgoal, FHFA has determined that the benchmark level for this subgoal for both Enterprises for 2022 should be set at the same level as in the proposed rule, *i.e.,* 88,000 units. This benchmark level is a significant increase over the benchmark level in place since 2015. However, both Enterprises have overperformed the benchmark level by a wide margin since 2016. FHFA considers the increased benchmark level to be attainable for the Enterprises in 2022, and the increase reflects FHFA's commitment to ensuring that the Enterprises provide substantial support for affordable multifamily housing.

3. Small Multifamily Low-Income Housing Subgoal

A small multifamily property is defined for purposes of the housing goals as a property with 5 to 50 units. The small multifamily low-income housing subgoal is based on the total number of units in small multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The final rule sets the small multifamily low-income housing subgoal benchmark level for 2022 at different levels for each Enterprise. The benchmark level for Freddie Mac will be 23,000 units for 2022, while the benchmark level for Fannie Mae will be 17,000 units for 2022. FHFA has determined that these benchmark levels are reasonable and achievable for each Enterprise based on the multifamily volume cap for 2022, the comments received, and FHFA's consideration of the statutory factors discussed above.

Table 10. Small Multifamily Low-Income Subgoal

	Historical Performance						
Year	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
Fannie Mae Small Low-Income Multifamily Benchmark	8,000	10,000	10,000	10,000	10,000	10,000	17,000
Freddie Mac Small Low-Income Multifamily Benchmark	8,000	10,000	10,000	10,000	10,000	10,000	23,000
Fannie Mae Performance							
Small Low-Income Multifamily Units	9,312	12,043	11,890	17,832	21,797		
Total Small Multifamily Units	15,211	20,375	17,894	25,565	36,880		
Low-Income % of Total Small Multifamily Units	61.2%	59.1%	66.4%	69.8%	59.1%		
Freddie Mac Performance							
Small Low-Income Multifamily Units	22,101	39,473	39,353	34,847	28,142		
Total Small Multifamily Units	33,984	55,116	53,893	46,879	41,275		
Low-Income % of Total Small Multifamily Units	65.0%	71.6%	73.0%	74.3%	68.2%		

Recent performance. As shown in Table 10, both Enterprises achieved the small multifamily low-income subgoal for the years 2016–2020. Freddie Mac has performed substantially above the benchmark level for this subgoal, significantly outpacing Fannie Mae's performance on the subgoal. For example, Freddie Mac's average performance on the subgoal over the past three years was 34,114 units, while Fannie Mae averaged 17,173 units during the same period. The Enterprises have different multifamily business models that complement one another and ensure continued liquidity in the multifamily market. Given these differences, each Enterprise must set its own credit risk tolerance for multifamily products. This produces variation in the number of affordable small units each Enterprise can support without crowding out private capital sources. Therefore, FHFA has decided to set different thresholds for each Enterprise for the affordable small multifamily subgoal that respond to these factors. These benchmarks should continue to encourage the Enterprises' participation in this market and ensure the Enterprises have the expertise necessary to serve this market should private sources of financing become unable or unwilling to lend on small multifamily properties.

Proposed rule and comments. Most commenters were generally supportive of the proposed increased benchmark level for the small multifamily subgoal. Freddie Mac expressed support for the proposed benchmark level, which it described as ambitious and requiring the Enterprises to maintain a strong and meaningful commitment to supporting affordable multifamily housing. However, Fannie Mae expressed concerns about its ability to achieve the proposed benchmark level. Fannie Mae also stated that substantial changes in the Enterprise's business mix, deal flow, and underwriting standards might be necessary in order to accommodate the proposed increase in the benchmark level.

FHFA determination. FHFA recognizes that the Enterprises have different approaches to serving this segment of the multifamily market and ensuring the safety and soundness of the Enterprises continues to be a fundamental priority for FHFA. Monitoring trends in the small multifamily market is challenging, and FHFA's non-public Enterprise reporting data suggests that loan performance for small multifamily properties were hit particularly hard in 2020 as a result of the COVID–19 pandemic. However, small multifamily properties are a key source of affordable rental housing, and maintaining consistent access to secondary market liquidity for such housing is critical.

At 23,000 units, the proposed small multifamily subgoal benchmark level for 2022 was a substantial increase from the 10,000-unit benchmark level that has been in place since 2017. In a departure from the proposed rule, the final rule establishes separate benchmark levels for the small multifamily low-income housing subgoal for each Enterprise. Although both Enterprises surpassed the small multifamily subgoal benchmark levels during this timeframe (from 2017–2020), Freddie Mac far exceeded the benchmark level. As a result, Freddie Mac is positioned to meet, if not exceed, the proposed small multifamily subgoal benchmark level for 2022. In light of historical performance on this subgoal, in addition to supportive comments on this proposed increase in the benchmark level, FHFA has determined that the proposed benchmark level of 23,000 units for 2022 is reasonable and meaningful for Freddie Mac. Accordingly, the final rule sets the final benchmark level for the small multifamily low-income housing subgoal at 23,000 units for Freddie Mac in 2022.

FHFA notes that the proposed small multifamily low-income benchmark level of 23,000 units for 2022 would have been a significant increase over Fannie Mae's historical performance under this subgoal, as well as a significant increase over the benchmark level of 10,000 units that has been in place since 2017. However, FHFA has determined that an increase in the benchmark level for Fannie Mae is reasonable and meaningful for Fannie Mae, and FHFA is setting the benchmark level for 2022 at 17,000 units for Fannie Mae. This benchmark level should continue to encourage Fannie Mae to provide necessary liquidity to this market segment while operating in a safe and sound manner.

VI. Section-by-Section Analysis of Other Changes

The final rule revises other provisions of the Enterprise housing goals regulation, as discussed below. These changes are non-substantive technical changes intended to conform the housing goals regulation text to FHFA's established practices and procedures in implementing the housing goals.

A. Definition of ''Designated Disaster Area''—§ 1282.1

Consistent with the proposed rule, the final rule revises the definition of ''designated disaster area'' in § 1282.1 to refer to major disasters ''where housing assistance payments were authorized by FEMA.''

Comments on Proposed Rule. FHFA received one comment on this proposed revision. Fannie Mae supported the proposed revision based on its understanding that the intent of the proposal is to focus disaster-related housing goal credit on discrete and localized events rather than broad-based

conditions like the COVID–19 pandemic response.

FHFA determination. Section 1282.1 of the current Enterprise housing goals regulation defines ''designated disaster area'' as ''any census tract that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, where individual assistance payments were authorized by FEMA.'' While this definition accurately reflects the types of disasters that FHFA counts for purposes of calculating the disaster areas increment for the low-income areas housing goal, the definition does not reflect FHFA's longstanding practice of counting only those census tracts where housing assistance payments were authorized by FEMA.

For those reasons, the final rule amends § 1282.1 to clarify the regulation with respect to FHFA's existing practice by revising the definition of ''designated disaster area'' for purposes of the low-income areas housing goal to refer specifically to ''housing assistance'' rather than to the broader category of ''individual assistance.''

B. Newly Available Data—Removal of § 1282.15(i)

Consistent with the proposed rule, the final rule removes § 1282.15(i) to avoid any implication that the housing goals regulation requires a particular method of calculating or applying affordability data such as AMIs.

Section 1282.15(i) of the current Enterprise housing goals regulation provides that an Enterprise is not required to use new data related to housing goals treatment of mortgages it purchases until the start of the quarter after it receives the data. This provision was adopted originally by the U.S. Department of Housing and Urban Development (HUD) in its 1995 final rule establishing housing goals under the Safety and Soundness Act.[37] However, this provision does not reflect FHFA's longstanding practice of independently calculating each Enterprise's housing goals performance on the basis of data provided to FHFA by the Enterprise. For example, FHFA determines the AMIs applicable to each census tract on an annual basis and provides that information to the Enterprises in the first half of each year. However, in calculating Enterprise housing goals performance for that year, FHFA applies the new data to all mortgage purchases in that year.

[37] *See* 60 FR 61846 (Dec. 1, 1995). Prior to the creation of FHFA in 2008, HUD was responsible for mission oversight of Fannie Mae and Freddie Mac, including the affordable housing goals.

Comments on Proposed Rule and FHFA determination. FHFA did not receive any comments on this change, and the final rule adopts the change as proposed.

C. Loan Modifications—Removal of § 1282.16(c)(10)

Consistent with the proposed rule, the final rule removes § 1282.16(c)(10) as it is no longer necessary in light of the expiration of the Home Affordable Modification Program (HAMP) modification program.

Section 1282.16(c)(10) of the current Enterprise housing goals regulation provides that the permanent modification of a mortgage under HAMP is counted as a refinancing for purposes of the low-income refinancing goal. Permanent loan modifications under HAMP are the only type of loan modification eligible for counting for purposes of the low-income refinancing goal. The HAMP modification program expired at the end of 2016.

Comments on Proposed Rule. FHFA received one comment on this proposed revision. Fannie Mae acknowledged the need to remove the reference to the HAMP modification program but suggested that FHFA modify the regulation to take into account that the Enterprises have had and will continue to have additional loan modification programs. Fannie Mae recommended that FHFA add the phrase ''in accordance with a loan modification program implemented by the Enterprise'' to the existing regulation.

FHFA determination. The final rule adopts the change as proposed. The final rule does not adopt Fannie Mae's recommendation to provide housing goals credit for other Enterprise loan modification programs. While FHFA supports the robust loss mitigation programs that the Enterprises have developed, treating all loan modifications as refinances for purposes of the housing goals would result in a misalignment between the Enterprise performance as measured and the benchmark level forecasts and market levels calculated by FHFA.

VII. Paperwork Reduction Act

This final rule does not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted the rule to OMB for review.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this final rule under the Regulatory Flexibility Act. FHFA certifies that the rule will not have a significant economic impact on a substantial number of small entities because the rule applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

IX. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with OMB.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the Preamble, under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA amends part 1282 of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter E—Housing Goals and Mission

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

■ 2. Amend § 1282.1 by revising the definition of ''Designated disaster area'' to read as follows:

§ 1282.1 Definitions.

* * * * *

Designated disaster area means any census tract that is located in a county designated by the Federal Government as adversely affected by a declared major disaster administered by FEMA, where housing assistance payments were authorized by FEMA. A census tract shall be treated as a ''designated disaster area'' for purposes of this part beginning on the January 1 after the FEMA designation of the county, or

such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation. This time period may be adjusted for a particular disaster area by notice from FHFA to the Enterprises.

* * * * *

■ 3. Amend § 1282.12 as follows:
■ a. Revise paragraphs (c)(2), (d)(2), (e)(2), and (f);
■ b. Redesignate paragraph (g) as paragraph (h);
■ c. Add new paragraph (g); and
■ d. Revise newly redesignated paragraph (h)(2).

The revisions and additions read as follows:

§ 1282.12 Single-family housing goals.

* * * * *

(c) * * *

(2) The benchmark level, which for 2022, 2023, and 2024 shall be 28 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) * * *

(2) The benchmark level, which for 2022, 2023, and 2024 shall be 7 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) * * *

(2) A benchmark level which shall be set annually by FHFA notice based on the sum of the benchmark levels for the low-income census tracts housing subgoal and the minority census tracts housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(f) *Low-income census tracts housing subgoal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that—

(1) Consists of:

(i) Mortgages in low-income census tracts that are not minority census tracts; and

(ii) Mortgages for families with incomes in excess of 100 percent of the area median income in low-income census tracts that are also minority census tracts;

(2) Shall meet or exceed either:

(i) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(ii) The benchmark level, which for 2022, 2023, and 2024 shall be 4 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) *Minority census tracts housing subgoal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for moderate-income families in minority census tracts shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2022, 2023, and 2024 shall be 10 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(h) * * *

(2) The benchmark level, which for 2022, 2023, and 2024 shall be 26 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

■ 4. Amend § 1282.13 by revising paragraphs (b) through (d) to read as follows:

§ 1282.13 Multifamily special affordable housing goal and subgoals.

* * * * *

(b) *Multifamily low-income housing goal.* For the year 2022, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be at least 415,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in 2022.

(c) *Multifamily very low-income housing subgoal.* For the year 2022, the benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be at least 88,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in 2022.

(d) *Small multifamily low-income housing subgoal.* For the year 2022, the benchmark level for each Enterprise's purchases of mortgages on small multifamily properties affordable to low-income families shall be, for Freddie Mac, at least 23,000 dwelling units affordable to low-income families in small multifamily properties financed by mortgages purchased by that Enterprise in 2022, and for Fannie Mae, at least 17,000 such dwelling units.

§ 1282.15 [Amended]

■ 5. Amend § 1282.15 by removing paragraph (i).

§ 1282.16 [Amended]

■ 6. Amend § 1282.16 by removing and reserving paragraph (c)(10).

Sandra L. Thompson,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2021–28168 Filed 12–27–21; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0874; Project Identifier AD–2021–00668–E; Amendment 39–21892; AD 2022–01–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Type Certificate Previously Held by Allison Engine Company) Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce Corporation (RRC) AE 2100D3 model turboprop engines. This AD was prompted by an in-flight shutdown (IFSD) of an engine and subsequent investigation by the manufacturer that revealed a crack in the 3rd-stage compressor wheel. This AD requires replacement of the affected 3rd-stage compressor wheel. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 2, 2022.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce Corporation, Rolls-Royce Meridian Center, 450 South Meridian Street, Indianapolis, IN 46225–1103; phone: (317) 230–1200; email: *defenseservicedesk@Rolls-Royce.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 (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0874.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0874; 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: Kyri Zaroyiannis, Aviation Safety Engineer, Chicago ACO, FAA, 2300 E. Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7836; fax: (847) 294–7834; email: *kyri.zaroyiannis@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 certain RRC AE 2100D3 model turboprop engines. The NPRM published in the **Federal Register** on October 12, 2021 (86 FR 56660). The NPRM was prompted by an uncommanded IFSD of a RRC AE 3007A1 model turbofan engine installed on an Embraer S.A. model EMB–145 airplane (marketed as ERJ–145), while conducting a revenue flight. The manufacturer's investigation of this incident revealed that the IFSD resulted from a low-cycle fatigue crack in the dovetail slot for the blade attachment in the 3rd-stage compressor wheel, causing one 3rd-stage compressor blade to release. The crack initiated in the dovetail slot due to a sharp corner in the wheel slot geometry. The broaching process was identified as the cause of the crack and parts from this manufacturing lot required removal from service.

In response to this event and the manufacturer's subsequent investigation, the FAA issued a final rule; request for comments, AD 2020–16–13 (85 FR 45769, July 30, 2020), requiring replacement of certain 3rd-stage compressor wheels installed on RRC AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1E, AE 3007A1P, and AE 3007A3 model turbofan engines before the 3rd-stage compressor wheels accumulate a specified number of cycles. The actions required by AD 2020–16–13 address engines that experienced high stresses at the 3rd-stage compressor wheel location and accumulated cycles at a high rate. In the NPRM, the FAA proposed to require replacement of certain AE 2100D3 3rd-stage compressor wheels that were produced in the same lot as the AE 3007 3rd-stage compressor wheels identified in AD 2020–16–13, before they accumulate a specified number of cycles. 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 one anonymous commenter. The anonymous commenter supported the NPRM without change.

Conclusion

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

Related Service Information

The FAA reviewed Rolls-Royce Alert Service Bulletin (ASB) AE 2100D3–A–72–330, Engine—3rd Stage Compressor Wheel Removal for Reduced Life Limit, dated June 11, 2021. The ASB describes procedures for removal of a certain 3rd-stage compressor wheel.

Costs of Compliance

The FAA estimates that this AD affects 15 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
Remove and replace 3rd-stage compressor wheel.	125 work-hours × $85 per hour = $10,625	$32,844	$43,469	$652,035

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:

2022–01–04 Rolls-Royce Corporation (Type Certificate previously held by Allison Engine Company): Amendment 39–21892; Docket No. FAA–2021–0874; Project Identifier AD–2021–00668–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 2, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Corporation (RRC) AE 2100D3 model turboprop engines with a 3rd-stage compressor wheel, part number (P/N) 23084158, and with a serial number listed in Figure 1 to paragraph (c) of this AD.

Figure 1 to Paragraph (c)—Serial Numbers of Affected P/N 23084158 3rd-stage Compressor Wheels

L343502
L343539
L343545
L343546
L343547
L343550
L343553
L343554
L343555
L343566
L343569
L343573
L343576
L343578
L343579
L343580
L343584
L343588
L343593
L343594
L343597
L343602

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an in-flight shutdown of an engine during a revenue flight and subsequent investigation by the manufacturer that revealed a crack in the 3rd-stage compressor wheel. The FAA is issuing this AD to prevent failure of the 3rd-stage compressor wheel. The unsafe condition, if not addressed, could result in an uncontained release of the 3rd-stage compressor wheel, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Before the affected 3rd-stage compressor wheel exceeds 5,200 flight cycles since new, remove the affected 3rd-stage compressor wheel and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, a part eligible for installation is a 3rd-stage compressor wheel that does not have a P/N and a serial number listed in the Applicability, paragraph (c) of this AD.

(i) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a one-time, non-revenue ferry flight to a location where the engine can be removed from service. This ferry flight must be performed with only essential flight crew.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Chicago ACO, 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 (k) 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.

(k) Related Information

For more information about this AD, contact Kyri Zaroyiannis, Aviation Safety Engineer, Chicago ACO, FAA, 2300 E. Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7836; fax: (847) 294–7834; email: *kyri.zaroyiannis@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued on December 21, 2021.

Lance T. Gant, Director,

Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–28136 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0134; Project Identifier AD–2020–01254–T; Amendment 39–21833; AD 2021–24–12]

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 certain The Boeing Company Model 777 airplanes. This AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) and Critical Design Configuration Control Limitations (CDCCLs) related to fuel tank ignition prevention, the engine fuel suction feed system, and the nitrogen generation system. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 1, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 1, 2022.

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–2021–0134.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0134; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this

final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3555; email: *kevin.nguyen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on March 26, 2021 (86 FR 16133). The NPRM was prompted by significant changes, including new or more restrictive requirements, made to the AWLs and CDCCLs related to fuel tank ignition prevention, the engine fuel suction feed system, and the nitrogen generation system. In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address ignition sources inside the fuel tanks and the increased flammability exposure of the center fuel tank caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane; and to address potential loss of engine fuel suction feed capability, which could result in dual engine flameouts, inability to restart engines, and consequent forced landing of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA), and FedEx Express, who supported the NPRM without change.

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

Request To Delay Issuance of the NPRM

Boeing requested delay of issuance of the NPRM until updated service information is available. Boeing stated that the service information has been updated to Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document, which modified two AWLs that are not currently mandated by AD 2008–11–13, Amendment 39–15536 (73 FR 30737, May 29, 2008) (AD 2008–11–13) (which will be terminated by this AD), and that the AWLs have changed significantly. Boeing commented that using the latest service information eliminates the need for approval of an alternative method of compliance (AMOC) for the revised AWLs.

Boeing also stated that the delay of the NPRM should occur after Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document, has been migrated to an ''SCI [special compliance items]/AWL document D622W001–9–04.'' Boeing commented that FAA approval and publication of this document to MyBoeingFleet is anticipated by October 2021. Boeing also commented that the migration of the document will make the method of compliance more manageable for the FAA, Boeing, and the operators, and that it will also eliminate the need for an AMOC to use the ''SCI/AWL document.'' Boeing asked that paragraph (g) of the proposed AD be revised to the document name and revision date of the new ''SCI/AWL document'' when approved by the FAA.

The FAA partially agrees with the commenter's request. The FAA agrees to allow operators the option to use Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document, for the reasons provided above. The February 2021 revision of Section 9 has significant updates to AWL 28–AWL–31 and AWL 28–AWL–32 that were included in the November 2019 revision of Section 9 to clarify the applicability of certain wire harnesses and wire bundles, and certain locations of Teflon sleeving and wire bundles. Either the November 2019 or February 2021 revision of Section 9 provides an adequate level of safety. The FAA has revised the ''Related Service Information under 1 CFR part 51'' section of this final rule and paragraph (g) of this AD accordingly.

In addition, the FAA has revised paragraph (h) of this AD to clarify certain description headers for 28–AWL–31 and 28–AWL–32 of Section D, ''Airworthiness Limitations—Systems,'' including Subsections D.1, D.2, and D.3, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777 200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document. The FAA has redesigned subsequent paragraphs accordingly.

Since the SCI/AWL document has not yet been issued, the FAA disagrees to delay this final rule any further to wait for document migration. To delay this AD would be inappropriate since the FAA has determined that an unsafe condition exists and that the actions in this AD must be done to ensure continued safety. However, if an operator is unable to accomplish the actions in this AD for whatever reason, it may request approval of an AMOC under the provisions of paragraph (l)(1) of this AD. The FAA has not changed this final rule in this regard.

Request for an Exemption for Airplanes in Long-Term Storage

UAL recommended that airplanes in long-term storage be exempt from the applicable initial compliance times in the proposed AD. UAL also recommended that the airworthiness limitation instructions (ALI) tasks in the proposed AD be accomplished at the applicable initial compliance times after the airplane is returned to service. UAL stated that paragraph (g) of the proposed AD requires the initial compliance time for doing the ALI tasks at the times specified in paragraphs (g)(1) through (10) of the proposed AD. UAL also stated that paragraphs (g)(1) through (5) of the proposed AD provides the flight cycles or days in which to do the ALI tasks after the most recent inspection, and paragraph (g)(6) of the proposed AD requires doing the ALI task within 60 months after the effective date of this AD. UAL commented that due to varying circumstances, however, many of the affected airplanes are now in long-term storage.

The FAA disagrees with UAL's recommendation to provide an exemption for airplanes in long-term storage. While the FAA understands that some airplanes are currently in long-term storage due to varying circumstances, it has determined that due to the unsafe condition, the initial compliance times for doing the ALI tasks represent an adequate amount of time to accomplish the actions required in this AD. If an operator is unable to

accomplish the actions in this AD for whatever reason, it may request for an approval of an AMOC under the provisions of paragraph (l)(1) of this AD. The FAA has not changed this AD in this regard.

Request To Remove Unqualified Wire Types

Boeing requested removal of unqualified wire and wire sleeving types from the list of acceptable wire and wire sleeving types specified in paragraphs (h)(1) and (2) of the proposed AD. Boeing stated that it has qualified and certified wire types BMS 13–48, BMS 13–58 and BMS 13–60, and Teflon wire sleeving TFE–2X, and it has not certified the additional wire and wire sleeving types for Boeing airplanes specified in paragraphs (h)(1) and (2) of the proposed AD.

The FAA disagrees with the commenter's request. Due to the FAA's assessment of the critical design features, it has determined that additional non-Boeing alternative wire types, wire sleeves, and wire sleeving material, as specified in paragraphs (i)(1) and (2) of this AD, are acceptable. Since the issuance of AD 2008–11–13 (which is terminated by this AD), the FAA has received requests for approval of AMOCs from operators and supplemental type certificate (STC) holders (or applicants) to allow the installation of alternative wire types, wire sleeves, and wire sleeving materials. The FAA evaluated certain attributes of those alternative materials for each installation, and issued AMOC approvals for AD 2008–11–13 based on its determination that the installation of those wire types, wire sleeves, and wire sleeving materials would provide an acceptable level of safety. The FAA has not changed the AD in this regard.

Request for Clarification of Previously Issued AMOCs

AAL requested clarification of previously issued AMOCs. AAL stated that for AD 2008–11–13, it currently uses AMOC 784–17–1576 with AWL 28–AWL–AVDEC and AWL 28–AWL–16, for the installation of STC ST02532LA. AAL commented that the NPRM specifically stated that credit would not be granted for AMOCs previously approved under AD 2008–11–13, to which AMOC 784–17–1576 is applicable.

AAL also commented that the NPRM specifically references operator's incorporating alternative versions of AWL 28–AWL–11, and that the FAA determined that certain critical design features specified in the AMOC-approved versions are not acceptable to meet the intent of AWL 28–AWL–11. AAL stated that the paragraph reads as though all AMOCs associated with AD 2008–11–13 are no longer approved; however, AAL uses AMOC 784–17–1576 to install a series of gaskets that do not require a greasing component, while AWL 28–AWL–11 is associated with requirements for new wiring that penetrates the fuel tank wall.

AAL commented that AMOC 784–17–1576 does not affect AWL 28–AWL–11 or its fundamental elements, and that AMOC 784–17–1576 aligns with the incorporation of AWL 28–AWL–01 through AWL 28–AWL–20, inclusive of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated November 2019, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document.

The FAA provides the following clarification that was included in the NPRM for AMOCs previously approved for AD 2008–11–13. The FAA previously issued AMOC approvals for compliance with paragraph (g)(2) of AD 2008–11–13 to allow operators to incorporate alternative versions of AWL 28–AWL–11. For those STCs, the FAA approved alternative versions of AWL 28–AWL–11 that specified critical design features associated with STC modifications. The FAA has determined that certain critical design features specified in the AMOC-approved versions of AWL 28–AWL–11 are no longer acceptable in meeting the intent of this AWL. Therefore, this AD does not allow credit for any AMOCs previously approved under AD 2008–11–13; AMOCs approved under AD 2008–11–13 will need to be resubmitted for evaluation. If an operator is unable to accomplish the actions in this AD for whatever reason, it may request an approval of an AMOC under the provisions of paragraph (l)(1) of this AD. The FAA has not changed 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 has reviewed the following service information.

- Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated November 2019, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document.
- Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document.

This service information describes airworthiness limitations and CDCCLs tasks related to fuel tank ignition prevention, the engine fuel suction feed system, and the nitrogen generation system. These documents are distinct because the February 2021 revision of Section 9 includes updated information. 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 219 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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:

2021–24–12 The Boeing Company: Amendment 39–21833; Docket No. FAA–2021–0134; Project Identifier AD–2020–01254–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 1, 2022.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) and (2) of this AD.

(1) AD 2008–11–13, Amendment 39–15536 (73 FR 30737, May 29, 2008) (AD 2008–11–13).

(2) AD 2014–09–09, Amendment 39–17844 (79 FR 30005, May 27, 2014) (AD 2014–09–09).

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, having line numbers (L/Ns) 1 through 1609 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel; 47, Inert Gas System.

(e) Unsafe Condition

This AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) and Critical Design Configuration Control Limitations (CDCCLs) related to fuel tank ignition prevention, the engine fuel suction feed system, and the nitrogen generation system. The FAA is issuing this AD to address ignition sources inside the fuel tanks and the increased flammability exposure of the center fuel tank caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane; and to address potential loss of engine fuel suction feed capability, which could result in dual engine flameouts, inability to restart engines, and consequent forced landing of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information in Section D, ''Airworthiness Limitations—Systems,'' including Subsections D.1, D.2, and D.3, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated November 2019, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document; or Section D, ''Airworthiness Limitations—Systems,'' including Subsections D.1, D.2, and D.3, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document; except as provided by paragraph (h) and (i) of this AD. The initial compliance time for doing the airworthiness limitation instructions (ALI) tasks is at the times specified in paragraphs (g)(1) through (10) of this AD.

(1) For AWL 28–AWL–01, ''External Wires Over Center Fuel Tank'': Within 16,000 flight cycles or 3,000 days, whichever occurs first after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 16,000 flight cycles or 3,000 days, whichever occurs first after the most recent inspection was performed as specified in AWL 28–AWL–01; whichever occurs later.

(2) For AWL 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out of Tank Wiring Lightning Shield to Ground Termination'': Within 16,000 flight cycles or 3,000 days, whichever occurs first after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 16,000 flight cycles or 3,000 days, whichever occurs first after the most recent inspection was performed as specified in AWL 28–AWL–03; whichever occurs later.

(3) For AWL 28–AWL–18, ''Over-Current and Arcing Protection Electrical Design Features Operation—AC Fuel Pump GFI and GFP'': Within 375 days after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 375 days after accomplishment of the actions specified in Boeing Service Bulletin 777–28A0037; or within 375 days after accomplishment of the actions specified in Boeing Service Bulletin 777–28A0038; or within 375 days after the most recent inspection was performed as specified in AWL 28–AWL–18; whichever occurs latest.

(4) For AWL 28–AWL–21, ''External Wires Over Auxiliary Fuel Tank (Cell)'': Within 16,000 flight cycles or 3,000 days, whichever occurs first after the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness; or within 16,000 flight cycles or 3,000 days, whichever occurs first after the most recent inspection was performed as specified in AWL 28–AWL–21; or within 365 days after the effective date of this AD; whichever occurs latest.

(5) For AWL 28–AWL–26, ''Auxiliary Fuel Tank (Cell) AC Fuel Pump Uncommanded ON/Automatic Shutoff Circuit'': Within 375 days after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 375 days after the most recent inspection was performed as specified in AWL 28–AWL–26; or within 30 days after the effective date of this AD; whichever occurs latest.

(6) For AWL 28–AWL–32, ''Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks'': For airplanes having L/Ns 1 through 503 inclusive, within 3,750 days after accomplishment of the actions specified in Boeing Service Bulletins 777–57A0050, or within 60 months after the effective date of this AD, whichever occurs later. For airplanes having L/Ns 504 and subsequent, within 3,750 days after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 60 months after the effective date of this AD; whichever occurs later.

(7) For AWL 28–AWL–101, ''Engine Fuel Suction Feed Operational Test'': Within 7,500 flight hours after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 7,500 flight hours after the most recent inspection was performed as specified in AWL 28–AWL–101; whichever occurs later.

(8) For AWL 47–AWL–04, ''NGS—Thermal Switch'': Within 108,000 flight hours after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of

airworthiness; or within 108,000 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 777–47–0002; or within 108,000 flight hours after the most recent inspection was performed as specified in AWL 47–AWL–04; whichever occurs latest.

(9) For AWL 47–AWL–05, ''NGS—Cross Vent Check Valve'': Within 10,682 flight hours after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 10,682 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 777–47–0002; or within 10,682 flight hours after the most recent inspection was performed as specified in AWL 47–AWL–05; whichever occurs latest.

(10) For AWL 47–AWL–06, ''NGS—NEA Distribution Ducting Integrity'': Within 10,682 flight hours after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 10,682 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 777–47–0002; or within 10,682 flight hours after the most recent inspection was performed as specified in AWL 47–AWL–06; whichever occurs latest.

(h) Exceptions to February 2021 Revision of Section 9

The following exceptions apply to 28–AWL–31 and 28–AWL–32 of Section D, ''Airworthiness Limitations—Systems,'' including Subsections D.1, D.2, and D.3, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document.

(1) In paragraph 1.i., change ''Front Spar Bulkhead (Center Tank)'' to ''Front Spar Bulkhead (Center Wing Tank Fuel Quantity Greater than 12,400 Gallons).''

(2) In paragraph 1.j., change ''Rear Spar Bulkhead (Center Tank)'' to ''Rear Spar Bulkhead (Center Wing Tank Fuel Quantity Greater than 12,400 Gallons).''

(i) Additional Acceptable Wire Types and Sleeving

As an option, when accomplishing the actions required by paragraph (g) of this AD, the changes specified in paragraphs (i)(1) and (2) of this AD are acceptable.

(1) Where AWL 28–AWL–11 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL 28–AWL–11 identifies TFE–2X Standard wall (manufactured as specified in MIL–I–23053) for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

(j) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(k) Terminating Actions

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (k)(1) and (2) of this AD for that airplane.

(1) All requirements of AD 2008–11–13 for Model 777–200, –200LR, –300, and –300ER series airplanes only.

(2) All requirements of AD 2014–09–09.

(l) 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 paragraph (m) of this AD. 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.

(m) Related Information

For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3555; email: *kevin.nguyen@faa.gov*.

(n) Material Incorporated by Reference

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

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

(i) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated November 2019, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document.

(ii) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated February 2021, of Boeing 777–200/200LR/300/300ER/777F Maintenance Planning Data (MPD) Document.

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

Issued on November 16, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–28133 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0564; Project Identifier AD–2020–01350–T; Amendment 39–21823; AD 2021–24–02]

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 MD–11 and MD–11F airplanes. This AD was prompted by reports indicating incidents of wires chafing against the inboard upper corner of the observer station circuit breaker panel. This AD requires, depending on airplane configuration, doing a general visual inspection of the right observer station upper main circuit breaker panel and wiring for certain missing parts; doing

an inspection of the right observer station upper main circuit breaker panel to determine if a certain bracket part number is installed; doing a general visual inspection of certain wire assemblies for any damage; modifying the observer station upper main circuit breaker panel; and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 1, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 1, 2022.

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–2021–0564.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0564; 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: Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5388; fax: 562–627–5210; email: *Roderick.Igama@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 MD–11 and MD–11F airplanes. The NPRM published in the **Federal Register** on August 18, 2021 (86 FR 46167). The NPRM was prompted by reports indicating incidents of wires chafing against the inboard upper corner of the observer station circuit breaker panel. In the NPRM, the FAA proposed to require, depending on airplane configuration, doing a general visual inspection of the right observer station upper main circuit breaker panel and wiring for certain missing parts; doing an inspection of the right observer station upper main circuit breaker panel to determine if a certain bracket part number is installed; doing a general visual inspection of certain wire assemblies for any damage; modifying the observer station upper main circuit breaker panel; and applicable on-condition actions. The FAA is issuing this AD to address wire chafing and arcing on the panel, which could cause damage to equipment, and result in loss of electrical power and a possible in-flight fire.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA) and Boeing who supported the NPRM without change.

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, 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 Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021. For certain airplanes, this service information describes procedures for doing a general visual inspection of the right observer station upper main circuit breaker panel and wiring for missing installation of sleeving, grommets, and spacers; doing an inspection of the right observer station upper main circuit breaker panel to determine if bracket part number SR11240046–11 is installed; and applicable on-condition actions. On-condition actions include repairing or replacing damaged wires, installing sleeves and routing wires, trimming and re-identifying the bracket, and replacing any missing grommets or spacers.

For certain other airplanes, this service information describes procedures for doing a general visual inspection of wire assemblies ABS9110 and ABS9115 for any damage (*i.e.,* wire chafing, arcing), modifying the observer station upper main circuit breaker panel, and applicable on-condition actions. On-condition actions include repairing or replacing damaged wires.

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 118 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
Inspections	Up to 17 work-hours × $85 per hour = up to $1,445.	$0	Up to $1,445	Up to $170,510

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

ON-CONDITION COSTS *

Action	Labor cost	Parts cost	Cost per product
Replacement, installation and trimming ..	Up to 3 work-hours × $85 per hour = up to $255.	$428	Up to $683

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

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2021–24–02 The Boeing Company: Amendment 39–21823; Docket No. FAA–2021–0564; Project Identifier AD–2020–01350–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 1, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Unsafe Condition

This AD was prompted by reports indicating incidents of wires chafing against the inboard upper corner of the observer station circuit breaker panel. The FAA is issuing this AD to address wire chafing and arcing on the panel, which could cause damage to equipment, and result in loss of electrical power and a possible in-flight fire.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021.

(h) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021, uses the phrase ''the Revision 2 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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-LAACO-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, Los Angeles 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.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137;

phone: 562–627–5388; fax: 562–627–5210; email: *Roderick.Igama@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin MD11–24A204, Revision 2, dated April 14, 2021.

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

Issued on November 9, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27958 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1069; Project Identifier AD–2021–00308–E; Amendment 39–21862; AD 2021–26–04]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–18–08 which applied to all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines. AD 2019–18–08 required a visual inspection of the engine fan hub assembly, initial and repetitive eddy current inspections (ECIs) of the engine fan hub blade slot bottom and blade slot front edge for cracks, and replacement of the engine fan hub blade lock assembly for certain affected engines. This AD continues to require initial and repetitive ECIs and adds an ultrasonic test (UT) inspection. This AD also lowers the repetitive ECI threshold, and requires an independent inspection of the engine fan hub assembly at the next disassembly and the next reassembly of the engine fan hub blade lock assembly and a visual inspection of the engine fan hub assembly for damage. This AD also requires replacement of the engine fan hub assembly with a part eligible for installation if damage is found outside serviceable limits. This AD was prompted by an uncontained failure of the engine fan hub. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 12, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 12, 2022.

The FAA must receive any comments on this AD by February 11, 2022.

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 final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@pw.utc.com;* website: *www.engineallianceportal.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 (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1069.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1069; 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 street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7236; fax: (781) 238–7199; email: *Stephen.L.Elwin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2019–18–08, Amendment 39–19735 (84 FR 49944, September 24, 2019), (AD 2019–18–08), for all EA GP7270 and GP7277 model turbofan engines. AD 2019–18–08 required, for certain GP7270 and GP7277 model turbofan engines, an initial and repetitive ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks. For all GP7270 and GP7277 model turbofan engines, AD 2019–18–08 also required an independent inspection of the engine fan hub assembly prior to the reassembly of the engine fan hub blade lock assembly and a visual inspection of the engine fan hub assembly for damage. For certain serial numbered GP7270 and GP7277 model turbofan engines, AD 2019–18–08 required replacement of the engine fan hub blade lock assembly with a part eligible for installation. AD 2019–18–08 resulted from the manufacturer identifying a fatigue crack originating inboard of a blade slot after the manufacturer performed a metallurgical examination of the engine fan hub that was recovered, related to an uncontained engine hub failure that occurred on September 30, 2017. After performing a risk assessment, the manufacturer determined the need to reduce the compliance time for the initial ECI and add a repetitive ECI. The FAA issued AD 2019–18–08 to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly.

Actions Since AD 2019–18–08 Was Issued

Since the FAA issued AD 2019–18–08, EA has revised its Alert Service Bulletin, reducing the repetitive ECI interval from 330 cycles to 290 cycles, and adding an inner diameter UT inspection of the rim area for cracks. EA published EA Turbojet Engine Alert Service Bulletin (ASB) No. EAGP7–A72–389, Revision No. 7, dated October 8, 2021, to update the repetitive inspection interval for performing the ECIs and add UT inspections. The FAA

is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EA Turbojet Engine ASB No. EAGP7–A72–389, Revision No. 7, dated October 8, 2021. This ASB describes procedures for performing an ECI of the engine fan hub blade slot bottom and blade slot front edge, and performing a UT inspection of the fan hub rim area for engine fan hub assemblies at the LPC module assembly level, at the piece part level, and installed in an engine (on-wing or off-wing). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed EA Turbojet Engine ASB No. EAGP7–A72–418, Revision No. 1, dated January 11, 2019. This ASB provides guidance on replacement or modification of the engine fan hub blade lock assembly.

The FAA also reviewed the following service information:

Subtask 72–31–42–210–001–A, of Task 72–31–42–000–802–A, from the A380 Aircraft Maintenance Manual (AMM). This subtask describes procedures for performing an on-wing visual inspection after removal of the engine fan hub blade lock assembly.

Figure 405 of Task 72–00–31–420–004 of the EA GP7000 Series Engine Manual (EM). This figure and task describe procedures for performing a visual inspection after removal of the engine fan hub blade lock assembly when the engine is in the shop.

Subtask 72–00–00–210–012–A, of Task 72–00–00–210–806–A, from the A380 AMM. This subtask describes procedures for performing an on-wing visual inspection after reassembly of the engine fan hub blade lock assembly.

Task 72–00–31–420–004, Paragraph 1.E.(13), of the EA GP7000 Series EM. This task describes procedures for performing a visual inspection after reassembly of the engine fan hub blade lock assembly when the engine is in the shop.

Table 601 in Subtask 72–00–00–210–012–A of Task 72–00–00–210–806, from the A380 AMM, and Task 72–00–31–220–010 of the EA GP7000 Series EM. Table 601 and Task 72–00–31–220–010 describe acceptable damage service limits for the engine fan hub assembly.

AD Requirements

This AD requires, for GP7270 and GP7277 model turbofan engines with engine fan hub assembly part numbers (P/Ns) 5760221, 5760321, or 5760001, initial and repetitive ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks. Additionally, this AD lowers the repetitive ECI threshold, in conjunction with the added repetitive UT inspection threshold. This AD also requires initial and repetitive UT inspections of the fan hub rim area. This AD also requires an independent inspection of the engine fan hub assembly at the next disassembly and the next reassembly of the engine fan hub blade lock assembly and a visual inspection of the engine fan hub assembly for damage. This AD also requires replacement of the engine fan hub assembly with a part eligible for installation if damage is found outside serviceable limits.

For certain serial-numbered GP7270 and GP7277 model turbofan engines, this AD requires replacement of the engine fan hub blade lock assembly with a part eligible for installation.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

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

The FAA has found the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from any U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1069 and Project Identifier AD–2021–00308–E'' 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 final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to

adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 0 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
Perform ECI	20 work-hours × $85 per hour = $1,700	$0	$1,700	$0
Perform UT Inspection	7 work-hours × $85 per hour = $595	0	595	0
Perform Visual Inspection	1 work-hour × $85 per hour = $85	0	85	0
Replace fan hub blade lock assembly	25 work-hours × $85 per hour = $2,125	28,000	30,125	0

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace engine fan hub assembly	50 work-hours × $85 per hour = $4,250	$790,500	$794,750

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2019–18–08, Amendment 39–19735 (84 FR 49944, September 24, 2019); and

■ b. Adding the following new airworthiness directive:

2021–26–04 Engine Alliance: Amendment 39–21862; Docket No. FAA–2021–1069; Project Identifier AD–2021–00308–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 12, 2022.

(b) Affected ADs

This AD replaces AD 2019–18–08, Amendment 39–19735 (84 FR 49944, September 24, 2019).

(c) Applicability

This AD applies to all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an uncontained failure of the engine fan hub. The FAA is issuing this AD to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly. The unsafe condition, if not addressed, could result in uncontained failure of the engine fan hub assembly, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For EA GP7270 and GP7277 model turbofan engines with engine fan hub assembly part numbers (P/Ns) 5760221, 5760321, or 5760001, within 1,700 cycles since new, within 150 flight cycles (FCs) after October 9, 2019 (the effective date of AD 2019–18–08), within 330 FCs since an eddy current inspection (ECI) was performed using the Accomplishment Instructions of EA Turbojet Engines Alert Service Bulletin (ASB) EAGP7–A72–389, Revision No. 6, dated November 21, 2019, or earlier versions of that ASB, or before further flight, whichever occurs later:

(i) For engine fan hub assemblies at the low-pressure compressor (LPC) module assembly level, perform an ECI of the engine fan hub blade slot bottom and blade slot front edge, and perform an ultrasonic test (UT)

inspection of the fan hub rim area, using the Accomplishment Instructions, Part A—For Fan Hubs at LPC Module Assembly Level, paragraphs 1.B., 1.C., and 1.E., of EA Turbojet Engine ASB EAGP7–A72–389, Revision No. 7, dated October 8, 2021 (EAGP7–A72–389, Revision No. 7).

(ii) For engine fan hub assemblies at the piece part level, perform an ECI of the engine fan hub blade slot bottom and blade slot front edge, and perform a UT inspection of the fan hub rim area, using the Accomplishment Instructions, Part B—For Fan Hubs at Piece Part Level, paragraphs 1.B., 1.C., and 1.E., of EAGP7–A72–389, Revision No. 7.

(iii) For engine fan hub assemblies installed in an engine (on-wing or off-wing), perform an ECI of the engine fan hub blade slot bottom and blade slot front edge, and perform a UT inspection of the fan hub rim area, using the Accomplishment Instructions, Part C—For Fan Hubs Installed in an Engine, paragraphs 3.B., 3.C., and 3.E., of EAGP7–A72–389, Revision No. 7.

(2) Thereafter, at intervals not exceeding 290 FCs since the previous ECI and UT inspection, repeat the ECI of the engine fan hub blade slot bottom, ECI of the blade slot front edge, and UT inspection of the fan hub rim area required by paragraphs (g)(1)(i) through (iii) of this AD.

(3) If, during any ECI or UT inspection required by paragraphs (g)(1) through (g)(2) of this AD, a rejectable indication is found, before further flight, remove the engine fan hub assembly from service and replace with a part that is eligible for installation.

(4) For all GP7270 and GP7277 model turbofan engines, after the effective date of this AD:

(i) At the next disassembly of the engine fan hub blade lock assembly, visually inspect the fan hub fan blade lock groove area (also known as the fan hub lock ring contact area) for damage.

(ii) At the next reassembly of the engine fan hub blade lock assembly, visually inspect the following areas of the engine fan hub for damage:

(A) The fan hub scallop areas;

(B) The fan hub bore area behind the balance flange;

(C) The fan hub fan blade lock retention hooks;

(D) The fan hub rim face; and

(E) The clinch nut holes.

(iii) After any reassembly of the fan hub blade lock assembly, before further flight, perform an independent inspection for damage of the areas of the engine fan hub identified in paragraph (g)(4)(ii) of this AD.

(iv) Thereafter, repeat the inspections required by paragraphs (g)(4)(i) through (iii) of this AD at each disassembly and reassembly of the engine fan hub blade lock assembly, as applicable.

(v) As an optional terminating action to the inspection and independent inspection requirements of paragraphs (g)(4)(i) through (iv) of this AD, insert the requirements for the visual inspections and independent inspections required by paragraphs (g)(4)(i) through (iv) as Required Inspection Items in the existing approved continuous airworthiness maintenance program for the airplane.

(vi) If damage is found that exceeds serviceable limits during the inspections required by paragraphs (g)(4)(i) through (iv) of this AD, before further flight, remove the engine fan hub assembly from service and replace it with a part eligible for installation.

(5) For GP7270 and GP7277 model turbofan engines with engine serial numbers P550101 through P550706, inclusive, within 200 FCs from August 1, 2020 or before further flight, whichever occurs later, remove the engine fan hub blade lock assembly, P/N 5700451, and replace it with a part eligible for installation.

Note 1 to paragraph (g)(5): EA Turbojet Engines ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019, contains guidance on replacement of the engine fan hub blade lock assembly.

(h) Credit for Previous Actions

You may take credit for the ECI inspections required by paragraph (g)(1)(i) through (iii) of this AD if you performed the ECI inspections before the effective date of this AD using EA ASB EAGP7–A72–389, Revision No. 6, dated November 21, 2019, or an earlier version.

(i) Definitions

(1) For the purpose of this AD, a ''part eligible for installation,'' when referring to replacement of the engine fan hub assembly, is a part that has passed the inspections required by paragraph (g)(1) of this AD.

(2) For the purpose of this AD, a ''part eligible for installation,'' when referring to replacement of the engine fan hub blade lock assembly, is:

(i) A part that is not P/N 5700451, or

(ii) An engine fan hub blade lock assembly that has been modified in accordance with EA ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019, or EA ASB EAGP7–A72–418, Revision No. 0, dated December 7, 2018.

(3) For the purpose of this AD, an ''independent inspection'' is a second visual inspection performed by an individual qualified to perform inspections who was not involved in the original inspection of the engine fan hub assembly following disassembly and reassembly of the engine fan hub blade lock assembly.

(j) 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 paragraph (k) of this AD. Information may be emailed 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.

(k) Related Information

For more information about this AD, contact Stephen Elwin, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7236; fax: (781) 238–7199; email: *Stephen.L.Elwin@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Turbojet Engines Alert Service Bulletin EAGP7–A72–389, Revision No. 7, dated October 8, 2021.

(ii) [Reserved]

(3) For EA service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT, 06118; phone: (800) 565–0140; email: *help24@pw.utc.com;* website: *www.engineallianceportal.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 8, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27981 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0543; Project Identifier AD–2021–00353–T; Amendment 39–21852; AD 2021–25–09]

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 certain The Boeing Company Model 737–200 and –200C series airplanes. This AD was prompted by reports of nuisance stick shaker activation while the airplane was accelerating to cruise speed at the top of a climb. Investigation revealed that the activation was caused when the angle of attack (AOA) (also

known as angle of airflow) sensor vanes froze and malfunctioned due to insufficient heat in certain AOA sensors to prevent ice buildup. This AD requires inspecting the AOA sensors for certain part numbers or vane shapes, and replacing any affected AOA sensor with a new or serviceable sensor. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 1, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 1, 2022.

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–2021–0543.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0543; 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: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; email: *jeffrey.w.palmer@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 certain The Boeing Company Model 737–200 and –200C series airplanes. The NPRM published in the **Federal Register** on August 9, 2021 (86 FR 43454). The NPRM was prompted by reports of nuisance stick shaker activation while the airplane was accelerating to cruise speed at the top of a climb. Investigation revealed that the activation was caused when the AOA sensor vanes froze and malfunctioned due to insufficient heat in certain AOA sensors to prevent ice buildup. In the NPRM, the FAA proposed to require inspecting the AOA sensors for certain part numbers or vane shapes, and replacing any affected AOA sensor with a new or serviceable sensor. The FAA is issuing this AD to prevent the AOA sensor vanes from being immobilized, which could result in unreliable or inaccurate AOA sensor data being transmitted to airplane systems, and consequent loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received an additional comment from Boeing. The following presents the comment received on the NPRM and the FAA's response.

Request for Clarification of Affected Airplane Model

Boeing asked that clarification be added to the Summary, Background, and Unsafe Condition sections of the proposed AD to specify that the originating AOA vane immobilization report was not on a Model 737 airplane. Boeing stated that this would clarify the service history and align the text with the language used in Boeing Alert Service Bulletin 737–27A1324, dated March 2, 2021.

The FAA agrees to provide clarification, here in the comment section instead of throughout the body of this AD. Initially, AOA vane immobilization was reported on a Model 717 airplane; the associated design issues have been addressed for that airplane model. Although no Model 737–200 airplane has experienced an in-flight incident related to the identified unsafe condition, the design of the AOA sensor vanes is similar on Model 737–200 airplanes. Therefore, the FAA has determined that this AD is necessary to address the unsafe condition on these airplanes. The FAA has not changed this final rule as a result of this comment.

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 change 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 Service Bulletin 737–27A1324, dated March 2, 2021. This service information specifies procedures for doing a general visual inspection of the left- and -right-side AOA sensor vane shapes, or inspecting the left and right AOA sensors, to determine the part number, and replacing any affected AOA sensor with a new or serviceable sensor. 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 will affect 11 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
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$935

* * * * *

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	3 work-hours × $85 per hour = $255	$54,000	$54,255

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:

2021–25–09 The Boeing Company: Amendment 39–21852; Docket No. FAA–2021–0543; Project Identifier AD–2021–00353–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 1, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–200 and –200C series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–27A1324, dated March 2, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Control System.

(e) Unsafe Condition

This AD was prompted by reports of nuisance stick shaker activation while the airplane was accelerating to cruise speed at the top of a climb. Investigation revealed that the activation was caused when the angle of attack (AOA) (also known as angle of airflow) sensor vanes froze and malfunctioned due to insufficient heat in certain AOA sensors to prevent ice buildup. The FAA is issuing this AD to prevent the AOA sensor vanes from being immobilized, which could result in unreliable or inaccurate AOA sensor data being transmitted to airplane systems, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Required Actions for Group 2 Airplanes

For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–27A1324, dated March 2, 2021: Within 120 days after the effective date of this AD, inspect the AOA sensor, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Group 1 Airplanes

Except as specified in paragraph (i) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–27A1324, dated March 2, 2021, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1324, dated March 2, 2021.

(i) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin 737–27A1324, dated March 2, 2021, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(j) Alternative Methods of Compliance (AMOCs)

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; email: *jeffrey.w.palmer@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–27A1324, dated March 2, 2021.

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

Issued on December 2, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27957 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31405; Amdt. No. 3988]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 28, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 2021.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section. The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff

Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on December 10, 2021.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service Manager, Standards Section, Flight Procedures & Airspace Group Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC number	FDC date	Subject
27–Jan–22 ...	AK	Napaskiak	Napaskiak	1/0887	9/24/21	RNAV (GPS) RWY 2, Orig-A.
27–Jan–22 ...	AK	Napaskiak	Napaskiak	1/0891	9/24/21	RNAV (GPS) RWY 20, Orig-A.
27–Jan–22 ...	ME	Rockland	Knox County Rgnl	1/1196	11/3/21	ILS OR LOC RWY 13, Amdt 2.
27–Jan–22 ...	KS	Kingman	Kingman/Clyde Cessna Fld	1/2723	9/24/21	RNAV (GPS) RWY 18, Amdt 1A.
27–Jan–22 ...	KS	Kingman	Kingman/Clyde Cessna Fld	1/2724	9/24/21	RNAV (GPS) RWY 36, Amdt 1A.
27–Jan–22 ...	OH	Steubenville	Jefferson County Airpark	1/2816	10/13/21	RNAV (GPS) RWY 14, Amdt 1A.
27–Jan–22 ...	OH	Steubenville	Jefferson County Airpark	1/2817	10/13/21	RNAV (GPS) RWY 32, Amdt 1B.
27–Jan–22 ...	KS	Elkhart	Elkhart-Morton County	1/3258	11/8/21	RNAV (GPS) RWY 22, Amdt 1C.
27–Jan–22 ...	KS	Elkhart	Elkhart-Morton County	1/3278	11/8/21	RNAV (GPS) RWY 35, Amdt 1D.
27–Jan–22 ...	NM	Artesia	Artesia Muni	1/3863	12/1/21	RNAV (GPS) RWY 22, Amdt 1B.
27–Jan–22 ...	NV	Las Vegas	Henderson Exec	1/3865	12/2/21	VOR–C, Amdt 1.
27–Jan–22 ...	NJ	Newark	Newark Liberty Intl	1/3868	12/1/21	RNAV (GPS) RWY 11, Orig-G.
27–Jan–22 ...	NJ	Newark	Newark Liberty Intl	1/3870	12/1/21	GLS RWY 11, Orig-B.
27–Jan–22 ...	MI	Adrian	Lenawee County	1/4373	12/3/21	RNAV (GPS) RWY 23, Orig-B.
27–Jan–22 ...	KY	Prestonsburg	Big Sandy Rgnl	1/4406	12/2/21	RNAV (GPS) RWY 21, Amdt 2.
27–Jan–22 ...	PA	Washington	Washington County	1/4643	12/2/21	ILS OR LOC RWY 27, Amdt 1D.
27–Jan–22 ...	OH	Port Clinton	Erie-Ottawa Intl	1/4991	10/1/21	RNAV (GPS) RWY 9, Amdt 1B.
27–Jan–22 ...	PA	Erie	Erie Intl/Tom Ridge Fld	1/5442	11/12/21	Takeoff Minimums and Obstacle DP, Amdt 6.
27–Jan–22 ...	WI	Amery	Amery Muni	1/5615	11/19/21	Takeoff Minimums and Obstacle DP, Amdt 1B.
27–Jan–22 ...	TX	Victoria	Victoria Rgnl	1/5742	9/24/21	ILS OR LOC RWY 13, Orig.
27–Jan–22 ...	TX	Victoria	Victoria Rgnl	1/5743	9/24/21	RNAV (GPS) RWY 13, Orig.
27–Jan–22 ...	TX	Victoria	Victoria Rgnl	1/5748	9/24/21	RNAV (GPS) RWY 31, Orig.
27–Jan–22 ...	TX	Victoria	Victoria Rgnl	1/5751	9/24/21	VOR RWY 31, Orig.
27–Jan–22 ...	AZ	Coolidge	Coolidge Muni	1/5936	12/3/21	VOR RWY 5, Amdt 1.
27–Jan–22 ...	WI	Stevens Point	Stevens Point Muni	1/5945	12/3/21	RNAV (GPS) RWY 21, Amdt 1A.
27–Jan–22 ...	WI	Stevens Point	Stevens Point Muni	1/5948	12/3/21	RNAV (GPS) RWY 3, Orig-B.
27–Jan–22 ...	WI	Stevens Point	Stevens Point Muni	1/5949	12/3/21	RNAV (GPS) RWY 30, Orig-B.
27–Jan–22 ...	WI	Stevens Point	Stevens Point Muni	1/5952	12/3/21	RNAV (GPS) RWY 12, Orig-B.
27–Jan–22 ...	WI	Stevens Point	Stevens Point Muni	1/5954	12/3/21	ILS OR LOC RWY 21, Amdt 1.
27–Jan–22 ...	CA	Hawthorne	Jack Northrop Fld/Hawthorne Muni.	1/6193	11/10/21	LOC RWY 25, Amdt 12B.
27–Jan–22 ...	CA	Hawthorne	Jack Northrop Fld/Hawthorne Muni.	1/6194	11/10/21	RNAV (GPS) RWY 25, Amdt 2.
27–Jan–22 ...	MI	Adrian	Lenawee County	1/6235	12/3/21	RNAV (GPS) RWY 5, Amdt 1B.
27–Jan–22 ...	IN	Indianapolis	Hendricks County-Gordon Graham Fld.	1/6745	10/1/21	RNAV (GPS) RWY 18, Amdt 1C.
27–Jan–22 ...	AL	Jasper	Walker County-Bevill Fld	1/6836	11/18/21	RNAV (GPS) RWY 27, Orig-A.
27–Jan–22 ...	AL	Jasper	Walker County-Bevill Fld	1/6837	11/18/21	RNAV (GPS) RWY 9, Orig-A.
27–Jan–22 ...	AL	Jasper	Walker County-Bevill Fld	1/6838	11/18/21	VOR/DME–A, Amdt 3.
27–Jan–22 ...	TX	Victoria	Victoria Rgnl	1/7009	12/6/21	VOR RWY 13, Orig.
27–Jan–22 ...	SC	Allendale	Allendale County	1/7592	11/16/21	RNAV (GPS) RWY 35, Orig-C.
27–Jan–22 ...	SC	Pelion	Lexington County	1/7676	11/16/21	RNAV (GPS) RWY 36, Orig-B.
27–Jan–22 ...	SC	Pelion	Lexington County	1/7677	11/16/21	RNAV (GPS) RWY 18, Orig-B.

AIRAC date	State	City	Airport	FDC number	FDC date	Subject
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7854	11/18/21	VOR/DME RWY 34, Amdt 2F.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7857	11/18/21	VOR/DME RWY 16, Amdt 3F.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7859	11/18/21	VOR RWY 34, Amdt 5D.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7862	11/18/21	VOR RWY 16, Amdt 3D.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7864	11/18/21	RNAV (GPS) RWY 34, Amdt 2.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7866	11/18/21	RNAV (GPS) RWY 22 , Orig.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7868	11/18/21	RNAV (GPS) RWY 16, Orig.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7870	11/18/21	RNAV (GPS) RWY 4, Orig.
27–Jan–22 ...	KS	Hays	Hays Rgnl	1/7872	11/18/21	ILS OR LOC RWY 34, Orig-E.
27–Jan–22 ...	KS	Fort Scott	Fort Scott Muni	1/8302	11/18/21	RNAV (GPS) RWY 18, Orig.
27–Jan–22 ...	KS	Fort Scott	Fort Scott Muni	1/8303	11/18/21	RNAV (GPS) RWY 36, Orig.
27–Jan–22 ...	TX	Graford	Possum Kingdom	1/8794	11/18/21	RNAV (GPS) RWY 20, Orig-C.
27–Jan–22 ...	TX	Graford	Possum Kingdom	1/8795	11/18/21	RNAV (GPS) RWY 2, Orig-C.
27–Jan–22 ...	TN	Lewisburg	Ellington	1/9062	11/3/21	RNAV (GPS) RWY 2, Amdt 1A.
27–Jan–22 ...	TN	Lewisburg	Ellington	1/9064	11/3/21	RNAV (GPS) RWY 20, Amdt 1A.
27–Jan–22 ...	KS	Wichita	Colonel James Jabara	1/9768	11/23/21	RNAV (GPS) RWY 36, Orig-B.
27–Jan–22 ...	PR	Ponce	Mercedita	1/9793	11/23/21	RNAV (GPS) RWY 12, Orig-D.
27–Jan–22 ...	PR	Ponce	Mercedita	1/9794	11/23/21	RNAV (GPS) RWY 30, Orig-B.
27–Jan–22 ...	MO	Rolla/Vichy	Rolla Ntl	1/9961	11/23/21	RNAV (GPS) RWY 4, Orig-B.

[FR Doc. 2021–28026 Filed 12–27–21; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31404; Amdt. No. 3987]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is December 28, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 2021.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on December 10, 2021.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

Part 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 27 January 2022

Lanett, AL, 7A3, RNAV (GPS) RWY 6, Orig
Lanett, AL, 7A3, RNAV (GPS) RWY 24, Orig
Lanett, AL, Lanett Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Lanett, AL, 7A3, VOR/DME OR GPS–A, Amdt 2A, CANCELLED
Phoenix, AZ, KPHX, ILS OR LOC RWY 8, Orig-F
Mountain View, CA, KNUQ, LOC RWY 14L, Amdt 2
Mountain View, CA, KNUQ, RNAV (GPS) RWY 32R, Amdt 1
Leesburg, FL, KLEE, RNAV (GPS) RWY 4, Amdt 1C
Leesburg, FL, Leesburg Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Yap Island, FM, Yap Intl, NDB RWY 7, Amdt 2B
Yap Island, FM, Yap Intl, NDB RWY 25, Orig-C
Yap Island, FM, Yap Intl, NDB/DME RWY 7, Amdt 2B
Yap Island, FM, Yap Intl, NDB/DME RWY 25, Orig-C
Washington, GA, KIIY, RNAV (GPS) RWY 13, Amdt 2
Washington, GA, KIIY, RNAV (GPS) RWY 31, Amdt 2
Washington, GA, Washington-Wilkes County, Takeoff Minimums and Obstacle DP, Amdt 1
Kahului, HI, PHOG, ILS Y OR LOC Y RWY 2, Orig
Kahului, HI, PHOG, ILS Z OR LOC Z RWY 2, Amdt 26
Huntington, IN, KHHG, VOR–A, Amdt 2B
South Bend, IN, KSBN, RNAV (GPS) RWY 9L, Amdt 1A
Danville, KY, KDVK, LOC RWY 31, Amdt 1F
Danville, KY, KDVK, RNAV (GPS) RWY 13, Amdt 1
Danville, KY, KDVK, RNAV (GPS) RWY 31, Amdt 1
New Orleans, LA, Lakefront, Takeoff Minimums and Obstacle DP, Amdt 1A
Luverne, MN, KLYV, RNAV (GPS) RWY 18, Amdt 1
Pipestone, MN, KPQN, RNAV (GPS) RWY 36, Amdt 2
Tracy, MN, KTKC, RNAV (GPS) RWY 29, Amdt 1
Worthington, MN, KOTG, RNAV (GPS) RWY 11, Amdt 1
Worthington, MN, KOTG, RNAV (GPS) RWY 18, Amdt 1
Worthington, MN, Worthington Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Worthington, MN, KOTG, VOR RWY 11, Amdt 3A, CANCELLED
Worthington, MN, KOTG, VOR RWY 18, Amdt 10A, CANCELLED
Pembina, ND, KPMB, RNAV (GPS) RWY 33, Orig-C
Hebron, NE, KHJH, RNAV (GPS) RWY 12, Orig-F
Lebanon, NH, KLEB, ILS OR LOC RWY 18, Amdt 8
Akron, OH, KCAK, VOR RWY 5, Amdt 3C
Akron, OH, KCAK, VOR RWY 23, Amdt 10B
Jackson, OH, James A Rhodes, Takeoff Minimums and Obstacle DP, Amdt 4A
Medina, OH, 1G5, VOR RWY 27, Amdt 3
Port Clinton, OH, KPCW, RNAV (GPS) RWY 27, Amdt 2
Erie, PA, KERI, ILS OR LOC RWY 6, Amdt 19
Erie, PA, KERI, RNAV (GPS) RWY 6, Amdt 2
Erie, PA, KERI, RNAV (GPS) RWY 24, Amdt 2
North Myrtle Beach, SC, KCRE, ILS OR LOC RWY 23, Amdt 12B
North Myrtle Beach, SC, KCRE, RNAV (GPS) RWY 23, Amdt 1C
North Myrtle Beach, SC, KCRE, VOR RWY 5, Amdt 22B
North Myrtle Beach, SC, KCRE, VOR RWY 23, Amdt 20B
Dallas-Fort Worth, TX, Dallas-Fort Worth, Takeoff Minimums and Obstacle DP, Amdt 7
Puyallup, WA, Pierce County-Thun Field, Takeoff Minimums and Obstacle DP, Amdt 4

[FR Doc. 2021–28028 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. FDA–2021–N–0917]

Medical Devices; Anesthesiology Devices; Classification of the Retrograde Intubation Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the retrograde intubation device into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the retrograde intubation device's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective December 28, 2021. The classification was applicable on December 12, 2018.

FOR FURTHER INFORMATION CONTACT: Todd Courtney, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1216, Silver Spring, MD 20993–0002, 301–796–4634, *Todd.Courtney@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the retrograde intubation device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On September 25, 2017, FDA received Cook Incorporated's request for De Novo classification of the Retrograde Intubation Set. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 12, 2018, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 868.5095.[1] We have named the generic type of device retrograde intubation device, and it is identified as a prescription device used to perform retrograde intubation via the cricothyroid membrane. The device may contain or be labeled for use with guidewires and intubating catheters, in addition to needles (21 CFR 868.5090), syringe (21 CFR 880.5860), and hemostats (21 CFR 878.4800).

FDA has identified the following risks to health associated specifically with this type of device and the measures

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

required to mitigate these risks in table 1.

TABLE 1—RETROGRADE INTUBATION DEVICE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Failure to intubate and ventilate (continued hypoxia)	Non-clinical performance testing, and Labeling
Tissue damage/trauma resulting in, for example:	Non-clinical performance testing, and Labeling
• Bleeding, hematoma	
• Subcutaneous emphysema	
• • Pneumomediastinum or pneumothorax	
• • Damage to trachea, esophagus, and vocal cords	
Infection	Sterilization validation, and Shelf-life testing
Adverse tissue reaction	Biocompatibility evaluation

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, retrograde intubation devices are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, if the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

While this final order contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this final order. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

■ 1. The authority citation for part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 868.5095 to subpart F to read as follows:

§ 868.5095 Retrograde intubation device.

(a) *Identification.* A retrograde intubation device is a prescription device used to perform retrograde intubation via the cricothyroid membrane. The device may contain or be labeled for use with guidewires and intubating catheters, in addition to needles (§ 868.5090), syringe (§ 880.5860 of this chapter), and hemostats (§ 878.4800 of this chapter).

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use, including the following:

(i) Wire guide tensile, flex, fracture, and corrosion testing;

(ii) Catheter tensile strength testing at likely points of failure;

(iii) Catheter kink radius testing;

(iv) Compatibility of device components that interact, including compatibility in connection, disconnection, and ability to transfer fluids;

(v) Dimensional validation;

(vi) Accuracy testing of markings; and

(vii) Validation of the maximum airway pressure.

(2) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the identified shelf life.

(3) The device must be demonstrated to be biocompatible.

(4) Labeling must include:

(i) Instructions for use; and

(ii) Package labels that clearly identify the minimum compatible size of endotracheal tube.

Dated: December 16, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–28166 Filed 12–27–21; 8:45 am]

BILLING CODE 4164–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 302–2, 302–3, 302–12, 302–15, and 302–17

[FTR Case 2020–302–1; Docket No. 2020–0019, Sequence 1]

RIN 3090–AK31

Federal Travel Regulation; Taxes on Relocation Expenses, Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) Eligibility

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA), in consultation with the Secretary of the Treasury, is amending the Federal Travel Regulation (FTR) to authorize Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) to all individuals who receive relocation allowances paid by the Federal Government. This amendment is in accordance with legislative changes to GSA's statutory authority for taxes on reimbursements for travel, transportation, and relocation expenses as enacted in the National Defense Authorization Act for Fiscal Year 2020, and as further amended by the National Defense Authorization Act for Fiscal Year 2021.

DATES: *Effective date:* This final rule is effective on December 28, 2021. *Applicability date:* This final rule is applicable to individuals who are authorized reimbursement for relocation expenses under the FTR and who receive some or all reimbursements, direct payments, or indirect payments on or after January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney (Rick) Miller, Program Analyst, Office of Government-wide Policy, at 202–501–3822 or *rodney.miller@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite ''FTR Case 2020–302–1.''

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule in the **Federal Register** on June 15, 2021 (86 FR 31659). The rule proposed to amend the FTR sections pertaining to eligibility for WTA and RITA in accordance with statutory changes to 5 U.S.C. 5724b, update relevant FTR part 302–3 tables to include RITA as a mandatory allowance that agencies must pay or reimburse, and adjust the relocation tables for certain mandatory and discretionary relocation entitlements depending on the individual's type of movement.

The public had 60 calendar days to comment on the proposed rule. GSA received no comments opposing the amendment and one comment supporting its adoption. GSA did not make any changes to this final rule based on the supporting comment.

Federal agencies authorize relocation entitlements to those listed at FTR § 302–1.1 and those assigned under the Government Employees Training Act (GETA) (5 U.S.C. Chapter 41).

Public Law (Pub. L.) 115–97, known as the ''Tax Cuts and Jobs Act of 2017,'' suspended qualified moving expense deductions along with the exclusion for employer reimbursements and payments of moving expenses effective January 1, 2018, for tax years 2018 through 2025, therefore making almost all relocation entitlements subject to additional tax liability.

Agencies are authorized to pay WTA and RITA to cover ''substantially all'' of the increased tax liability resulting from receipt of the relocation expense reimbursements either paid directly or indirectly. However, in the version of 5 U.S.C. 5724b immediately preceding the passage of Section 1114 of the ''National Defense Authorization Act for Fiscal Year 2020'' (Pub. L. 116–92) (''the Act''), WTA and RITA were available only to employees ''transferred'' in the interest of the Government from one official station or agency to another for permanent duty.

Previously, new appointees (including political appointees), Senior Executive Service (SES) employees performing a ''last move home'', employees returning from an overseas assignment for the purpose of separating from Government service, and those assigned under GETA were not eligible for WTA and RITA as such individuals were not ''transferred'' in the interest of the Government from one official station or agency to another for permanent duty. The suspension of qualified moving expense deductions in Public Law 115–97 substantially increased the tax liability of these individuals, which could not be reimbursed through WTA or RITA.

Section 1114 of the Act amended 5 U.S.C. 5724b to expand eligibility for WTA and RITA beyond ''transferred'' employees to include all individuals whose travel, transportation, or relocation expenses are reimbursed or furnished in kind pursuant to chapter 57, subchapter II or chapter 41, both of title 5, U.S.C. These individuals include, among others, those not previously eligible for WTA and RITA, *e.g.,* new appointees (including political appointees), employees returning from an overseas assignment for the purpose of separation from Government service, SES employees eligible for ''last move home'' entitlements, and those assigned under GETA. The Act also includes a retroactive effective date to January 1, 2018, to allow those individuals who received taxable travel, transportation, or relocation allowances since January 1, 2018, to now submit a RITA claim for the additional tax liability.

Of note, 5 U.S.C. 5724b(b) contained an apparent typographical error as shown here in bold: ''For purposes of this section, the term 'travel, transportation, or relocation expenses' means all travel, transportation, or relocation expenses reimbursed or furnished in kind pursuant to this subchapter **of** chapter 41.'' (emphasis added). A literal implementation of the text would have rendered this statutory provision meaningless because ''this subchapter of chapter 41'' does not exist. Accordingly, GSA developed a legislative proposal to correct the typographical error. Until the statutory amendment was made, GSA implemented 5 U.S.C. 5724b(b) as if it read ''. . . pursuant to this subchapter **or** chapter 41.'' (emphasis added). GSA's decision was based on conversations with Congress, and aimed at avoiding a literal interpretation of the statute which would have produced an absurd result that is demonstrably at odds with Congressional intent. GSA's legislative proposal resulted in section 1121 of the ''William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021'' (Pub. L. 116–283) which amended 5 U.S.C. 5724b(b) to correct the typographical error. The amendments made to 5724b(b) by section 1121 are retroactively effective as if included in the enactment of section 1114 of the Act.

Pursuant to 5 U.S.C. 5738, the Administrator of General Services is mandated to prescribe necessary regulations regarding Federal employees who relocate in the interest of the Government. The overall implementing authority is the FTR, codified in title 41 of the Code of Federal Regulations, chapters 300 through 304 (41 CFR chapters 300 through 304).

This final rule amends FTR sections pertaining to eligibility for WTA and RITA in accordance with statutory changes to 5 U.S.C. 5724b. Specifically, this amendment updates relevant tables in FTR Part 302–3 to include RITA as a mandatory allowance that agencies must pay or reimburse.

This final rule also adjusts the relocation tables at §§ 302–3.2 and 302–3.101 to update certain mandatory and discretionary relocation entitlements depending on the individual's type of movement. Updates to the tables include, but are not limited to, adding use of a relocation services company, home marketing incentives, and temporary quarters subsistence expense (TQSE) as discretionary allowances to, from, or between non-foreign areas. The tables are also updated to remove home marketing incentives for new appointees who are not entitled to real estate expenses.

Additionally, this final rule indicates, as relevant, where allowances are

intended to apply more broadly to other relocating individuals (*e.g.,* appointments, reassignments, separations, and last move(s) home), in addition to transferred employees.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) has determined that this rule is not a major rule under 5 U.S.C. 804(2), therefore, GSA did not submit a rule report.

IV. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it applies only to Federal agencies and employees and it affects less than one percent of all relocations authorized under FTR part 302. The administrative changes to the FTR provide further clarification on existing statutory changes with no additional impact to agencies.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this final rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the final rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FTR Case 2020–302–1), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Parts 300–3, 302–2, 302–3, 302–12, 302–15, and 302–17

Government employees, Income taxes, Travel and transportation expenses.

Robin Carnahan,

Administrator, General Services Administration.

Therefore, GSA amends 41 CFR parts 300–3, 302–2, 302–3, 302–12, 302–15, and 302–17 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for 41 CFR part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, revised May 22, 1992.

■ 2. Amend § 300–3.1 by removing the definition of ''Relocation service company (RSC)'' and adding in its place the definition of ''Relocation services company (RSC)'' to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Relocation services company (RSC)—A third-party supplier under contract with an agency to assist an eligible individual who relocates. Services may include: Homesale programs, home inspection, home marketing assistance, home finding assistance, property management services, shipment and storage of household goods, voucher review and payment, relocation counseling, and similar items.

* * * * *

PART 302–2—EMPLOYEES ELIGIBILITY REQUIREMENTS

■ 3. The authority citation for 41 CFR part 302–2 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

■ 4. Revise § 302–2.1 to read as follows:

§ 302–2.1 When may I begin my relocation?

You may begin your relocation only after your agency has approved your travel authorization (TA) in writing (paper or electronic).

■ 5. Revise § 302–2.13 to read as follows:

§ 302–2.13 What is a service agreement?

(a) A service agreement is a written and signed agreement between you and your agency. The service agreement states that you will remain in the service of the Government, after you have relocated, for a period of time as specified in § 302–2.14. A service agreement must also include the duplicate reimbursement disclosure statement specified in §§ 302–2.21, 302–2.22, and 302–2.100(g).

(b) A service agreement is not required for a ''last move home'' relocation, a temporary change of station, or separation from Government service.

■ 6. Revise § 302–2.14 to read as follows.

§ 302–2.14 Am I required to sign a service agreement for an appointment or transfer CONUS or Outside the Continental United States (OCONUS), renewal agreement travel, or assignment under the Government Employees Training Act (GETA), and what is the minimum period of service?

Yes, you are required to sign a service agreement for appointment or transfer CONUS or OCONUS, renewal agreement travel, or assignment under GETA. The minimum periods of service are:

(a) Within CONUS for a period of service of not less than 12 months following the effective date of your appointment or transfer;

(b) OCONUS for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of your appointment or transfer;

(c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of Title 20, United States Code;

(d) For renewal agreement travel, a period of not less than 12 months from the date of return to the same or different overseas official station; and

(e) For assignment under GETA, not less than three times the length of the training period as prescribed by the head of your agency.

■ 7. Revise § 302–2.17 to read as follows:

§ 302–2.17 Must I sign a service agreement for a ''last move home'' relocation or separation from Government service?

No, you do not need to sign a service agreement for a ''last move home'' relocation or separation from Government service.

■ 8. Revise § 302–2.101 to read as follows:

§ 302–2.101 When may we authorize reimbursement for relocation expenses?

You may authorize reimbursement for relocation expenses:

(a) When you have determined that an eligible individual's relocation is in the best interest of the Government as specified in § 302–1.1 of this chapter; and

(b) Only after an eligible individual has signed a service agreement to remain in service for the period specified in § 302–2.14.

PART 302–3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

■ 9. The authority citation for 41 CFR part 302–3 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

■ 10. Amend § 302–3.2 by:

■ a. Revising the section heading and the first sentence of the introductory text; and

■ b. Revising Tables A and B.

The revisions read as follows:

§ 302–3.2 As a new appointee or student trainee what relocation expenses may my agency pay or reimburse me for incident to an assignment to my first official station?

As a new appointee or student trainee assigned to your first official station, your agency may pay or reimburse you the relocation expenses indicated for the type of assignment in Tables A and B of this section. * * *

TABLE A—ASSIGNED TO FIRST OFFICIAL STATION IN THE CONTINENTAL UNITED STATES (CONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation of employee & immediate family member(s) (part 302–4 of this chapter). 2. Per diem for employee only (part 302–4 of this chapter) ..... 3. Transportation & temporary storage of household goods (part 302–7 of this chapter). 4. Extended storage of household goods (part 302–8 of this chapter)[1] .. 5. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter). 6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	1. Shipment of privately owned vehicle (POV) (part 302–9 of this chapter). 2. Use of a relocation services company (part 302–12 of this chapter).

[1] **Note to Column 1, Item 4:** Only when assigned to a designated isolated official station in CONUS.

TABLE B—ASSIGNED TO FIRST OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation of employee & immediate family member(s) (part 302–4 of this chapter). 2. Per diem employee only (part 302–4 of this chapter)	1. Shipment of privately owned vehicle (POV) (part 302–9 of this chapter). 2. Temporary quarters subsistence expense (TQSE) is not authorized in a foreign area; however, you may be entitled to the following under the Department of State Standardized Regulations (Government Civilians-Foreign Areas) which is available from the Superintendent of Documents, Washington, DC 20402. (a) Foreign Transfer Allowance (FTA) (Subsistence Expense) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for an official station in a foreign area incident to a permanent change of station and travel to first official station overseas. (b) Temporary quarters subsistence allowance (TQSA) when a transfer is authorized to a foreign area. (c) The miscellaneous expense portion of the FTA is authorized incident to first official station travel to a foreign area.
3. Transportation & temporary storage of household goods (part 302–7 of this chapter). 4. Extended storage of household goods (part 302–8 of this chapter) ... 5. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	3. Use of a relocation services company (part 302–12 of this chapter).

■ 11. Revise the heading for subpart B to read as follows:

Subpart B—Transferred Employees and Other Relocated Employees

■ 12. Amend § 302–3.101 by:

■ a. Revising the section heading;

■ b. In the introductory text:

■ i. Adding to the first sentence the words ''or other relocated employee'' after the words ''transferred employee''; and

■ ii. Removing the word ''transfer'' from the second sentence and adding the word ''relocation'' in its place; and

■ c. Revising Tables A, B, C, D, F, G, and I.

The revisions read as follows:

§ 302–3.101 As a transferred employee or other relocated employee what relocation allowances must my agency pay or reimburse to me?

* * * * *

TABLE A—TRANSFER BETWEEN OFFICIAL STATIONS IN THE CONTINENTAL UNITED STATES (CONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Househunting per diem & transportation, employee & spouse only (part 302–5 of this chapter).
2. Miscellaneous moving expense (part 302–16 of this chapter)	2. Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter).
3. Sell or buy residence transactions or lease termination expenses (part 302–11 of this chapter).	3. Shipment of privately owned vehicle (POV) (part 302–9 of this chapter).
4. Transportation & temporary storage of household goods (part 302–7 of this chapter).	4. Use of a relocation services company (part 302–12 of this chapter).
5. Extended storage of household goods (part 302–8 of this chapter) [1]	5. Property management services (part 302–15 of this chapter).
6. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter) [2].	6. Home marketing incentives (part 302–14 of this chapter).
7. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

[1] **Note to Column 1, Item 5:** Only when assigned to a designated isolated official station in CONUS.

[2] **Note to Column 1, Item 6:** Mobile homes may be shipped within CONUS, within Alaska, and through Canada en route between Alaska and CONUS or through Canada between one CONUS point and another (*e.g.,* between Buffalo, NY, and Detroit, MI).

TABLE B—TRANSFER FROM CONUS TO AN OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Temporary quarters subsistence expense (TQSE) when transfer is to a non-foreign area. In foreign areas you may be entitled to the following under the Department of State Standardized Regulations (DSSR) (Government Civilians-Foreign Areas): (a) A Foreign Transfer Allowance (FTA) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for an official station in a foreign area incident to a permanent change of station and travel to first official station overseas. (b) Temporary quarters subsistence allowance (TQSA).
2. Miscellaneous expense allowance (part 302–16 of this chapter)	2. Property management services (part 302–15 of this chapter).
3. Transportation & temporary storage of household goods (part 302–7 this chapter).	3. Shipment of a privately owned vehicle (part 302–9 of this chapter).
4. Extended storage of household goods (part 302–8 of this chapter) ...	4. Use of a relocation services company (part 302–12 of this chapter).
5. Sell & buy residence transaction expenses or lease termination expenses when transfer is to a non-foreign area (part 302–11 of this chapter).	5. Home marketing incentives when transfer is to a non-foreign area (part 302–14 of this chapter).
6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	6. Househunting per diem & transportation, employee & spouse only when transfer is to a non-foreign area (part 302–5 of this chapter).

TABLE C—TRANSFER FROM OCONUS OFFICIAL STATION TO AN OFFICIAL STATION IN CONUS

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Shipment of a privately owned vehicle (part 302–9 of this chapter).
2. Miscellaneous expense allowance (part 302–16 of this chapter)	2. Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter).[2]
3. Sell & buy residence transaction expenses or lease termination expenses (part 302–11 of this chapter) [1].	3. Use of a relocation services company (part 302–12 of this chapter).
4. Transportation & temporary storage of household goods (part 302–7 of this chapter).	4. Home marketing incentives when transfer is from a non-foreign area (part 302–14 of this chapter).
5. Extended storage of household goods only when assigned to a designated isolated official station in CONUS (part 302–8 of this chapter).	
6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

[1] **Note to Column 1, Item 3:** Allowed when old and new official stations are located in the United States. Also allowed when instead of being returned to the former official station in the United States, an employee is transferred in the interest of the Government to a different official station in the United States than the official station from which transferred when assigned to the foreign official station.

[2] **Note to Column 2, Item 2:** A TQSA under the DSSR may be authorized preceding final departure subsequent to the necessary vacating of residence quarters.

TABLE D—TRANSFER BETWEEN OCONUS OFFICIAL STATIONS

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Shipment of a privately owned vehicle (POV) (part 302–9 of this chapter).
2. Transportation & temporary storage of household goods (part 302–7 of this chapter).	2. Property management services (part 302–15 of this chapter).
3. Miscellaneous expense allowance (part 302–16 of this chapter)	3. Househunting per diem & transportation for employee & spouse only when transfer is between non-foreign areas (part 302–5 of this chapter).
4. Extended storage of household goods (part 302–8 of this chapter) ...	4. Temporary quarters subsistence expense (TQSE) when transfer is to or between non-foreign areas (part 302–6 of this chapter).[1]
5. Sell & buy residence transaction expenses or lease termination expenses when transfer is between non-foreign areas (part 302–11 of this chapter).	5. Use of a relocation services company (part 302–12 of this chapter).
6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	6. Home marketing incentives when transfer is between non-foreign areas (part 302–14 of this chapter).

[1] **Note to Column 2, item 4:** TQSA may be authorized under the DSSR.

* * * * *

TABLE F—RETURN FROM OCONUS OFFICIAL STATION TO PLACE OF ACTUAL RESIDENCE FOR SEPARATION

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation for employee & immediate family member(s) (part 302–4 of this chapter).	1. Shipment of a privately owned vehicle (POV) (part 302–9 of this chapter).
2. Per diem for employee only (part 302–4 of this chapter)	2. Use of a relocation services company (part 302–12 of this chapter).
3. Transportation & temporary storage of household goods (part 302–7 of this chapter).	
4. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

Note to Table F: This table also applies to an employee returning to the CONUS to transfer to a new duty station after completing a tour of duty OCONUS if relocation expenses have not been authorized to the new duty station. In that case, and unless otherwise agreed to, the employee is only eligible for return expenses from the OCONUS duty station to the employee's actual residence, payable by the losing agency.

TABLE G—LAST MOVE HOME FOR SES CAREER APPOINTEES UPON SEPARATION FROM GOVERNMENT SERVICE

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation for employee & immediate family member(s) (part 302–4 of this chapter).	1. Shipment of privately owned vehicle (POV) (part 302–9, subpart B of this chapter).
2. Per diem for employee only (part 302–4 of this chapter)	2. Use of a relocation services company (part 302–12 of this chapter).
3. Transportation & temporary storage of household goods (part 302–7 of this chapter).	
4. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter).	
5. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

* * * * *

TABLE I—ASSIGNMENT UNDER THE GOVERNMENT EMPLOYEES TRAINING ACT

[5 U.S.C. 4109][1]

1. Transportation of employee & immediate family member(s) (part 302–4 of this chapter).
2. Per Diem for employee (part 302–4 of this chapter).
3. Movement of household goods & temporary storage (part 302–7 of this chapter).
4. Relocation income tax allowance (RITA) (part 302–17 of this chapter).

[1] **Note to Table I:** The allowances listed in Table I may be authorized in lieu of per diem or actual expense allowances. This is not considered a permanent change of station.

§ 302–3.300 [Amended]

■ 13. Amend § 302–3.300 by adding the words ''(see Table F in § 302–3.101 for a summary of allowances)'' after the word ''goods''.

§ 302–3.306 [Amended]

■ 14. Amend § 302–3.306 by removing the words ''item 7 of Tables A and C in § 302.3.101'' and adding the words ''Table G to § 302–3.101'' in its place.

■ 15. Amend § 302–3.427 by:

■ a. Removing the word ''and'' at the end of the paragraph (f);

■ b. Removing the period from the end of the paragraph (g) and adding ''; and'' in its place; and

■ c. Adding paragraph (h).

The addition reads as follows:

§ 302–3.427 What relocation allowances may my agency pay when I am permanently assigned to my temporary official station?

* * * * *

(h) Relocation income tax allowance (RITA) under part 302–17 of this chapter.

■ 16. Revise § 302–3.503 to read as follows:

§ 302–3.503 Must we require employees to sign a service agreement?

Yes, you must require employees to sign a service agreement if the employee is receiving reimbursement for relocation travel expenses, except as provided in § 302–2.17 of this chapter and §§ 302–3.300 and 302–3.410.

■ 17. Amend § 302–3.505 by revising paragraphs (a) through (d) and adding paragraph (e) to read as follows:

§ 302–3.505 How long must we require an employee to agree to the terms of a service agreement?

* * * * *

(a) Within CONUS for a period of service of not less than 12 months following the effective date of appointment or transfer;

(b) OCONUS for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of appointment or transfer;

(c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of Title 20, United States Code;

(d) For renewal agreement travel, a period of not less than 12 months from the date of return to the same or different overseas official station; and

(e) For assignment under the Government Employees Training Act (GETA), not less than three times the length of the training period as prescribed by the head of the agency.

PART 302–12—USE OF A RELOCATION SERVICES COMPANY

■ 18. The authority citation for 41 CFR part 302–12 continues to read as follows:

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

§ 302–12.100 [Amended]

■ 19. Amend § 302–12.100 by removing the words ''a transferred employee in relocating to the new official station'' from the first sentence and adding the words ''an employee who relocates'' in its place.

PART 302–15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES

■ 20. The authority citation for 41 CFR part 302–15 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–15.13 [Amended]

■ 21. Amend § 302–15.13 by removing the word ''service'' in the first sentence and adding the word ''services'' in its place.

PART 302–17—TAXES ON RELOCATION EXPENSES

■ 22. The authority citation for 41 CFR part 302–17 continues to read as follows:

Authority: 5 U.S.C. 5724b; 5 U.S.C. 5738; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 23. Amend § 302–17.1 by revising the definition for ''Relocation income tax allowance (RITA)'' to read as follows:

§ 302–17.1 What special terms apply to this part?

* * * * *

Relocation income tax allowance (RITA) means the payment to individuals to cover the difference between the withholding tax allowance (WTA), if any, and the actual income tax liability incurred by the individual, and such individual's spouse (if filing jointly), as a result of their taxable relocation benefits authorized pursuant to this chapter. RITA is paid whenever the actual income tax liability exceeds the WTA and applies to any travel, transportation, and relocation expenses reimbursed or furnished in kind pursuant to chapter 57, subchapter II of title 5 U.S.C. and 5 U.S.C. chapter 41.

* * * * *

§ 302–17.3 [Amended]

■ 24. Amend § 302–17.3 by removing the words ''transferred employees'' and adding the words ''employees or individuals eligible for relocation expense allowances under § 302–1.1 of this chapter'' in its place.

■ 25. Amend § 302–17.5 by revising the second sentence and adding a third sentence to read as follows:

§ 302–17.5 Who is eligible for the WTA and the RITA?

* * * You are eligible for the WTA and the RITA if you are relocating in the interest of the Government, and your agency's reimbursements to you for relocation expenses result in you being liable for additional income taxes. Eligibility for WTA and RITA includes, among others, transferred employees, appointments (new or political), assignments under the Government Employees Training Act, and those returning from an overseas assignment for the purpose of separation from Government service.

* * * * *

§ 302–17.6 [Removed]

■ 26. Remove § 302–17.6.

§§ 302–17.7 through 302–17.13 [Redesignated as §§ 302–17.6 through 302–17.12]

■ 27. Redesignate §§ 302–17.7 through 302–17.13 as §§ 302–17.6 through 302–17.12.

[FR Doc. 2021–27637 Filed 12–27–21; 8:45 am]

BILLING CODE 6820–14–P

Proposed Rules

Federal Register
Vol. 86, No. 246
Tuesday, December 28, 2021

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

[NRC–2020–0133]

RIN 3150–AK49

Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to update the access authorization fees charged to NRC licensees for work performed under the Material Access Authorization Program and the Information Access Authority Program. The change in fees is due to an increase in the review time for each application for access authorization. This amendment is prompted by a recent audit of fees performed by an external certified public accounting and financial management services firm and ensures that the NRC continues to recover the full costs of processing access authorization requests from NRC licensees. The proposed rule also would make two administrative changes to revise definitions to include new naming conventions for background investigation case types and to specify the electronic process for completing security forms.

DATES: Submit comments by January 27, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0133. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Emily Robbins, Office of Administration, telephone: 301–415–7000, email: *Emily.Robbins@nrc.gov* or Vanessa Cox, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–8342, email: *Vanessa.Cox@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0133 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0133.
- *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, at 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.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0133 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on March 14, 2022. However, if the NRC receives significant adverse comments by January 27, 2022, then the NRC will

publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if it meets the following criteria:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required under the following circumstances:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Certain individuals employed by NRC licensees or their contractors require access to special nuclear material (plutonium, uranium-233, and uranium enriched in the isotopes uranium-233 or uranium-235), restricted data, or national security information. These individuals must obtain an access authorization from the NRC. When a licensee requests access authorization for an employee or a contractor, the NRC initiates a background investigation of the individual seeking access authorization. Based on the results of that investigation, the NRC determines whether permitting that individual to have access to special nuclear material, restricted data, or national security information would create a security risk.

The Defense Counterintelligence and Security Agency (DCSA) conducts the access authorization background investigations for the NRC and sets the rates charged for these investigations. The combined cost of the DCSA background investigation and any related NRC processing activities (NRC processing fee) is recovered from the licensee through an access authorization fee assessed by the NRC. It is the NRC's practice to publish the fee schedule for special nuclear material access authorization in § 11.15(e) of title 10 of the *Code of Federal Regulations* (10 CFR) and the corresponding fee schedule for restricted data and national security information access authorization in appendix A to 10 CFR part 25. Both schedules are based on rates charged by DSCA for conducting the access authorization background investigations (DSCA investigation billing rates).

Updated Access Authorization Fees

This proposed rule would amend 10 CFR parts 11, 25, and 95 along with appendix A to 10 CFR part 25. The NRC is proposing to revise the processing fee charged to licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP) from 55.8 percent of the DCSA investigation billing rates to 90.2 percent. A September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization showed an increase in the NRC's review time for each application. The audit also showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications; despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012.

In addition, requests for reciprocity would be charged a flat fee rate of $95.00. Previously, the NRC did not charge a fee for reciprocity requests because certain applications from individuals with current Federal access authorizations were processed expeditiously and at a reduced cost. This flat fee would be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting this work. In cases where reciprocity is not acceptable and it is necessary to perform a background investigation, then the NRC would charge the appropriate fee based on the DCSA investigation billing rate. This proposed rule would continue to allow licensees to calculate the NRC access authorization fee for any given application by referencing the current DCSA investigation billing rates schedule for background investigation services. Reimbursable billing rates for personnel background investigations are published by DCSA in a Federal Investigations Notice (FIN). The current DCSA investigation billing rates are published on the DCSA website and are available at *https://www.dcsa.mil/mc/pv/gov_hr_security/billing_rates/.* The NRC's licensees can also obtain the current DCSA investigation billing rates schedule by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at *Licensee_Access_Authorization_Fee.Resource@nrc.gov.*

The fee-calculation formula is designed to recover the NRC's actual in-house processing costs for each application received from a licensee. The NRC's access authorization fee for any given request is determined using the following formula: The DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC material access authorization fee. The provisions in this proposed rule would set the NRC processing fee; the fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (*i.e.,* DCSA rate × 90.2 percent).

Public Law 115–439, the Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215), requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. As noted previously, the DCSA investigation billing rates are pulled directly from the current DCSA fee schedule for investigations. The tables in revised § 11.15(e)(3) and appendix A to 10 CFR part 25 cross-reference each type of NRC access authorization request to the appropriate investigation service listed in the DCSA's investigation billing rates schedule. For example, a licensee seeking a special nuclear material ''NRC–U'' access authorization requiring a Tier 5 (T5) investigation is directed by the table in § 11.15(e)(3) to calculate the NRC processing fee based on the DCSA investigation billing rates for a ''standard'' T5 investigation. According to the current DCSA investigation billing rates schedule (FIN 20–04, ''FY 2021 and FY 2022 Investigations Reimbursable Billing Rates,'' dated June 30, 2020), the DCSA charges $5,465 for a ''standard'' T5 investigation. The table

instructs the licensee to calculate the NRC's application processing fee by multiplying $5,465 by 90.2 percent, which equals $4,929.43. The licensee then rounds the NRC's processing fee to the nearest dollar, or $4,929, and adds that amount to the DCSA investigation billing rate of $5,465 to determine the total NRC access authorization fee: $10,394.

The following table illustrates the calculation process:

Current DCSA investigation billing rate for standard T5	Plus NRC application processing fee					Equals total NRC access authorization fee for NRC-U application
	DCSA rate	×	NRC fee 90.2%	=	(rounded to nearest $)	
$5,465	$5,465	×	90.2%	=	$4,929.43 (rounded to $4,929)	= $10,394

Licensees applying for restricted data or national security information access authorization follow a similar procedure. The table in appendix A to 10 CFR part 25 cross-references each type of ''Q'' or ''L'' access authorization to the corresponding DCSA investigation type. The DCSA investigation billing rate for the type of investigation referenced is determined by consulting the current DCSA investigation billing rates schedule. This rate is then used in the formula to calculate the correct NRC access authorization fee for the type of application submitted. Copies of the current NRC access authorization fees can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to *Licensee_Access_Authorization_Fee.Resource@nrc.gov.* Any change in the NRC's access authorization fees would be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

Administrative Changes

In Federal Investigations Notice Number 16–07, dated September 26, 2016 (*https://www.dcsa.mil/Portals/91/Documents/pv/GovHRSec/FINs/FY16/fin-16-07.pdf*), the Office of Personnel Management (OPM) implemented the Federal Investigative Standards according to the phased Federal Investigative Standards Implementation Plan issued by the Suitability and Security Executive Agents. In accordance with the plan, the Access National Agency Check with Inquiries was renamed to Tier 3 (T3) and the National Agency Check with Law and Credit was renamed to Tier 3 reinvestigation (T3R). The T3 investigation is required for positions designated as non-critical sensitive and/or requiring eligibility for ''L'' or ''R'' access or access to Confidential or Secret information. The T3R is the reinvestigation product for the same positions. The Single Scope Background Investigation was renamed to Tier 5 (T5) and the Single Scope Background Investigation-Periodic Reinvestigation was renamed to Tier 5R (T5R). The T5 investigation is required for positions designated as critical sensitive, special sensitive, and/or requiring eligibility for ''Q'' or ''U'' access or access to Top Secret or Sensitive Compartmented Information. The T5R is the reinvestigation product required for the same positions. This proposed rule would revise the definitions in 10 CFR parts 11, 25, and 95 to include the new naming conventions for background investigations case types. The definitions for the NRC ''R'' and NRC ''U'' special nuclear material access authorizations would include the renamed investigation types Tier 3 and Tier 5, respectively. Also, the definitions for NRC ''L'' and NRC ''Q'' access authorizations would include the renamed investigation types Tier 3 and Tier 5, respectively.

In 2005, the OPM implemented the Electronic Questionnaires for Investigative Processing (e-QIP) system, which allows applicants to electronically enter, update, and release their personal investigative data over a secure internet connection to an employing agency for review and approval. The e-QIP system is a web-based automated system that facilitates the processing of standard investigative forms used when conducting background investigations for Federal security, suitability, fitness, and credentialing purposes. The NRC allows applicants to complete their security form, the Questionnaire for National Security Positions, Standard Form 86 (SF–86), electronically through the (e-QIP) system to minimize errors and expedite processing. This proposed rule would update 10 CFR parts 11 and 25 to clarify that the NRC uses the e-QIP system for applicants to provide their personal investigative data.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Paperwork Reduction Act

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Numbers 3150–0046 and 3150–0062.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

List of Subjects

10 CFR Part 11

Hazardous materials transportation, Investigations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

Dated: December 21, 2021.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2021–28117 Filed 12–27–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0963; Project Identifier AD–2021–01026–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes. This proposed AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines (''fan blades'' are also known as ''1st-stage low-pressure compressor (LPC) blades''—these terms are used interchangeably in this proposed AD). This proposed AD would require modifying the engine inlet to withstand fan blade failure event loads. 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 January 27, 2022.

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 Boeing service information identified in this NPRM, 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.* For Pratt & Whitney service information identified in this NPRM contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0963; 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: Luis Cortez-Muniz, 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:

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–2021–0963; Project Identifier AD–2021–01026–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Luis Cortez-Muniz, 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.* 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 has received reports of three incidents involving in-flight fan blade failures and shutdowns on certain The Boeing Company Model 777–200 and 777–300 series airplanes equipped with Pratt & Whitney (P&W) Model PW4000 series turbofan engines. The two most recent events occurred in December 2020 and February 2021. In the latter incident, the engine fan blade failure occurred during climb at approximately 13,000 feet. While the engine fan blade failure was contained by the fan case, the event loads caused structural failures that resulted in the inlet (inlet lip, inner and outer barrel, and aft bulkhead) and fan cowl doors separating from the engine and airplane. The resultant separated engine and nacelle parts caused damage to the wing and fuselage. Several flammable fluid lines, the engine accessory gearbox, and thrust reverser (T/R) structure were fractured. The hydraulic pump shutoff valve failed to close when the fire handle was pulled, contributing additional flammable fluid to the engine nacelle and T/R resulting in an uncontained engine fire.

In the December 2020 incident, the engine fan blade failure occurred during climb at approximately 15,000 feet. While the engine fan blade failure was contained by the fan case, the event loads caused structural failures that resulted in the fan cowl doors separating from the engine and airplane. The resultant separated engine and nacelle parts caused damage to the left side horizontal stabilizer and fuselage. The engine accessory gearbox and T/R attachment to the engine were also fractured.

In the earliest incident, which occurred in 2018, the engine fan blade failure occurred just after beginning the descent. While the engine fan blade failure was contained by the fan case, the event loads caused structural failures that resulted in the inlet (inlet

lip, inner and outer barrel, and aft bulkhead) and fan cowl doors separating from the engine and airplane. The resultant separated engine and nacelle parts caused damage to the right side horizontal stabilizer, wing and fuselage.

Upon the occurrence of the February 2021 in-flight engine fan blade failure, the FAA issued an Emergency AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021), requiring inspection of the engine fan blades for cracking and removal from service if any cracking is found. Since the two most recent incidents and issuance of that Emergency AD, the FAA, Boeing, and P&W have continued to examine the airplane and engine design, along with the information provided through the incident investigations, to determine if further action is necessary. The FAA has determined that further action is necessary to address the airplane-level implications and unsafe condition resulting from in-flight engine fan blade failures. Fan blade failures can cause fan rotor imbalance and result in fan blade fragments penetrating the inner and outer barrel of the inlet. This condition, if not addressed, could result in the separation of inlet and fan cowl doors and the T/R cowl. This could lead to engine in-flight shutdown, impact damage to the empennage, fuselage, or window, with significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude during operations under extended-range twin-engine operational performance standards (ETOPS) missions, which could result in loss of control of the airplane, a forced off-airport landing, and injury to passengers.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021. This service information specifies procedures for performing thermal acoustic image and ultrasonic testing inspections of 1st-stage LPC blades. 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**.

Related Service Information

The FAA reviewed Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022, of Boeing 777–200/300 Aircraft Maintenance Manual, dated September 5, 2021. The service information specifies procedures for performing a functional check of the engine-driven pump shutoff valve.

Proposed AD Requirements in This NPRM

This proposed AD would require modifying the engine inlet to withstand fan blade failure event loads in accordance with a method approved by the Manager, Seattle ACO Branch, FAA. The modification includes an inspection of the inlet outer barrel for moisture ingression and repair if necessary, adding ballistic shielding and support structure to the inlet outer barrel, revising the outer cowl aft row fasteners, adding support structures to the aft bulkhead, and revising the inlet attach-ring to A-flange engine bolts and associated barrel nuts.

Explanation of Special Flight Permit Paragraph

This proposed AD is related to NPRM Docket Number FAA–2021–0959, which proposes to require initial and repetitive ultrasonic testing (UT) inspections and thermal acoustic image inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. This proposed AD is also related to NPRM Docket Number FAA–2021–0962, which proposes to require, among other actions, repetitive functional checks of the hydraulic pump shutoff valves to ensure they close in response to the fire handle input, and corrective actions if necessary. The special flight permit paragraphs in those proposed ADs are similar to the one in this proposed AD. The special flight permit paragraph includes a limitation requiring that the following actions have been done before the special flight is permitted: A flow path UT inspection of the 1st-stage LPC blades for cracking and the 1st-stage LPC blades have been found serviceable, and a functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the fire handle input within 10 days prior to flight.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 54 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
Modification	660 work-hours × $85 per hour = $56,100	$362,560	$418,660	$22,607,640

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs that are part of the modification specified in this proposed 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

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:

The Boeing Company: Docket No. FAA–2021–0963; Project Identifier AD–2021–01026–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as specified in paragraphs (c)(1) and (2) of this AD.

(1) Model 777–200 series airplanes equipped with Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines.

(2) Model 777–300 series airplanes equipped with Pratt & Whitney PW4090 and PW4098 model turbofan engines.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines. The FAA is issuing this AD to address engine fan blade failure, which could result in the separation of inlet and fan cowl doors and the thrust reverser (T/R) cowl. This could lead to engine in-flight shutdown, impact damage to the empennage, fuselage, or window, with significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude during operations under extended-range twin-engine operational performance standards (ETOPS) missions, which could result in loss of control of the airplane, a forced off-airport landing, and injury to passengers.

(f) Compliance

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

(g) Modification

Before further flight after the effective date of this AD, modify the engine inlet to withstand fan blade failure event loads, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(h) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not permitted except for airplanes on which the actions specified in paragraphs (h)(1) and (2) of this AD have been done.

(1) A flow path ultrasonic testing (UT) inspection of the 1st-stage low-pressure compressor (LPC) blades for cracking has been done as specified in the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to their Return to Service, paragraph 1.A., of Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, and the 1st-stage LPC blades have been found serviceable.

(2) A functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the fire handle input and all applicable corrective actions (*i.e.,* repair) within 10 days prior to flight.

Note (1) to paragraph (h)(2): Guidance for accomplishing the actions required by paragraph (h)(2) of this AD can be found in the ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022) of Boeing 777–200/300 Aircraft Maintenance Manual.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (i)(1), (2), or (3) of this AD.

(1) Paragraph 2. of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 85F–21, dated May 12, 2021, for a flow path UT inspection.

(2) Paragraph 1.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, dated July 1, 2021, for a flow path UT inspection.

(3) Paragraph 2.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, Revision A, dated July 28, 2021, for a flow path UT inspection.

(j) 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 paragraph (k)(1) of this AD. 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.

(k) Related Information

(1) For more information about this AD, contact Luis Cortez-Muniz, 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) For Boeing 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.* For Pratt & Whitney service information identified in this AD, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on December 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27839 Filed 12–22–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1164; Project Identifier MCAI–2021–00975–E]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede airworthiness directive (AD) 2020–20–07 which applies to all Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent

1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines. AD 2020–20–07 requires initial and repetitive borescope inspections (BSIs) or visual inspections of the intermediate-pressure compressor (IPC) shaft assembly and, depending on the results of the inspection, replacement of the IPC shaft assembly. Since the FAA issued AD 2020–20–07, RRD provided optional terminating actions for the required repetitive inspections and alternative inspection instructions. This proposed AD would continue to require initial and repetitive BSIs but would allow modification of the engine in accordance with Rolls-Royce service information as a terminating action to these inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 11, 2022.

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

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

For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *https://www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1164.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1164; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7116; email: *Nicholas.J.Paine@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–2021–1164; Project Identifier MCAI–2021–00975–E'' 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 Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–20–07, Amendment 39–21263 (85 FR 62975, October 6, 2020) (AD 2020–20–07), for all RRD Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines. AD 2020–20–07 was prompted by a report of crack findings in the front air seal on the IPC shaft assembly during the stripping of a flight test engine. AD 2020–20–07 requires initial and repetitive BSIs or visual inspections of the IPC shaft assembly and, depending on the results of the inspection, replacement of the IPC shaft assembly with a part eligible for installation. The agency issued AD 2020–20–07 to prevent failure of the IPC shaft assembly, which could result in loss of thrust control and reduced control of the airplane.

Actions Since AD 2020–20–07 Was Issued

Since the FAA issued AD 2020–20–07, EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0282R1, dated August 25, 2021 (EASA AD 2019–0282R1), to correct an unsafe condition for all RRD Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines.

RRD also published Rolls-Royce Trent 1000 Service Bulletin (SB) 72–K570, Initial Issue, dated June 15, 2021 (Rolls-Royce Trent 1000 SB 72–K570); and Rolls-Royce Trent 1000 SB 72–K571, Initial Issue, dated June 15, 2021 (Rolls-Royce Trent 1000 SB 72–K571). This service information introduces optional terminating actions for the repetitive inspections and an alternative method for the repetitive BSIs of the IPC shaft assembly.

See EASA AD 2019–0282R1 for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2020–20–07, this proposed AD would retain all the requirements of AD 2020–20–07. Those requirements are

referenced in EASA AD 2019–0282R1, which, in turn, is referenced in paragraph (g) of this proposed AD.

FAA's Determination

These engines have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Community, the FAA has been notified about the unsafe condition described in the MCAI. The FAA is issuing this NPRM after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other engines of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2019–0282R1. EASA AD 2019–0282R1 describes actions for initial and repetitive BSIs of the IPC shaft assembly. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Rolls-Royce Trent 1000 Alert Non-Modification Service Bulletin (NMSB) 72–AK451, Revision 1, dated July 15, 2021 (Rolls-Royce Trent 1000 Alert NMSB 72–AK451); Rolls-Royce Trent 1000 SB 72–K570; and Rolls-Royce Trent 1000 SB 72–K571.

Rolls-Royce Trent 1000 Alert NMSB 72–AK451 describes procedures for initial and repetitive BSIs of the IPC shaft assembly. Rolls-Royce Trent 1000 SB 72–K570 and Rolls-Royce Trent 1000 SB 72–K571, differentiated by engine model, describe procedures for the modification of the engine as a terminating action to the initial and repetitive BSIs of the IPC shaft assembly.

Proposed AD Requirements in this NPRM

This proposed AD would retain all the requirements of AD 2020–20–07. This proposed AD would require compliance with the required actions from November 10, 2020, the effective date of AD 2020–20–07. This proposed AD would also allow modification of the engine in accordance with Rolls-Royce service information as a terminating action to the initial and repetitive BSIs of the IPC shaft assembly. This proposed AD would also require accomplishing the actions specified in EASA AD 2019–0282R1, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, the FAA proposes to incorporate EASA AD 2019–0282R1 in the FAA final rule. This proposed AD would require compliance with EASA AD 2019–0282R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2019–0282R1 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2019–0282R1. Service information specified by EASA AD 2019–0282R1 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1164 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

Where EASA AD 2019–0282R1 requires compliance from the effective date of EASA AD 2019–0282, this proposed AD requires compliance from the effective date of FAA AD 2020–20–07. Where EASA AD 2019–0282R1 requires contacting Rolls-Royce for approved corrective actions if a crack is detected during any on-wing inspection and in-shop inspection, this proposed AD requires removing the part and installing a serviceable part.

Where EASA AD 2019–0282R1 defines a serviceable part as an IPC shaft assembly which is not an affected part; or an affected part which is new (never previously installed on an engine); or an affected part that, before (re)installation, has passed (no crack detected) an inspection in accordance with the instructions of the NMSB, this proposed AD includes in that definition an IPC shaft assembly that, before (re)installation, has passed a visual inspection (no crack detected) of the exposed part using FAA-approved maintenance procedures.

Where EASA AD 2019–0282R1 references on-wing inspections, a visual inspection of the IPC shaft assembly using FAA-approved maintenance procedures may be substituted for any on-wing borescope inspection if the affected part is exposed, and provided that the compliance times specified in this proposed AD are not exceeded.

This proposed AD does not mandate compliance with the ''Remarks'' section of EASA AD 2019–0282R1.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 22 engines installed on 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
BSI or visual inspection of IPC shaft assembly.	3.5 work-hours × $85 per hour = $297.50	$0	$297.50	$6,545

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace IPC shaft assembly	1,080 work-hours × $85 per hour = $91,800	$1,365,219	$1,457,019

Authority for This Rulemaking

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

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

Regulatory Findings

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:

■ a. Removing Airworthiness Directive (AD) 2020–20–07, Amendment 39–21263 (85 FR 62975, October 6, 2020); and

■ b. Adding the following new AD:

Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Docket No. FAA–2021–1164; Project Identifier MCAI–2021–00975–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 11, 2022.

(b) Affected ADs

This AD replaces AD 2020–20–07, Amendment 39–21263 (85 FR 62975, October 6, 2020) (AD 2020–20–07).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines installed as identified in EASA AD 2019–0282R1, Revision 1, dated August 25, 2021 (EASA AD 2019–0282R1).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of crack findings in the front air seal on the intermediate-pressure compressor (IPC) shaft assembly during the stripping of a flight test engine. The FAA is issuing this AD to prevent failure of the IPC shaft assembly. The unsafe condition, if not addressed, could result in loss of thrust control and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, EASA AD 2019–0282R1.

(h) Exceptions to EASA AD 2019–0282R1

(1) Where EASA AD 2019–0282R1 requires compliance from November 27, 2019, the effective date of EASA AD 2019–0282, this AD requires compliance from November 10, 2020, the effective date of FAA AD 2020–20–07.

(2) Where EASA AD 2019–0282R1 requires contacting Rolls-Royce for approved corrective actions if a crack is detected during any on-wing inspection and in-shop inspection, this AD requires removing the IPC shaft assembly and replacing it with a part eligible for installation before further flight.

(3) Where EASA AD 2019–0282R1 defines a serviceable part as an IPC shaft assembly which is not an affected part; or an affected part which is new (never previously installed on an engine); or an affected part that, before (re)installation, has passed (no crack detected) an inspection in accordance with the instructions of the NMSB, this AD also includes in that definition an IPC shaft assembly that, before (re)installation, has passed a visual inspection (no crack detected) of the exposed part using FAA-approved maintenance procedures.

(4) Where EASA AD 2019–0282R1 references on-wing inspections, this AD allows for a visual inspection of the IPC shaft assembly using FAA-approved maintenance procedures as a substitute for any on-wing borescope inspection if the affected part is exposed, provided that the compliance times specified in this AD are not exceeded.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2019–0282R1.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about EASA AD 2019–0282R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *https://*

www.easa.europa.eu. You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1164.

(2) For more information about this AD, contact Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7116; email: *Nicholas.J.Paine@faa.gov.*

(3) For RRD service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424 fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx.* You may view this material 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 (817) 222–5110.

Issued on December 20, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27980 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1005; Project Identifier AD–2021–00842–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 series airplanes. This proposed AD was prompted by a report that after a certain circuit breaker tripped, power to the two pitot-static (P/S) probe heaters on the right-hand side was lost, and the flightcrew discovered conflicting procedures in the flightcrew operations manual/quick reference handbook (FCOM/QRH). This proposed AD would require revising the existing airplane flight manual (AFM) to incorporate procedures to be applied during P/S probe heater failure conditions. 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 February 11, 2022.

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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1005; 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: Huey Ton, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5320; email: *huey.ton@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–2021–1005; Project Identifier AD–2021–00842–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Huey Ton, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5320; email: *huey.ton@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that after a certain circuit breaker tripped, power to the two P/S probe heaters on the right-hand side was lost, and the flightcrew discovered conflicting procedures in the FCOM/QRH. Those existing procedures were written for single P/S probe heater failures and did not account for a scenario where both P/S probe heaters on one side of the airplane failed simultaneously, therefore failing to isolate the unheated P/S probes in this scenario. This condition, if not addressed, could result in the transmission of potentially inaccurate pitot static pressure data to the air data computer (ADC), resulting in erroneous or misleading air data being displayed, which, in combination with a stall, overspeed, overrun, or short/hard landing conditions, could result in a reduced ability of the flightcrew to maintain safe flight and landing of the airplane.

The Boeing Company has revised and released an updated FCOM/QRH to address this condition by replacing the conflicting procedures with new procedures. However, the FCOM/QRH are not FAA-approved documents. Therefore, the FAA has determined the existing AFM must be revised to include

procedures to address the identified unsafe condition.

The FAA has determined that the identified unsafe condition only applies to Model 747–400 series airplanes having a three ADC configuration, except for airplanes on which the Production Revision Record (PRR) 85655 has been incorporated.

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.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing AFM to incorporate procedures to be applied during P/S probe heater failure conditions.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 114 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
AFM Revision	1 work-hour × $85 per hour = $85	None	$85	$9,690

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:

The Boeing Company: Docket No. FAA–2021–1005; Project Identifier AD–2021–00842–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 series airplanes, certificated in any category, having a three air data computer (ADC) configuration, except for airplanes on which the Production Revision Record (PRR) 85655 has been incorporated.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report that after a certain circuit breaker tripped, power to the two pitot-static (P/S) probe heaters on the right-hand side was lost, and the flightcrew discovered conflicting procedures in the flightcrew operations manual/quick reference handbook (FCOM/QRH). The FAA is issuing this AD to address the conflicting procedures, which could result in the transmission of potentially inaccurate pitot static pressure data to the ADC, resulting in erroneous or misleading air data being displayed, which, in combination with a stall, overspeed, overrun, or short/hard landing condition, could result in reduced ability of the flightcrew to maintain continued safe flight and landing of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revisions

Within 90 days after the effective date of this AD, revise the Non-Normal Procedures Section of the existing AFM to include the changes specified in paragraphs (g)(1) through (4) of this AD. Revising the existing AFM to include the changes specified in paragraphs (g)(1) through (4) of this AD, may be done by inserting a copy of figure 1 to paragraph (g)(1) through figure 4 to paragraph (g)(4) of this AD into the existing AFM.

(1) In Section 2, Non-Normal Procedures, add the ''HEAT P/S CAPT'' paragraph to include the information in figure 1 to paragraph (g)(1) of this AD.

BILLING CODE 4910–13–P

Figure 1 to paragraph (g)(1) – *AFM Revision: Heat P/S Captain*

PITOT-STATIC PROBE HEAT (Required by AD 2021--**)**

HEAT P/S CAPT

The HEAT P/S CAPT message indicates that captain's pitot static probe heat is failed. This procedure objective is to determine whether more than one probe heat is failed, and to select air data sources to minimize or to prevent erroneous flight instrument indications.

Disengage the autopilot.

If EICAS message HEAT P/S CAPT is displayed and HEAT P/S L AUX is blank, place the captain's air data source selector to R and the first officer's air data source selector to C. Engage the R autopilot, if needed. L and C autopilots are unreliable in icing conditions, end of procedure.

[Disengage the autopilot.]

If EICAS messages HEAT P/S CAPT and HEAT P/S L AUX are both displayed, place the captain's air data source selector to C. Engage any autopilot, if needed. Avoid icing conditions. Flight in icing conditions can result in unreliable standby flight instrument indications.

Note Inoperative Items:

- Both pitot probe heaters on the left side of the airplane inoperative – Avoid Icing Conditions.
- Autothrottle inoperative, Reference EPR is blank - Use manual throttle.
- LNAV and VNAV inoperative – Use HDG SEL or HDG HOLD and FLCH, V/S or ALT HOLD.

Do not accomplish the HEAT P/S L AUX non-normal procedure, end of procedure.

(2) In Section 2, Non-Normal Procedures, add the ''HEAT P/S F/O'' paragraph to include the information in figure 2 to paragraph (g)(2) of this AD.

Figure 2 to paragraph (g)(2) – *AFM Revision: Heat P/S First Officer*

PITOT-STATIC PROBE HEAT (CONTINUED) (Required by AD 2021--**)**

HEAT P/S F/O

The HEAT P/S F/O message indicates that First Officer's pitot static probe heat is failed. This procedure objective is to determine whether more than one probe heat is failed, and to select air data sources to minimize or to prevent erroneous flight instrument indications.

Disengage the autopilot.

If EICAS message HEAT P/S F/O is displayed and HEAT P/S R AUX is blank, place the captain's air data source selector to C and the first officer's air data source selector to L. Engage the L or C autopilot, if needed. R autopilot is unreliable in icing conditions, end of procedure.

[Disengage the autopilot.]

If EICAS messages HEAT P/S F/O and HEAT P/S R AUX are both displayed, engage the L or C autopilot, if needed. R autopilot is unreliable in icing conditions. Avoid icing conditions. Flight in icing conditions can result in unreliable first officer's flight instrument indications.

Note Inoperative Items:

- Both pitot probe heaters on the right side of the airplane inoperative – Avoid Icing Conditions.
- Autothrottle inoperative, Reference EPR is blank - Use manual throttle.
- LNAV and VNAV inoperative – Use HDG SEL or HDG HOLD and FLCH, V/S or ALT HOLD.

Do not accomplish the HEAT P/S R AUX non-normal procedure, end of procedure.

(3) In Section 2, Non-Normal Procedures, add the ''HEAT P/S L AUX'' paragraph to include the information in figure 3 to paragraph (g)(3) of this AD.

Figure 3 to paragraph (g)(3) – *AFM Revision: Heat P/S Left Auxiliary*

PITOT-STATIC PROBE HEAT (CONTINUED) (Required by AD 2021--**)**

HEAT P/S L AUX

The HEAT P/S L AUX message indicates that left auxiliary pitot static probe heat is failed. This procedure objective is to determine whether more than one probe heat is failed, and to select air data sources to minimize or to prevent erroneous flight instrument indications.

Disengage the autopilot.

If EICAS message HEAT P/S L AUX is displayed and HEAT P/S CAPT is blank, place the captain's air data source selector to C and the first officer's air data source selector to L. Engage the L or C autopilot, if needed. Avoid Icing Conditions. Flight in icing conditions can result in unreliable standby flight instrument indications, end of procedure.

[Disengage the autopilot.]

If EICAS messages HEAT P/S L AUX and HEAT P/S CAPT are both displayed, place the captain's air data source selector to C. Engage any autopilot, if needed. Avoid icing conditions. Flight in icing conditions can result in unreliable standby flight instrument indications.

Note Inoperative Items:

- Both pitot probe heaters on the left side of the airplane are inoperative – Avoid Icing Conditions.
- Autothrottle inoperative, Reference EPR is blank - Use manual throttle.
- LNAV and VNAV inoperative – Use HDG SEL or HDG HOLD and FLCH, V/S or ALT HOLD.

Do not accomplish the HEAT P/S CAPT non-normal procedure, end of procedure.

(4) In Section 2, Non-Normal Procedures, add the ''HEAT P/S R AUX'' paragraph to include the information in figure 4 to paragraph (g)(4) of this AD.

Figure 4 to paragraph (g)(4) – *AFM Revision: Heat P/S Right Auxiliary*

PITOT-STATIC PROBE HEAT (CONTINUED) (Required by AD 2021--**)**

HEAT P/S R AUX

The HEAT P/S R AUX message indicates that right auxiliary pitot static probe heat is failed. This procedure objective is to determine whether more than one probe heat is failed, and to select air data sources to minimize or to prevent erroneous flight instrument indications.

Disengage the autopilot.

If EICAS message HEAT P/S R AUX is displayed and HEAT P/S F/O is blank, place the captain's air data source selector to R and the first officer's air data source selector to C. Engage the R autopilot, if needed, end of procedure.

[Disengage the autopilot.]

If EICAS messages HEAT P/S R AUX and HEAT P/S F/O are both displayed, engage the L or C autopilot, if needed. R autopilot is unreliable in icing conditions. Avoid icing conditions. Flight in icing conditions can result in unreliable first officer's flight instrument indications.

Note Inoperative Items:

- Both pitot probe heaters on the right side of the airplane are inoperative – Avoid Icing Conditions.
- Autothrottle inoperative, Reference EPR is blank - Use manual throttle.
- LNAV and VNAV inoperative – Use HDG SEL or HDG HOLD and FLCH, V/S or ALT HOLD.

Do not accomplish the HEAT P/S F/O non-normal procedure, end of procedure.

BILLING CODE 4910–13–C

(h) 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 paragraph (i)(2) of this AD. 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.

(i) Related Information

(1) For more information about this AD, contact Huey Ton, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5320; email: *huey.ton@faa.gov.*

(2) For information about AMOCs, contact Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

Issued on November 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27974 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0959; Project Identifier AD–2021–00830–E]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–03–01 and AD 2021–05–51, which apply to certain Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines. AD 2019–03–01 requires performing initial and repetitive thermal acoustic image (TAI) inspections for cracks in certain 1st-stage low-pressure compressor (LPC) blades and removal of those blades that fail inspection. AD 2021–05–51 requires performing a one-time TAI inspection for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. Since the FAA issued AD 2019–03–01 and AD 2021–05–51, the manufacturer determined the need to add initial and repetitive ultrasonic testing (UT) inspections of the 1st-stage LPC blades. This proposed AD would require initial and repetitive UT inspections and TAI inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. 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 January 27, 2022.

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 Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0959; 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: Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7655; fax: (781) 238–7199; email: *carol.nguyen@faa.gov*.

SUPPLEMENTARY INFORMATION:

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–2021–0959; Project Identifier AD–2021–00830–E'' 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.

The FAA has been informed that PW has done some outreach with affected operators regarding the proposed corrective actions for this unsafe condition. As a result, affected operators are already aware of the proposed corrective actions and, in some cases, have already begun implementation of the updated inspections on the 1st-stage LPC blades proposed by this AD. Therefore, the FAA has determined that a 30-day comment period is appropriate.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Carol Nguyen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–03–01, Amendment 39–19553 (84 FR 4320, February 15, 2019) (AD 2019–03–01), and AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021) (AD 2021–05–51) for certain PW PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines. AD 2019–03–01 and AD 2021–05–51 were prompted by three in-flight failures of a 1st-stage LPC blade, with one failure resulting in an engine fire during flight. AD 2019–03–01 and AD 2021–05–51 require performing a TAI inspection for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. The agency issued AD 2019–03–01 and AD 2021–05–51 to prevent failure of the 1st-stage LPC blades.

Actions Since AD 2019–03–01 and AD 2021–05–51 Was Issued

Since the FAA issued AD 2019–03–01 and AD 2021–05–51, the manufacturer developed an improved UT inspection for the three critical locations on the 1st-stage LPC blade, two at the mid span region of the blade and one at the flow path region of the blade. The manufacturer published Pratt & Whitney Alert Service Bulletin (ASB) PW4G–112–A72–361, dated October 15, 2021, which provides instructions for performing both the improved UT inspection and the TAI inspection. The manufacturer also determined that it was necessary to adjust the initial TAI inspection threshold and lower the repetitive TAI inspection interval on the 1st-stage LPC blades to address the unsafe condition.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney ASB PW4G–112–A72–361, dated October 15, 2021. This ASB specifies procedures for performing the TAI and UT inspections of 1st-stage LPC blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022) of Boeing 777–200/300 Aircraft Maintenance Manual, dated September 5, 2021. The service information specifies procedures for performing the engine-driven pump shutoff valve functional check.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2019–03–01 and AD 2021–05–51. This proposed AD would require initial and repetitive UT inspections and TAI inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection.

Interim Action

The FAA considers this AD to be an interim action. The FAA anticipates that further AD action will follow.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 108 engines installed on 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
Perform UT flow path inspection of 1st-stage LPC blades.	15 work-hours × $85 per hour = $1,275	$0	$1,275	$137,700
Perform UT mid span inspection of 1st-stage LPC blades.	30 work-hours × $85 per hour = $2,550	0	2,550	275,400
Perform TAI inspection of 1st-stage LPC blades.	22 work-hours × $85 per hour = $1,870	0	1,870	201,960

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace 1st-stage LPC blade	0 work-hours × $85 per hour = $0	$125,000	$125,000

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 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 (AD) 2019–03–01, Amendment 39–19553 (84 FR 4320, February 15, 2019), and AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021); and

■ b. Adding the following new airworthiness directive:

Pratt & Whitney Division: Docket No. FAA–2021–0959; Project Identifier AD–2021–00830–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by January 27, 2022.

(b) Affected ADs

This AD replaces AD 2019–03–01, Amendment 39–19553 (84 FR 4320, February 15, 2019), and AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021).

(c) Applicability

This AD applies to Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines, with a 1st-stage low-pressure compressor (LPC) blade, with part number 52A241, 55A801, 55A801–001, 55A901, 55A901–001, 56A201, 56A201–001, or 56A221, installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by three in-flight failures of a 1st-stage LPC blade, with one failure resulting in an engine fire during flight, and subsequent manufacturer publication of service information specifying improved inspections for three critical locations on the 1st-stage LPC blade. The FAA is issuing this AD to prevent failure of the 1st-stage LPC blades. The unsafe condition, if not addressed, could result in 1st-stage LPC blade release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Initial 1st-Stage LPC Blade Inspections

(i) For 1st-stage LPC blades that have accumulated any number of cycles since new (CSN) greater than zero, before further flight after the effective date of this AD, perform a flow path and a mid span ultrasonic testing (UT) inspection of the 1st-stage LPC blades in accordance with the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to Their Return to Service, paragraph 1.A. through C., of Pratt & Whitney Alert Service Bulletin (ASB) PW4G–112–A72–361, dated October 15, 2021 (PW4G–112–A72–361).

Note 1 to paragraph (g)(1)(i): New fan blades that have zero CSN do not need to undergo the initial 1st-stage LPC blade flow path and mid span UT inspection required by paragraph (g)(1)(i) of this AD, but must undergo the repetitive inspections of paragraph (g)(2) of this AD.

(ii) Within the following compliance times after the effective date of this AD, perform a thermal acoustic image (TAI) inspection of the 1st-stage LPC blades for cracks using a method approved by the FAA:

(A) For 1st-stage LPC blades with 1,000 CSN or more, with no prior TAI inspection, inspect before further flight.

(B) For 1st-stage LPC blades with 1,000 flight cycles (FCs) or more since the last TAI inspection, inspect before further flight.

(C) For 1st-stage LPC blades with fewer than 1,000 CSN, with no prior TAI inspection, inspect before accumulating 1,000 CSN.

(D) For 1st-stage LPC blades with fewer than 1,000 FCs since the last TAI inspection, inspect before accumulating 1,000 FCs since the last TAI inspection.

Note 2 to paragraph (g)(1)(ii): Vendors that can perform an FAA-approved TAI inspection are listed in the Vendor Services section of PW4G–112–A72–361.

(2) Repetitive 1st-Stage LPC Blade Inspections

(i) Before exceeding 275 FCs since the last flow path UT inspection, and thereafter at intervals not exceeding 275 FCs since the last flow path UT inspection, perform a flow path UT inspection of the 1st-stage LPC blades in accordance with the Accomplishment Instructions, Part B—Repetitive Inspection of All LPC Fan Blades After Their Return to Service, paragraph 1.A., of PW4G–112–A72–361.

(ii) Before exceeding 550 FCs since the last mid span UT inspection, and thereafter at intervals not exceeding 550 FCs since the last mid span UT inspection, perform a mid span UT inspection of the 1st-stage LPC blades in accordance with the Accomplishment Instructions, Part B—Repetitive Inspection of All LPC Fan Blades After Their Return to Service, paragraphs 1.B. and C., of PW4G–112–A72–361.

(iii) Before exceeding 1,000 FCs since the last TAI inspection, and thereafter at intervals not exceeding 1,000 FCs since the last TAI inspection, perform repetitive TAI inspections of the 1st-stage LPC blades using a method approved by the FAA.

(3) Removal of the 1st-Stage LPC Blade

(i) If any 1st-stage LPC blade fails any inspection required by paragraphs (g)(1) or (2) of this AD, before further flight, remove the 1st-stage LPC blade from service and replace with a part eligible for installation.

(ii) [Reserved]

(h) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not permitted except for airplanes on which the actions specified in paragraphs (h)(1) and (2) of this AD have been done.

(1) A flow path UT inspection of the 1st-stage LPC blades for cracking has been done as specified in the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to their Return to Service, paragraph 1.A., of PW4G–112–A72–361, and the 1st-stage LPC blades have been found serviceable.

(2) A functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the fire handle input and all applicable corrective actions (*i.e.,* repair) within 10 days prior to flight.

Note 3 to paragraph (h)(2): Guidance for accomplishing the actions required by paragraph (h)(2) of this AD can be found in the ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022) of Boeing 777–200/300 Aircraft Maintenance Manual.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g)(1) and (h)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (i)(1), (2), or (3) of this AD.

(1) Paragraph 2. of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 85F21, dated May 12, 2021, for a flow path UT inspection.

(2) Paragraph 1.a) through c) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, dated July 1, 2021, for a flow path and a mid span UT inspection.

(3) Paragraph 2.a) through c) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, Revision A, dated July 28, 2021, for a flow path and a mid span UT inspection.

(j) 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 paragraph (k)(1) of this AD. 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.

(k) Related Information

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

(2) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this referenced 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.

Issued on December 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27840 Filed 12–22–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1166; Project Identifier MCAI–2021–00952–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–11–25, which applies to certain Airbus Helicopters (type certificate previously held by Eurocopter France) Model AS350B3 and EC130T2 helicopters. AD 2021–11–25 requires revising the existing rotorcraft flight manual (RFM) for your helicopter by inserting a new procedure (temporary). Since the FAA issued AD 2021–11–25, the manufacturer has identified an additional affected full authority digital engine control (FADEC) part number and developed an optional modification for the affected FADECs. This proposed AD would require revising the existing RFM for your helicopter by inserting a new procedure (temporary). This proposed AD would also require, for helicopters on which an optional terminating action (installation of serviceable FADECs) is done, removing the applicable temporary procedure from the existing RFM for your helicopter. In addition, this proposed AD would also add helicopters to the applicability. Furthermore, this proposed AD would prohibit the installation of an affected FADEC. 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 February 11, 2022.

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 Airbus Helicopters service information identified in this NPRM, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* For Safran Turbomeca service information identified in this NPRM contact Safran Helicopter Engines, S.A., 64511 Bordes, France; phone: +33 (0) 5 59 74 45 11. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1166; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@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–2021–1166; Project Identifier MCAI–2021–00952–R'' 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 Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–11–25, Amendment 39–21587 (86 FR 33097, June 24, 2021), (AD 2021–11–25), for Airbus Helicopters (type certificate previously held by Eurocopter France) Model AS350B3 and EC130T2 helicopters with an ARRIEL 2D engine and THALES FADEC part number (P/N) C13165DA00 without amendment A or P/N C13165FA00 without amendment B, installed. AD 2021–11–25 requires revising the Emergency Procedures of the existing RFM for your helicopter by inserting Appendix 4. of Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–01.00.67 or ASB No. EC130–04A004, each Revision 2 and dated February 17, 2014 (ASB AS350–01.00.67 or ASB EC130–04A004), as applicable to your helicopter. AD 2021–11–25 was prompted by EASA AD 2013–0287, dated December 5, 2013 (EASA AD 2013–0287), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter (formerly Eurocopter

France, Aerospatiale) Model AS 350 B3 and EC 130 T2 helicopters with an ARRIEL 2D engine and THALES FADEC P/N C13165DA00 or P/N C13165FA00 installed. EASA advised that there was a report of an in-flight event where the pilot noticed that the temporary amber governor (GOV) light had illuminated, followed by the failure of the vehicle engine monitoring display (VEMD) screens, and no availability of the automatic or auxiliary engine back-up control ancillary unit (EBCAU). Subsequent investigation identified an internal failure of the engine digital electronic control unit (DECU), which led to loss of fuel flow regulation (frozen fuel metering unit). This failure was not indicated to the pilot by a red GOV warning light as expected, but with amber GOV indication and loss of VEMD display instead. EASA also advised that if this fuel metering unit is frozen in the open position, it may lead to a rotor overspeed, and if it is frozen in the closed position, it may lead to unavailability of engine power. EASA stated that this condition, if not addressed, could result in the pilot identifying the type of failure condition incorrectly, possibly resulting in an improper response.

Accordingly, and pending the development of a DECU assembly design improvement, EASA AD 2013–0287 required incorporating a new procedure into the Emergency Procedures section of the RFM and informing all flight crews of the RFM change. EASA considered its AD an interim action and stated that further AD action may follow.

After EASA issued EASA AD 2013–0287, EASA issued safety information bulletin (SIB) No. 2013–23, dated December 19, 2013, for Eurocopter AS 350 B3 and EC 130 T2 helicopters with a Turboméca ARRIEL 2D engine installed. The SIB recommended modifying certain electronic engine control units (EECUs).

Actions Since AD 2021–11–25 Was Issued

Since the FAA issued AD 2021–11–25, EASA issued AD 2021–0195, dated August 20, 2021 (EASA AD 2021–0195), which supersedes EASA AD 2013–0287. EASA advises that after EASA AD 2013–0287 was issued, Airbus Helicopters revised ASB AS350–01.00.67 and ASB EC130–04A004 to include an additional affected part number as part of the same rectification campaign. Additionally, EASA advises that in parallel, SAFRAN (formerly Turboméca) developed a modification of the affected part, which mitigates the risk of rotor speed fluctuations, loss of power or uncommanded in-flight shutdown, and issued Service Bulletin 292 73 2852 providing FADEC replacement instructions. Consequently, Airbus Helicopters issued the applicable ASBs, providing instructions to remove the temporary procedure from the RFM Emergency Procedures section for helicopters with a modified FADEC. Accordingly, EASA AD 2021–0195 retains the requirements of EASA AD 2013–0287 and requires removing the temporary revision from the Emergency Procedures section of the RFM for helicopters with a modified FADEC installed. EASA AD 2021–0195 also prohibits the installation of an affected part after installation of a modified FADEC. Furthermore, EASA AD 2021–0195 specifies to ''inform all flight crews'' of revisions to the RFM, and thereafter to ''operate the helicopter accordingly.''

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. AS350–01.00.67, Revision 2, dated February 17, 2014; and Alert Service Bulletin No. EC130–04A004, Revision 2, dated February 17, 2014; which the Director of the Federal Register approved for incorporation by reference as of July 29, 2021.

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

The FAA also reviewed Safran Turbomeca Mandatory Service Bulletin No. 292 73 2852, Revision C, dated June 6, 2016. This service information specifies replacing certain FADEC D EECUs with certain amended FADEC D EECUs.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2021–11–25. This proposed AD would also expand the applicability by adding helicopters that have a FADEC, P/N C13165DA00PC00 without amendment A, installed. This proposed AD would also require, for the added helicopters, revising the existing RFM for your helicopter by inserting a new procedure (temporary) into the Emergency Procedures section. This proposed AD would also provide an optional terminating action (installation of serviceable FADECs). This proposed AD would also require, for helicopters on which the terminating action is done, removing the applicable procedure (temporary) from the Emergency Procedures section of the existing RFM for your helicopter. Furthermore, this proposed AD would prohibit the installation of an affected FADEC.

Differences Between This Proposed AD and the EASA AD

EASA AD 2021–0195 requires operators to ''inform all flight crews'' of revisions to the RFM, and thereafter to ''operate the helicopter accordingly.'' However, this proposed AD would not specifically require those actions.

FAA regulations mandate compliance with only the operating limitations section of the flight manual. The flight manual changes that would be required by this proposed AD would apply to the emergency procedures section of the existing RFM for your helicopter. Furthermore, compliance with such requirements in an AD is impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the aircraft in such a manner is unenforceable. Nonetheless, the FAA recommends that flight crews of the helicopters listed in the applicability operate in accordance with the revised emergency procedures specified in this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect up to 628 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the existing RFM for your helicopter takes about 0.25 work-hour for an estimated cost of $21 per helicopter and up to $13,188 for the U.S. fleet.

Accomplishing the optional terminating action, if done, takes about 1 work-hour, with a parts costs of $5,000, for an estimated cost of $5,085 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–11–25, Amendment 39–21587 (86 FR 33097, June 24, 2021); and

■ b. Adding the following new airworthiness directive:

Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Docket No. FAA–2021–1166; Project Identifier MCAI–2021–00952–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by February 11, 2022.

(b) Affected ADs

This AD replaces AD 2021–11–25, Amendment 39–21587 (86 FR 33097, June 24, 2021) (AD 2021–11–25).

(c) Applicability

This AD applies to Airbus Helicopters (type certificate previously held by Eurocopter France) Model AS350B3 and EC130T2 helicopters, certificated in any category, with an ARRIEL 2D engine and with THALES full authority digital engine control (FADEC) part number (P/N) C13165DA00 without amendment A, P/N C13165DA00PC00 without amendment A, or P/N C13165FA00 without amendment B, that has a serial number below 1736, installed.

Note 1 to paragraph (c): Helicopters with a Model AS350B3e designation are Model AS350B3 helicopters.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7321, Engine Fuel Control/Turbine Engines.

(e) Unsafe Condition

This AD was prompted by a report of failure of an engine digital electronic control unit. The FAA is issuing this AD to prevent incorrect indicator illumination, display failure, and loss of fuel flow regulation (frozen fuel metering unit). The unsafe condition, if not addressed, could result in misleading information to the pilot, rotor overspeed or unavailability of engine power, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Retained Revision to the Existing Rotorcraft Flight Manual (RFM) for Your Helicopter and Optional Terminating Action for Certain Helicopters With New Optional Terminating Action

For helicopters with FADEC P/N C13165DA00 without amendment A or P/N C13165FA00 without amendment B installed:

(1) Within 25 hours time-in-service after July 29, 2021 (the effective date of AD 2021–11–25), revise the Emergency Procedures of the existing RFM for your helicopter by inserting Appendix 4. of Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–01.00.67 or ASB No. EC130–04A004, each Revision 2 and dated February 17, 2014 (ASB AS350–01.00.67 or ASB EC130–04A004), as applicable to your helicopter model. Inserting a different document with information identical to that in Appendix 4. of ASB AS350–01.00.67 or ASB EC130–04A004, as applicable to your helicopter model, is acceptable for compliance with the requirement of this paragraph.

(2) As an optional terminating action for the requirement of paragraph (g)(1) of this AD, install amendment A on FADEC P/N C13165DA00 or amendment B on FADEC P/N C13165FA00.

(3) As an optional terminating action for the requirement of paragraph (g)(1) of this AD, install a FADEC unit having P/N C13165DA00 with amendment A, P/N C13165DA00PC00 with amendment A, or P/N C13165FA00 with amendment B; or install a FADEC unit other than a FADEC unit having P/N C13165DA00, P/N C13165DA00PC00, or P/N C13165FA00, that has a serial number below 1736.

(h) New Requirement: Revision to the Existing RFM for Your Helicopter and Optional Terminating Action for Certain Other Helicopters

For helicopters that have FADEC P/N C13165DA00PC00 without amendment A installed:

(1) Within 25 hours time-in-service after the effective date of this AD, revise the existing RFM for your helicopter by inserting Appendix 4. of ASB AS350–01.00.67 or ASB EC130–04A004, as applicable to your helicopter model. Inserting a different document with information identical to that in Appendix 4. of ASB AS350–01.00.67 or ASB EC130–04A004, as applicable to your helicopter model, is acceptable for compliance with the requirement of this paragraph.

(2) As an optional terminating action for the requirement of paragraph (h)(1) of this AD, install amendment A on FADEC P/N C13165DA00PC00.

(3) As an optional terminating action for the requirement of paragraph (h)(1) of this AD, install a FADEC unit having P/N C13165DA00 with amendment A, P/N C13165DA00PC00 with amendment A, or P/N C13165FA00 with amendment B; or install a FADEC unit other than a FADEC unit having P/N C13165DA00, P/N C13165DA00PC00, or P/N C13165FA00, that has a serial number below 1736.

(i) New Requirement: Removal of Temporary Revision From the Existing RFM for Your Helicopter

(1) For helicopters that accomplish the optional terminating action specified in paragraph (g)(2) or (3) of this AD: Concurrently with the installation, before further flight, remove the temporary revision to the existing RFM for your helicopter that was inserted in accordance with the requirement of paragraph (g)(1) of this AD.

(2) For helicopters that accomplish the optional terminating action specified in paragraph (h)(2) or (3) of this AD: Concurrently with the installation, before further flight, remove the temporary revision to the existing RFM for your helicopter that was inserted in accordance with the requirement of paragraph (h)(1) of this AD.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any helicopter a FADEC identified in paragraph (c) of this AD (affected FADEC part).

Note 2 to paragraph (j): Removal of an affected FADEC part from a helicopter and reinstallation of that same affected FADEC part on the same helicopter during the same maintenance visit is not considered ''install'' as specified in paragraph (j) of this AD.

(k) Special Flight Permits

Special flight permits may be issued to operate the helicopter to a location where the actions specified in this AD can be performed, provided no passengers are onboard.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

(1) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(2) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* For Safran Turbomeca service information identified in this AD, contact Safran Helicopter Engines, S.A., 64511 Bordes, France; phone: +33 (0) 5 59 74 45 11. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2021–0195, dated August 20, 2021. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–1166.

Issued on December 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–28132 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1020; Project Identifier AD–2021–00864–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by a report of the loss of the nuts at all four fastener locations common to the outboard flap inboard support rear spar attachment fittings, which affects the retention feature of the fasteners and leaves the fasteners susceptible to migrating out of the joint. This proposed AD would require repetitive detailed inspections for discrepancies of the fasteners and shim of the wing rear spar at certain outboard flap supports, a detailed inspection for damage of the shim, flap support mechanism, and wing lower skin; installing new fasteners and shims; and repair or replacement of damaged parts. 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 February 11, 2022.

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 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 referenced 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–2021–1020.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1020; 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: 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:

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–2021–1020; Project Identifier AD–2021–00864–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to 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.* 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 has received a report of the loss of the nuts at all four fastener locations common to the outboard flap inboard support rear spar attachment fittings, which affects the retention feature of the fasteners and leaves the fasteners susceptible to migrating out of the joint. These conditions, if not addressed, could result in the inability of the outboard flap support to sustain limit load, and potential loss of the outboard flap. Loss of the fastener retention feature in the rear spar attachment may lead to a severed joint at the forward attachment point, leading to separation of the support fitting. Contact with the airplane from a departed outboard flap or support fitting could cause damage and consequent reduced controllability and reduced structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–57A0123 RB, dated July 8, 2021. This service information specifies procedures for repetitive detailed inspections for discrepancies (missing nuts, loose nuts, thread protrusion, shim migration, and gapping between the shim and wing lower skin or between the shim and flap support fitting) of the fasteners and shim of the wing rear spar at outboard flap support numbers 1, 2, 7, and 8, a detailed inspection for damage of the shim, flap support mechanism, and wing lower skin; installing new fasteners and shims; and repair or replacement of damaged parts. Installation of the new fasteners and shim would eliminate the need for the repetitive inspections. 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 accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1020.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 280 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
Detailed inspections	39 work-hours × $85 per hour = $3,315.	$0	$3,315	$928,200 per inspection cycle.
Inspect for damage, install fasteners/shim, replace damaged parts.	Up to 37 work-hours × $85 per hour = Up to $3,145.	1,920	Up to $5,065	Up to $1,418,200.

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

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:

The Boeing Company: Docket No. FAA–2021–1020; Project Identifier AD–2021–00864–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 777–57A0123 RB, dated July 8, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of the loss of the nuts at all four fastener locations common to the outboard flap inboard support rear spar attachment fittings, which affects the retention feature of the fasteners and leaves the fasteners susceptible to migrating out of the joint. The FAA is issuing this AD to address the resulting inability of the outboard flap support to sustain limit load, and potential loss of the outboard flap. Loss of the fastener retention feature in the rear spar attachment may lead to a severed joint at the forward attachment point, leading to separation of the support fitting, which could cause damage and consequent reduced controllability and reduced 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 777–57A0123 RB, dated July 8, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–57A0123 RB, dated July 8, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–57A0123, dated July 8, 2021, which is referred to in Boeing Alert Requirements Bulletin 777–57A0123 RB, dated July 8, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–57A0123 RB, dated July 8, 2021, use the phrase ''the original issue date of Requirements Bulletin 777–57A0123 RB,'' this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 777–57A0123 RB, dated July 8, 2021, 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 paragraph (j)(1) of this AD. 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) 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.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on December 2, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–28181 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1078; Project Identifier MCAI–2020–01574–R]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 429 helicopters. This proposed AD was prompted by in-service reports of the loss of display and subsequent recovery of certain display units (DUs). This proposed AD would require revising the existing rotorcraft flight manual supplement (RFMS) for your helicopter and disabling the traffic alert and collision avoidance system (TCAS) POP–UP feature for certain DUs. 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 February 11, 2022.

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

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

For service information identified in this NPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1078; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@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–2021–1078; Project Identifier MCAI–2020–01574–R'' 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 Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2020–18R1, dated November 27, 2020 (Transport Canada AD CF–2020–18R1), to correct an unsafe condition for Bell Textron Canada Limited Model 429 helicopters, serial numbers 57001 through 57369, 57371, and 57373. Transport Canada advises that it has received in-service reports of the loss of display and subsequent recovery of the DU manufactured by Rogerson Kratos (RK). During an instrument flight rules approach, a Bell Textron Canada Limited Model 429 helicopter lost its center DU display, which then rebooted, and subsequently lost its right-hand side (RHS) DU display, which then also rebooted. Investigation revealed that the DUs' power cycle occurred while in Map-Mode, which was caused by the RK DUs' limited processing capability for excessive null waypoints generated by the Garmin GTN 750/650 GPS/NAV/COMM/MFD.

Transport Canada also advises that the use of Map-Mode to the center DU should be limited only for Bell Textron Canada Limited Model 429 helicopters equipped with RK DUs and Garmin GTN 750/650 main software version 6.21 or later and that the use of Map-Mode should be prohibited on both the RHS DU and left-hand side DU, if installed. In addition, Transport Canada advises that a new emergency and malfunction procedure in the event of center DU failure should be implemented.

If not addressed, a DU power cycle occurring during flight and consequent momentary loss of display information on the primary flight display and other DUs could result in the unexpected loss of display of important flight parameters to the pilots, including attitude, approach, airspeed, altitude, flight director information, navigation system cues, as well as engine and rotor drive system indications.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021, which specifies procedures for disabling the TCAS POP–UP feature for certain DUs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing RFMS for your helicopter and disabling the TCAS POP–UP feature for certain DUs.

Differences Between This Proposed AD and the Transport Canada AD

Transport Canada AD CF–2020–18R1 requires operators to ''advise all flight crews'' of the changes introduced by the RFMS revision. However, this proposed AD would not specifically require that action. 14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFMS. Therefore, including a requirement in this AD to operate the helicopter according to the revised RFMS would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the helicopter in such a manner would be unenforceable. The flight manual supplement changes proposed in this AD would also apply to the emergency and malfunction procedures section of the existing RFMS for your helicopter. FAA regulations mandate compliance only with the operating limitations section of the flight manual. Nonetheless, the FAA recommends that flight crews of the helicopters listed in the applicability operate in accordance with the revised emergency and

malfunction procedures specified in this proposed AD.

This proposed AD would also propose to require disabling the TCAS POP–UP feature for certain DUs, which is not required in Transport Canada AD CF–2020–18R1. The FAA has coordinated this requirement with Transport Canada, and Transport Canada stated that it is planning to include this action in a future rulemaking action.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 88 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the RFMS for your helicopter takes about 1 work-hour for an estimated cost of $85 per helicopter and $7,480 for the U.S. fleet.

Disabling the TCAS POP–UP feature for your helicopter takes about 0.5 work-hours for an estimated cost of $43 per helicopter and $3,784 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Textron Canada Limited: Docket No. FAA–2021–1078; Project Identifier MCAI–2020–01574–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 429 helicopters, certificated in any category, serial numbers 57001 through 57369 inclusive, 57371, and 57373.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 3100, Indicating/Recording System.

(e) Unsafe Condition

This AD was prompted by in-service reports of the loss of display and subsequent recovery of certain display units (DUs). The FAA is issuing this AD to address a DU power cycle occurring during flight and consequent momentary loss of display information on the primary flight display and other DUs, which if not addressed, could result in the unexpected loss of display of important flight parameters to the pilots, including attitude, approach, airspeed, altitude, flight director information, navigation system cues, as well as engine and rotor drive system indications.

(f) Compliance

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

(g) Revising the Rotorcraft Flight Manual Supplement (RFMS)

Within 30 days after the effective date of this AD: Revise the Types of Operation—Limitations (section 1–3–A.) of the existing RFMS for your helicopter to include the information in the ''Limitations'' procedure specified in figure 1 to paragraph (g) of this AD, revise the Configuration (section 1–5.) of the existing RFMS for your helicopter to include the information in the ''Configuration'' specified in figure 2 to paragraph (g) of this AD, and revise the Emergency and Malfunction Procedures (section 3) of the existing RFMS for your helicopter to include the information in the ''CENTER DU FAILURE'' specified in figure 3 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) – *Limitations procedure revision*

1-3-A. LIMITATIONS

Safe Taxi® and Chart View, if installed, shall not be used as primary means for flight crews to orient themselves on the airport surface.

Use of the GTN for primary navigation for latitudes above 89.00°N and below 89.00°S is not authorized.

Use of MAP mode on the Pilot and Co-pilot (if installed) Rogerson Kratos (RK) DU is prohibited. Use of MAP mode may cause a power cycle of the DU.

MAP mode on the center RK DU shall not be selected during a DME Arc approach, as this may cause a power cycle of the DU.

MAP mode on the center RK DU shall not be selected during search pattern operations. Excessive search pattern legs in DU MAP mode may cause a power cycle of the DU.

The SD card or Flight Stream 510 (MMC) shall be present in each unit at all times.

Demo mode shall not be used in flight.

Figure 2 to paragraph (g) – *Configuration revision*

1-5. CONFIGURATION

Garmin GTN 750/650 main software shall be Version 4.00 with GPS software 5.00 or main software 6.21 with GPS software 5.2, or main software 6.62 with GPS software 5.2.

Flight Stream 510, if installed, shall be version 2.32 or later.

Both GTN units shall have the same software versions.

TCAS POP-UP mode shall be DISABLED on the Rogerson Kratos (RK) DU.

Figure 3 to paragraph (g) – *Emergency and Malfunction Procedures revision*

3-14-B. CENTER DU FAILURE

- INDICATIONS:

  DU screen momentarily goes blank.

  Pilot and Co-pilot (if installed) DU goes into composite mode.

- PROCEDURE:

  NOTE

  MAP mode on center DU is defaulted ON with Weather Radar (if installed).

Center DU — Deselect MAP mode.

Pilot/Copilot DU — Select flight mode, as desired.

Note 1 to paragraph (g): The information in the ''CENTER DU FAILURE'' specified in figure 3 to paragraph (g) of this AD can be found in Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revisions 3, 4, 5, and 6.

(h) Disabling the Traffic Alert and Collision Avoidance System (TCAS) POP-UP Feature

Within 30 days after the effective date of this AD: Disable the TCAS POP–UP mode, including those helicopters equipped with the TCAS kit, in the parameter setup page on all RK DUs, in accordance with paragraph 3. of the Accomplishment Instructions of Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

(2) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in Transport Canada AD CF–2020–18R1, dated November 27, 2020. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–1078.

Issued on December 16, 2021.

Ross Landes,

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

[FR Doc. 2021–28089 Filed 12–27–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0962; Project Identifier AD–2021–00997–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes. This proposed AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines (''fan blades'' are also known as ''1st-stage low-pressure compressor (LPC) blades''—these terms are used interchangeably in this proposed AD). This proposed AD would require installation of debris shields on the thrust reverser (T/R) inner wall at the left and right sides of the lower bifurcation, inspection of the fan cowl doors for moisture ingression, repetitive functional checks of the hydraulic pump shutoff valves to ensure they close in response to the fire handle input, and corrective actions if necessary. 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 January 27, 2022.

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 Boeing service information identified in this NPRM, 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.* For Pratt & Whitney service information identified in this NPRM contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0962; 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: James Laubaugh, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3622; email: *james.laubaugh@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–2021–0962; Project Identifier AD–2021–00997–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include

supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

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Background

The FAA has received reports of three incidents involving in-flight fan blade failures and shutdowns on certain The Boeing Company Model 777–200 and 777–300 series airplanes equipped with Pratt & Whitney (P&W) Model PW4000 series turbofan engines. The two most recent events occurred in December 2020 and February 2021. In the latter incident, the engine fan blade failure occurred during climb at approximately 13,000 feet. While the engine fan blade failure was contained by the fan case, the event loads caused structural failures that resulted in the inlet (inlet lip, inner and outer barrel, and aft bulkhead) and fan cowl doors separating from the engine and airplane. The resultant separated engine and nacelle parts caused damage to the wing and fuselage. Several flammable fluid lines, the engine accessory gearbox, and T/R structure were fractured. The hydraulic pump shutoff valve failed to close when the fire handle was pulled, contributing additional flammable fluid to the engine nacelle and T/R resulting in an uncontained engine fire.

In the December 2020 incident, the engine fan blade failure occurred during climb at approximately 15,000 feet. While the engine fan blade failure was contained by the fan case, the event loads caused structural failures that resulted in the fan cowl doors separating from the engine and airplane. The resultant separated engine and nacelle parts caused damage to the left side horizontal stabilizer and fuselage. The engine accessory gearbox and T/R attachment to the engine were also fractured.

In the earliest incident, which occurred in 2018, the engine fan blade failure occurred just after beginning the descent. While the engine fan blade failure was contained by the fan case, the event loads caused structural failures that resulted in the inlet (inlet lip, inner and outer barrel, and aft bulkhead) and fan cowl doors separating from the engine and airplane. The resultant separated engine and nacelle parts caused damage to the right side horizontal stabilizer, wing and fuselage.

Upon the occurrence of the February 2021 in-flight engine fan blade failure, the FAA issued Emergency AD 2021–05–51, Amendment 39–21470 (86 FR 13445, March 9, 2021) requiring inspection of the engine fan blades for cracking and removal from service if any cracking is found. Since the two most recent incidents and issuance of that Emergency AD, the FAA, Boeing, and P&W have continued to examine the airplane and engine design, along with the information provided through the incident investigations, to determine if further action is necessary. The FAA has determined that further action is necessary to address the airplane-level implications and unsafe condition resulting from in-flight engine fan blade failures. Fan blade failures can cause fan rotor imbalance and result in fan blade fragments penetrating the inner and outer barrel of the inlet. This condition, if not addressed, could result in the separation of inlet and fan cowl doors and the T/R cowl. This could lead to engine in-flight shutdown, impact damage to the empennage, with significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude during operations under extended-range twin-engine operational performance standards (ETOPS) missions, and uncontrolled engine fire, which could result in loss of control of the airplane, a forced off-airport landing, and injury to passengers.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR part 51

The FAA reviewed Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021. This service information specifies procedures for performing thermal acoustic image and ultrasonic testing inspections of 1st-stage LPC blades. 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**.

Related Service Information

The FAA reviewed Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022, of Boeing 777–200/300 Aircraft Maintenance Manual, dated September 5, 2021. The service information specifies procedures for performing a functional check of the engine-driven pump shutoff valve.

Proposed AD Requirements in This NPRM

This proposed AD would require doing the following actions in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

- Installing debris shields on the T/R inner wall at the left and right sides of the lower bifurcation.
- Inspecting the fan cowl doors for moisture ingression and corrective action (*i.e.,* repair) if necessary.
- Repetitive functional checks of the hydraulic pump shutoff valves to ensure they close in response to the fire handle input, and corrective actions (*i.e.,* repair) if necessary.

Explanation of Special Flight Permit Paragraph

This proposed AD is related to NPRM Docket Number FAA–2021–0959, which proposes to require initial and repetitive ultrasonic testing (UT) inspections and thermal acoustic image inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. This proposed AD is also related to NPRM Docket Number FAA–2021–0963, which proposes to require modifying the engine inlet to withstand fan blade failure event loads. The

special flight permit paragraphs in those proposed ADs are similar to the one in this proposed AD. The special flight permit paragraph includes a limitation requiring that the following actions have been done before the special flight is permitted: a flow path UT inspection of the 1st-stage LPC blades for cracking and the 1st-stage LPC blades have been found serviceable, and a functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the fire handle input within 10 days prior to flight.

Interim Action

The FAA considers that this proposed AD would be an interim action. The manufacturer is currently developing other actions that will address the unsafe condition identified in this proposed AD. Once these actions are developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 54 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
Installation of T/R debris shields	115 work-hour × $85 per hour = $9,775	$4,300	$14,075	$760,050
Inspection of fan cowl doors	64 work-hours × $85 per hour = $5,440	0	$5,440	$293,760
Functional checks of the hydraulic pump shutoff valves.	1 work-hour × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle.	$4,590 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition corrective actions specified in this proposed 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

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:

The Boeing Company: Docket No. FAA–2021–0962; Project Identifier AD–2021–00997–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as specified in paragraphs (c)(1) and (2) of this AD.

(1) Model 777–200 series airplanes equipped with Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 model turbofan engines.

(2) Model 777–300 series airplanes equipped with Pratt & Whitney PW4090 and PW4098 model turbofan engines.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by reports of three incidents involving in-flight fan blade failures on certain Pratt & Whitney engines. The FAA is issuing this AD to address engine fan blade failure, which could result in the separation of inlet and fan cowl doors and the thrust reverser (T/R) cowl. This could lead to engine in-flight shutdown, impact damage to the empennage, with significantly increased aerodynamic drag causing fuel exhaustion or the inability to maintain altitude during operations under extended-range twin-engine operational performance standards (ETOPS) missions, and uncontrolled engine fire, which could result in loss of control of the airplane, a forced off-airport landing, and injury to passengers.

(f) Compliance

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

(g) Installation and Inspections

Before further flight after the effective date of this AD, do the actions specified in paragraphs (g)(1) through (3) of this AD, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA. Repeat the functional check specified in paragraph (g)(3) of this AD thereafter at intervals not to exceed 10 days.

(1) Install debris shields on the T/R inner wall at the left and right sides of the lower bifurcation.

(2) Inspect the fan cowl doors for moisture ingression. If any moisture ingression is found, repair before further flight.

(3) Do a functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the fire

handle input. If any hydraulic pump shutoff valve does not close, before further flight perform corrective actions until it closes in response to the fire handle input.

Note (1) to paragraph (g)(3): Guidance for accomplishing the actions required by paragraphs (g)(3) and (h)(2) of this AD can be found in the ''Engine-Driven Pump (EDP) Shutoff Valve Check'' (Subtasks 26–21–00–200–018, 26–21–00–200–019, and 26–21–00–840–022) of Boeing 777–200/300 Aircraft Maintenance Manual.

(h) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not permitted except for airplanes on which the actions specified in paragraphs (h)(1) and (2) of this AD have been done.

(1) A flow path ultrasonic testing (UT) inspection of the 1st-stage low-pressure compressor (LPC) blades for cracking has been done as specified in the Accomplishment Instructions, Part A—Initial Inspection of All LPC Fan Blades Prior to their Return to Service, paragraph 1.A., of Pratt & Whitney Alert Service Bulletin PW4G–112–A72–361, dated October 15, 2021, and the 1st-stage LPC blades have been found serviceable.

(2) A functional check of the left and right hydraulic pump shutoff valves to ensure they close in response to the fire handle input and all applicable corrective actions (*i.e.,* repair) within 10 days prior to flight.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (i)(1), (2), or (3) of this AD.

(1) Paragraph 2. of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 85F–21, dated May 12, 2021, for a flow path UT inspection.

(2) Paragraph 1.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, dated July 1, 2021, for a flow path UT inspection.

(3) Paragraph 2.a) of the Accomplishment Instructions of Pratt & Whitney Special Instruction No. 130F–21, Revision A, dated July 28, 2021, for a flow path UT inspection.

(j) 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 paragraph (k)(1) of this AD. 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.

(k) Related Information

(1) For more information about this AD, contact James Laubaugh, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3622; email: *james.laubaugh@faa.gov.*

(2) For Boeing 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.* For Pratt & Whitney service information identified in this AD contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@prattwhitney.com;* website: *https://connect.prattwhitney.com.* You may view this referenced service information at FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on December 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27838 Filed 12–22–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1149; Airspace Docket No. 21–ASW–27]

RIN 2120–AA66

Proposed Amendment of the Class E Airspace and Revocation of Class E Airspace; Grove, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace and revoke Class E airspace at Grove, OK. The FAA is proposing this action due to an airspace review conducted as part of the decommissioning of the Neosho very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before February 11, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–1149/Airspace Docket No. 21–ASW–27, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Grove Municipal Airport, Grove, OK, and remove the Class E airspace extending upward from 700 feet above the surface at Grove General Hospital Heliport, Grove, OK, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–1149/Airspace Docket No. 21–ASW–27.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at https://www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at https://*www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (increased from a 6.3-mile) radius of Grove Municipal Airport, Grove, OK; removing the extensions south and north of Grove Municipal Airport from the airspace legal description as they are no longer needed; removing the Grove General Hospital Heliport, Grove, OK, and the associated airspace as the instrument procedures to the heliport have been cancelled and the airspace is no longer required; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review conducted as part of the decommissioning of the Neosho VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

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

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

71.1 [Amended]

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

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

* * * * *

ASW OK E5 Grove, OK [Amended]

Grove Municipal Airport, OK
(Lat. 36°36′24″ N, long. 94°44′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grove Municipal Airport.

Issued in Fort Worth, Texas, on December 20, 2022.

Martin A. Skinner,

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

[FR Doc. 2021–27939 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1148; Airspace Docket No. 21–AGL–38]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Springfield, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Springfield, OH. The FAA is proposing this action due to an airspace review conducted as part of the decommissioning of the Springfield very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program.

DATES: Comments must be received on or before February 11, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–1148/Airspace Docket No. 21–AGL–38 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Springfield-Beckley Municipal Airport, Springfield, OH, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–1148/Airspace Docket No. 21–AGL–38.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at https://www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at https://*www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface at Springfield-Beckley Municipal Airport, Springfield, OH, by removing the Clark County NDB and associated extension from the airspace legal description as they are no longer needed.

This action is due to an airspace review conducted as part of the decommissioning of the Springfield VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

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

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is

published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

71.1 [Amended]

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

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

* * * * *

AGL OH E5 Springfield, OH [Amended]

Springfield-Beckley Municipal Airport, OH (lat. 39°50′25″ N, long. 83°50′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Springfield-Beckley Municipal Airport.

Issued in Fort Worth, Texas, on December 20, 2022.

Martin A. Skinner,

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

[FR Doc. 2021–27940 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0558; FRL–9308–03–R6]

Finding of Failure To Attain the Primary 2010 One-Hour Sulfur Dioxide Standard for the St. Bernard Parish, Louisiana Nonattainment Area; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule ''Finding of Failure to Attain the Primary 2010 One-Hour Sulfur Dioxide Standard for the St. Bernard Parish, Louisiana Nonattainment Area'' that was published on December 7, 2021. The proposal provided for a public comment period ending January 6, 2022. The EPA received a request from the public to extend this comment period. The EPA is extending the comment period to January 13, 2022.

DATES: The comment period for the proposed rule published December 7, 2021 (86 FR 69210), is extended. Written comments must be received on or before January 13, 2022.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2017–0558, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, SO_2 and Regional Haze Section (R6–ARSH), 214–665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

On December 7, 2021, we published in the **Federal Register** ''Finding of Failure to Attain the Primary 2010 One-Hour Sulfur Dioxide Standard for the St. Bernard Parish, Louisiana Nonattainment Area'', where we proposed to determine that the St. Bernard Parish sulfur dioxide (SO_2) nonattainment area (''St. Bernard area'' or ''area'') failed to attain the primary 2010 one-hour SO_2 national ambient air quality standard (NAAQS) under the Clean Air Act (CAA or the Act) by the applicable attainment date of October 4, 2018 (86 FR 69210). We received a request for an extension of the comment period and, in response, have decided to allow an additional 7 days for the public to comment. We are extending the comment period to January 13, 2022. This action will allow interested

persons additional time to prepare and submit comments.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Pollution, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: December 20, 2021.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2021–27934 Filed 12–27–21; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 86, No. 246
Tuesday, December 28, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 22, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 27, 2022 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.

Animal and Plant Health Inspection Service

Title: Specimen Submission.

OMB Control Number: 0579–0090.

Summary of Collection: The Animal Health Protection Act of 2002 (AHPA) is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the United States' ability to globally compete in the trade of animals and animal products. VS Forms 10–4 and 10–4A, Specimen Submission are critical components of APHIS' disease surveillance mission. They are used routinely when specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, goats, horses, and poultry) are submitted to APHIS' National Veterinary Services Laboratories (NVSL) for disease testing. VS Form 5–38, Parasite Submission form, is completed by State veterinarians or other State representatives, accredited veterinarians, private laboratories, research institutions, and owners or producer.

Need and Use of the Information: Using the Specimen Submission Form and Continuation Sheet (APHIS VS 10–4 & 10–4A), State or Federal veterinarians, accredited veterinarians, or other State and Federal representatives will document the collection and submission of specimens for laboratory analysis. The form identifies the individual animal from which the specimen is taken as well as the animal's herd or flock; the type of specimen submitted, and the purpose of submitting the specimen. Occasionally the time pressures exerted by or field conditions existing during a disease outbreak leave submitters no time to find or fill out the 10–4; thus, a Nonconforming Submission using whatever scrap of paper is handy. The National Tick Surveillance Program is based on the information submitted on the Parasite Submission Form (VS 5–38), in addition to critical surveillance information needed for the Cattle Fever Tick Eradication Program. This information identifies the individual submitting the tick samples. Without the information APHIS would not have the critical information necessary to effectively operate a disease surveillance program.

Description of Respondents: State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 1,871.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,390.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–28155 Filed 12–27–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0065]

Addition of the Dominican Republic to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added the Dominican Republic to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in the Dominican Republic.

DATES: The Dominican Republic was added to the APHIS list of regions considered affected with ASF on July 28, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Ray, Regionalization Evaluation Services, Strategy and Policy, APHIS Veterinary Services, 920 Main Campus Drive, Venture II, Raleigh, NC 27606; phone: (919) 855–7225; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and

domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/.* This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations state that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

APHIS added the Dominican Republic to the list of regions where ASF exists or is reasonably believed to exist on July 28, 2021, following notification by the Dominican Republic of samples obtained from swine that had tested positive for ASF. On July 29, 2021, the veterinary authorities of the Dominican Republic reported to the OIE the occurrence of ASF in that country. This notice serves as an official record and public notification of the APHIS action.

As a result, pork and pork products from the Dominican Republic, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States, effective July 28, 2021.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 21st day of December 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–28054 Filed 12–27–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2021–0001]

Eligibility of Lithuania to Export Egg Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it intends to list Lithuania as a country eligible to export egg products to the United States. FSIS has reviewed Lithuania's laws, regulations, and documents concerning their egg products inspection system, audited the system as implemented, and determined that Lithuania's egg products inspection system is equivalent to the system that the United States has established under the Egg Products Inspection Act (EPIA) and its implementing regulations. Should FSIS make a final determination to list Lithuania as eligible to ship egg products to the United States, only egg products produced in certified Lithuanian establishments would be eligible for export to the United States. All such products would continue to be subject to re-inspection at U.S. points-of-entry by FSIS inspectors. FSIS is requesting comment before it makes a final determination concerning Lithuania's equivalence for egg products. FSIS will announce its final determination in a subsequent **Federal Register** notice.

DATES: Comments must be received on or before February 28, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2021–0001. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

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

SUPPLEMENTARY INFORMATION:

Background

FSIS is announcing that it intends to list Lithuania as a country eligible to export egg products to the United States. Lithuania is currently eligible to export processed beef and pork to the United States.

Statutory and Regulatory Basis for Action

The EPIA prohibits the importation of egg products capable of use as human food into the United States unless they were processed under an approved inspection system of the government of the foreign country of origin and are labeled and packaged in accordance with, and otherwise comply with, the standards of the Act and regulations issued thereunder applicable to such articles within the United States (21 U.S.C. 1046(a)(2)). The regulatory requirements for foreign countries to become eligible to export egg products to the United States are provided in 9 CFR 590.910(a).

Section 590.910(a) requires a foreign country's inspection system to be authorized by a legal authority that imposes requirements equivalent to those of the United States, specifically with respect to labeling, packaging, sanitation, processing, facility requirements, and Government inspection. The foreign country's inspection system must ensure that establishments preparing egg products for export to the United States comply

with requirements equivalent to those of the EPIA and the regulations promulgated by FSIS under the authority of that statute. The foreign country is required to certify establishments as having met the required standards and to notify FSIS of those establishments that are either certified or removed from certification.

Before the foreign country can export egg products to the United States, FSIS needs to evaluate the country's inspection system for egg products to determine whether it is equivalent to FSIS', and therefore, eligible to export egg products to the United States. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to effect its inspection program (9 CFR 327.2(a)(2)(iii), 381.196(a)(2)(iii), and 590.910(a)). FSIS requests that countries provide information about their inspection systems through the Self Reporting Tool (SRT).[1] The SRT is a standardized questionnaire that FSIS provides to foreign governments to gather information that characterizes foreign inspection systems. Through the SRT, FSIS collects information on practices and procedures in six areas, known as equivalence components: (1) Government Oversight (*e.g.,* Organization and Administration, Enforcement Authority, Government Inspection Personnel-Training/Staffing), (2) Government Verification of Food Safety and Other Consumer Protection Requirements (*e.g.,* Humane Handling, Ante-Mortem Inspection, Post-Mortem Inspection, Product Standards and Labeling), (3) Government Sanitation Verification, (4) Government Hazard Analysis and Critical Control Point (HACCP) Systems Verification, (5) Government Chemical Residue Programs, and (6) Government Microbiological Pathogen and Process Control Programs. FSIS evaluates the information submitted to verify that the critical points in the six equivalence components are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multidisciplinary team to evaluate all aspects of the country's inspection program. This comprehensive process is described more fully on the FSIS website at *https://www.fsis.usda.gov/inspection/import-export/equivalence.*

[1] The SRT template can be found on the FSIS website at *https://www.fsis.usda.gov/sites/default/files/import/srt.pdf.*

FSIS regulations (9 CFR 590.910(b)) provide that a list of countries eligible to export egg products to the United States be maintained at *https://www.fsis.usda.gov/importlibrary.* Once listed, the government of an eligible country certifies to FSIS that establishments that wish to export egg products to the United States are operating under requirements equivalent to those of the United States. To verify that products imported into the United States are not adulterated or misbranded, FSIS reinspects all product imported under FSIS jurisdiction and samples a subset of those products for pathogens and residues at points-of-entry before they enter U.S. commerce, as discussed in more detail below.

Evaluation of Lithuania's Egg Products Inspection System

In November 2014, the government of Lithuania requested approval to export egg products to the United States. FSIS conducted a document review of Lithuania's egg products inspection system and concluded, on the basis of that review, that Lithuania's laws, regulations, control programs, and procedures were equivalent to those of the United States.

Accordingly, from October 24, 2016, to November 2, 2016, FSIS proceeded with an on-site audit of Lithuania's egg products inspection system to verify that Lithuania's State Food and Veterinary Service (SFVS), the central competent authority (CCA) in charge of food inspection, effectively implemented an egg products inspection system equivalent to that of the United States. FSIS audited the SFVS headquarters, one territorial office, and one local inspection office, the single establishment that was to be certified to export egg products to the United States, and the National Food and Veterinary Risk Assessment Institute (NFVRAI), the national government laboratory. During the visit, the establishment was not producing egg products for export to the United States. However, the FSIS auditor was able to conduct observations of SFVS's inspection at the establishment and to verify information that was provided during the document review.

The 2016 on-site audit of Lithuania's egg products inspection system found that SFVS was unable to demonstrate adequate government oversight regarding implementation and verification of its sanitation requirements as evidenced by the establishment's failure to conduct candling procedures and washing, sanitizing, and drying dirty eggs. The FSIS auditors observed that dirty eggs were in direct contact with each other and other eggs on the conveyor and that the establishment's employees were not removing those eggs prior to the breaking operation. In addition, the FSIS auditors observed after the breaking step an accumulation of intact shell eggs or large fragments of broken shells in the egg products containers, resulting in direct product contamination. Lastly, FSIS auditors observed beaded condensate, dust on overhead structures, and pooling water on the establishment's floor. SFVS responded with its proposed corrective actions for the deficiencies identified during the 2016 audit.

On April 25, 2017, FSIS sent its audit report to SFVS. In the letter accompanying the report, FSIS advised SFVS that as the next step in the review process, the Agency would evaluate SFVS's proposed corrective actions identified during the 2016 audit and would schedule a verification audit in the near future. Additionally, after further assessment of the country's written program, FSIS determined that Lithuania needed to submit updated supporting documentation and to clarify some of the information previously provided to FSIS as part of its initial equivalence request for egg products. Throughout 2018 and 2019, the SFVS continued to provide supporting documents in response to FSIS requests.

From July 15 to July 24, 2019, FSIS conducted an on-site audit to verify whether the food safety system governing egg products was implemented as described in the FSIS SRT and is effective in providing an equivalent level of public health protection as achieved in the United States. Specifically, the audit was intended to determine whether Lithuania's corrective actions in response to the prior findings were implemented and effective. FSIS audited the SFVS headquarters, two territorial offices, and four local inspection offices, and the one establishment that was to be certified to export egg products to the United States.

The FSIS auditors found that the corrective actions for the 2016 Government Sanitation component findings were implemented and effective in resolving the findings. However, they also determined that the 2016 Government Oversight finding was not resolved and that SFVS was still unable to demonstrate adequate government oversight regarding implementation and verification of its egg products requirements. For example, the government inspection personnel failed to identify several deficiencies at the establishment and

could not explain how the egg products pasteurization records presented during the audit supported that pasteurization requirements were met. The FSIS auditors also identified that the establishment was not able to produce a current calibration certificate for one flow rate probe used during the pasteurization process and was not monitoring and documenting product temperature during heat treatment of each lot of dried whites at a supportable frequency. Furthermore, the auditors found that the government inspectors had not identified these noncompliances.

Also, during the 2019 audit, the FSIS auditors observed multiple blood spots on the yolks of multiple eggs with no actions taken by the official government veterinarians or establishment personnel to remove the blood spots or reject the affected egg products. FSIS auditors also identified blocks of yeast used in the fermentation of egg products stored in a refrigerator without any labeling indicating the actual product contents. SFVS responded to FSIS with its corrective actions to the identified deficiencies.

FSIS sent its audit report to SFVS on January 7, 2020. SFVS addressed the FSIS audit findings through corrective action plans presented to FSIS on February 14, 2020 and September 10, 2020. Specifically, veterinarians who perform inspections in egg products establishments were introduced to the FSIS audit findings and the SFVS conducted training on FSIS' egg products training program. The SFVS revised the working procedures to incorporate corrective actions to the audit findings, including instructions on pasteurization requirements. As part of the corrective action plan, the audited egg products establishment installed new pasteurization equipment and an inedible egg rejection system and purchased a replacement flow meter to have on-site while one is being calibrated. The SFVS established requirements for the establishments to include a once per year calibration frequency into their equipment control program and to label every package of yeast indicating the original name, product manufacturer, shelf life, lot number, and weight. Lithuania also provided documentary evidence to demonstrate adequate function of newly installed equipment and for government inspection activities verifying implementation of corrective actions. FSIS evaluated the corrective action plans and Lithuania's inspection verification activities, based on the information Lithuania submitted, and determined that Lithuania had satisfactorily addressed all the audit findings and was able to meet FSIS requirements and equivalence criteria related to all six components.

On October 29, 2020, FSIS published the final rule, Egg Products Inspection Regulations (85 FR 68640). The rule established new requirements for official plants that process egg products to develop and implement Hazard Analysis and Critical Control Point (HACCP) and Sanitation Standard Operating Procedures (Sanitation SOPs) and to meet other requirements, including sanitation performance standards, consistent with FSIS' meat and poultry regulations. On April 15, 2021, FSIS sent a letter to SFVS notifying it of the policy changes and explaining that some requirements for foreign countries had taken effect on December 28, 2020. The letter also stated that the Sanitation SOP requirements would become effective on October 29, 2021, while the HACCP requirements would take effect on October 31, 2022.

On May 17, 2021, Lithuania provided FSIS with documentation that outlined the changes that were made to the SFVS' egg products inspection system to achieve equivalence with the revised U.S. regulations related to the requirements for establishments to develop and implement HACCP and Sanitation SOPs, including sanitation performance standards. FSIS conducted a document review of SFVS's updated operating procedure and has determined that Lithuania's egg products inspection system is equivalent with the new U.S. regulatory requirements for sanitation and HACCP described in the October 29, 2020 final rule.

In summary, FSIS has completed the document review, on-site audit, follow-up audits with verification of corrective actions as part of the equivalence process and determined that all outstanding issues have been resolved. FSIS has concluded that, as implemented, Lithuania's inspection system for egg products is equivalent to that of the United States. All audit reports on Lithuania's egg products inspection system can be found on the FSIS website at *https://www.fsis.usda.gov/inspection/import-export/international-reports/foreign-audit-reports.*

At this time, Lithuania intends to certify one establishment as eligible to export egg products to the United States. After considering comments in response to this notice, should FSIS make a final determination that Lithuania maintains an equivalent inspection system, FSIS will publish a subsequent **Federal Register** notice announcing that Lithuania is eligible to export egg products to the United States. In addition, the government of Lithuania would need to certify to FSIS those establishments that wish to export egg products to the United States and that operate in accordance with requirements equivalent to that of the United States (9 CFR 590.510(a)). FSIS would verify that the establishments certified by Lithuania's government are meeting the United States requirements through additional verification audits of Lithuania's egg products inspection system. Although a foreign country may be listed on FSIS' website as eligible to export egg products to the United States, the exporting country's products must be found to comply with all other applicable requirements of the United States. Accordingly, egg products exported from Lithuania would be subject to re-inspection at U.S. points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS would conduct other types of re-inspection activities, such as taking product samples for laboratory analysis for the detection of chemical residues and pathogens for a subset of Lithuania's egg products imported into the United States. Products that pass re-inspection would be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they would be refused entry and within 45 days would be exported to the country of origin, destroyed, or converted to animal food (subject to approval of the U.S. Food and Drug Administration), depending on the violation.

Economic Impact Analysis

As explained above, FSIS intends to list Lithuania as a country eligible to export egg products to the United States. Given the limited market in the United States for Lithuania's egg products and Lithuania's projected low export volume, there is likely to be little, if any, impact on the United States economy.

In comparison to the United States, Lithuania is a low volume egg products producer with limited capacity to export egg products. Between 2015 and 2019, Lithuania had an annual average of 3.2 million egg laying hens that produced 55,300 tons of eggs, of which approximately 50,800 tons were consumed within Lithuania. The remaining eggs were exported mainly to the European Union, of which Lithuania is a member. Of these exports, approximately 17.2 percent were in the

form of egg products.[2] As such, FSIS estimates the total potential egg products available for export to be approximately 3,200 tons [3] (17.2 percent of 18,800 tons). Assuming that the European Union will continue to be Lithuania's largest trading partner, the amount of egg products to be exported to the U.S. is likely to be less than 3,200 tons.

From 2015 to 2019, the U.S. had an annual average of 375 million egg laying hens [4] that produced 6.6 million tons of eggs, of which approximately 5.6 million tons were consumed domestically.[5] While the U.S. imports around 11,200 tons of egg products annually, it is a net exporter of egg products.[6]

With only one establishment intending to export egg products to the U.S., Lithuanian egg products exports volume to the U.S. are likely to be low in comparison to the total U.S. egg products market and are expected to have little or no effect on U.S. egg products supplies or their prices. U.S. consumers, however, are expected to enjoy more choices when purchasing egg products.

Effect on Small Businesses

The FSIS Administrator has made a preliminary determination that this notice will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The trade volume is expected to have little or no effect on all U.S. establishments, regardless of size.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS website located at: *https://www.fsis.usda.gov/policy/federal-register-rulemaking.* FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Congressional Review Act

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

USDA Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

Paul Kiecker,

Administrator.

[FR Doc. 2021–28119 Filed 12–27–21; 8:45 am]

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[2] Detailed data on Lithuanian egg products is limited. We use the available egg data to estimate the potential amount of egg products Lithuania would be able to export to the United States. Lithuania's production, trade and consumptions data are based on the Food and Agricultural Organization of the United Nations (FAO, 2021) Food Balance Sheet: Available at *http://www.fao.org/faostat/en/#data/FBS.* The maximum expected exports potential is based on production plus imports minus consumption and assuming zero ending stock. FSIS calculated 17.2 percent as a five-year average based on 2015–19 FAO data.

[3] Noted that FSIS has jurisdiction over only some egg products, not all.

[4] U.S. Chicken Layers Inventory are based on USDA National Agricultural Statistics Service (NASS) data for July 1st each year from 2015–19. The data were accessed from the USDA/NASS Quick Stats at: *https://quickstats.nass.usda.gov/results/53032069-6FCE-3AA2-99E7-B33E1C1AD8F2.*

[5] U.S. Production and Consumption Data accessed from USDA/World Agricultural Supply and Demand Estimates (WASDE): *https://usda.library.cornell.edu/concern/publications/3t945q76s?locale=en.* WASDE's egg data are published in dozen; FSIS converted these data into tons using Grade A Large Egg Weight based on USDA/Agricultural Marketing Service conversion rate: Accessed from *https://www.ams.usda.gov/sites/default/files/media/Shell_Egg_Standard%5B1%5D.pdf.*

[6] U.S. Import and Export Data accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://apps.fas.usda.gov/GATS/default.aspx.* Egg products are based on Harmonized System (HS) codes 040811, 040819, 040891, 040899, 350211, and 350219.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Family Day Care Home (FDCH) Participation Study

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a New collection for the Family Day Care Home (FDCH) Participation Study.

DATES: Written comments must be received on or before February 28, 2022.

ADDRESSES: Comments may be sent to: Chanhatasilpa Chanchalat, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th floor, Alexandria, VA 22314. Comments may also be submitted via email to *chanchalat.chanhatasilpa@usda.gov,*

703–305–2115. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed Chanhatasilpa Chanchalat at 703–305–2115, or *chanchalat.chanhatasilpa@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Family Day Care Home (FDCH) Participation Study.

Form Number: N/A.

OMB Number: Not Yet Assigned.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Child and Adult Care Food Program (CACFP), administered by the Food and Nutrition Service (FNS), plays a critical role in supporting the health and wellness of children by reimbursing providers for nutritious meals served to eligible children in their care. The FDCH Participation Study aims to understand FDCH provider experiences with the CACFP by asking a nationally representative sample of both current and former CACFP-participating FDCH providers about their experiences with the program.

Data collection will occur during the spring of 2023. The primary data collection activity will include the FDCH Provider Experience Survey, designed to gather information from FDCH providers to address the three main objectives for the study:

1. Identify and describe the reasons why FDCH providers discontinue their participation in CACFP;

2. Determine and describe CACFP program statutory and regulatory requirements, operational and financial considerations, and Federal, State, and local specifics frequently cited as burdensome by stakeholders. Classify challenges as Federal, State, and local and describe in detail; and

3. Gather and summarize recommendations from FDCH providers on how to reduce barriers or challenges to CACFP participation.

The sample frame for this study will consist of all FDCH providers listed in FNS' list of CACFP-participating providers for program years 2019 and 2022. The sampling frame will be created by comparing the 2019 list of providers with the 2022 list. Those FDCH providers included only on the 2019 list will be the frame of former participants. Those that are on the 2022 list will form the frame of current participants. The survey will include a screener to verify CACFP participation status of the providers and ask follow-up questions related to their experiences—including reasons they discontinued their CACFP participation, program factors they consider burdensome, and recommendations to facilitate CACFP participation for FDCH providers. In addition to comparing responses by the current and former CACFP participants, results will be compared by the following subgroups: Tier status (Tier I/II), program size (small/large), and urbanicity (urban/rural).

Affected Public: State and local government respondents are CACFP State agency managers. For-profit and not-for-profit business respondents are FDCH providers and their sponsors.

Estimated Number of Respondents: The estimated number of respondents is 5,921. This includes 1,878 responses and 4,043 nonresponses. The number of unique respondents for this study are 51 State Agencies, 478 CACFP sponsors, and 1,340 FDCH providers.

Estimated Number of Responses per Respondent: All respondents will be asked to respond to each specific data collection activity only once. The overall average number of responses per respondent across the entire collection is 11.88.

Estimated Total Annual Responses: The estimated number of total annual responses is 70,362.

Estimated Time per Response: 0.0575 minutes. The estimated time of response varies from 1 minute to 1 hour depending on respondent group, as shown in the table below.

Estimated Total Annual Burden on Respondents: 4,045.1 hours. This includes 3,754.4 hours for respondents and 290.7 hours for non-respondents. See the table below for estimated total annual burden for each type of respondent.

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				Responsive					Non-Responsive					
Respondent Category	Type of respondents	Instruments	Sample Size	Number of respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Number of Non-respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Grand Total Annual Burden Estimate (hours)
State/Local Government	States	State Directors Notification from Regional Directors	51	51	1	51	0.05	2.6	0	1	0	0.05	0.0	2.6
		Westat Notification to States Directors + request for sponsor notification	51	51	1	51	0.167	8.5	0	1	0	0.05	0.0	8.5
SUBTOTAL STATE/LOCAL GOVERNMENT			51	51	2	102	0.109	11.1	0	0	0	0	0.0	11.1
	sponsors	State notification of study	597	478	1	478	0.05	23.9	119	1	119	0.017	2.0	25.9
		Westat Sponsor Recruitment Letter + request for provider notification	597	478	1	477.6	0.167	79.8	119	1	119.4	0.017	2.0	81.8
		Study Brochure with FAQs	597	478	1	477.6	0.05	23.9	119	1	119.4	0.017	2.0	25.9
		USDA Endorsement Letter	597	478	1	477.6	0.05	23.9	119	1	119.4	0.017	2.0	25.9
		Other Endorsement Letter	597	478	1	477.6	0.05	23.9	119	1	119.4	0.017	2.0	25.9
		Study Website	597	448	1	447.8	0.351	157.0	149	1	149.25	0	0.0	157.0
		Email Request to Sponsors to follow-up with Nonresponding Providers	300	300	1	300	0.05	15.0	0	1	0	0.017	0.0	15.0
		Sponsor Email to Nonresponding Providers	300	240	1	240	0.134	32.1	60	1	60	0.017	1.0	33.1
		Sponsor Email to Study Team with Updated Provider Information	100	60	1	60	0.752	45.1	40	1	40	0.017	0.7	45.8
	providers	FDCH Provider Experience Survey, Pretest invitation letter	18	18	1	18	0.05	0.9	0	1	0	0.017	0.0	0.9
		FDCH Provider Experience Survey, Pretest	9	9	1	9	1.00	9.0	0	1	0	0.017	0.0	9.0
		Sponsor notification of study	5264	4211	1	4211	0.05	211.0	1053	1	1053	0.017	17.6	228.6
		Provider Invitation Letter	5264	4211	1	4211	0.05	211.0	1053	1	1053	0.017	17.6	228.6
		Study Brochure with FAQs	5264	4211	1	4211	0.05	211.0	1053	1	1053	0.017	17.6	228.6
		USDA Endorsement Letter	5264	4211	1	4211	0.05	211.0	1053	1	1053	0.017	17.6	228.6
		Other Endorsement Letter	5264	4211	1	4211	0.05	211.0	1053	1	1053	0.017	17.6	228.6
		Study Website	5264	2632	1	2632	0.351	923.0	2632	1	2632	0.017	44.0	967.0

				Responsive					Non-Responsive					
Respondent Category	Type of respondents	Instruments	Sample Size	Number of respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Number of Non-respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Grand Total Annual Burden Estimate (hours)
		FDCH Provider Experience Survey Reminder #1	5264	4211	1	4211	0.017	70.3	1053	1	1053	0	0.0	70.3
		FDCH Provider Experience Survey Reminder # 2	4876	3900	1	3900	0.017	65.1	976	1	976	0	0.0	65.1
		Sponsor encouragement for non-responding providers	4719	3775	1	3775	0.017	63.0	944	1	944	0	0.0	63.0
		FDCH Provider Experience Survey, Second Invitation with Paper Survey	4719	3775	1	3775	0.05	189.1	944	1	944	0.017	15.8	204.9
		FDCH Provider Experience Survey Reminder # 3	4719	3775	1	3775	0.017	63.0	944	1	944	0	0.0	63.0
		FDCH Provider Experience Survey Follow-up Telephone Script	4063	3250	1	3250	0.134	434.2	813	1	813	0.084	67.9	502.1
		FDCH Provider Experience Survey	5264	1340	1	1340	0.334	447.6	3924	1	3924	0.017	65.5	513.1
		FDCH Provider Experience Survey Thank you	1340	1340	1	1340	0.017	22.4	0	1	0	0	0.0	22.4
SUBTOTAL BUSINESS			5870	1827	28.49	52038	0.0719	3743.4	4043	4.51	18222	0.0160	290.7	4034.1
TOTAL			5921	1878	30.49	52140	0.1805	3754.4	4043	4.51	18222	0.0160	290.7	4045.1

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2021–28149 Filed 12–27–21; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Mark Twain National Forest is proposing to charge new fees at 11 recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO 65401.

FOR FURTHER INFORMATION CONTACT: Thomas Saylors, Recreation Program Manager, 573–341–7472 or *thomas.saylors@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Paddy Creek, Pine Ridge, Dry Fork, Berryman, and Pinewood Lake campgrounds are proposing $15 per night. Pinewood Lake campground is proposing $25 per night at double sites. Bar-K Horse Camp is proposing $10 per night. The Berryman Group Picnic is proposing $50 per day. In addition, this proposal would implement a new fee at one recreation rental: Sinking Creek Cabin is proposing $75 per night. A $5 day-use fee per vehicle is proposed at Berryman, Big Bay, and Noblett Lake Day Use Areas. The full suite of Interagency passes and the forest annual passes will be honored.

New fees would provide increased visitor opportunities, as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for campgrounds, group sites, and the cabin will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: December 21, 2021

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–28139 Filed 12–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Fishlake National Forest is proposing to charge new fees at three recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Fishlake National Forest, 115 East 900, North Richfield, Utah 84701.

FOR FURTHER INFORMATION CONTACT: Daniel Child, Forest Recreation Officer, 435–896–9233 or *daniel.child@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Twin Creeks Amphitheatre group picnic site is proposed for $60 per day. In addition, the proposal would implement new fees at two recreation rentals: Mt. Terrill Guard Station at $50 per night and Big Flat Guard Station at $50–$75 per night, depending on season.

New fees would provide increased visitor opportunities as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for the group picnic site and cabins will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: December 21, 2021.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–28140 Filed 12–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Allegheny National Forest is proposing to charge three new fees at the recreation site listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of this recreation site. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Allegheny National Forest, 29 Forest Service Drive, Bradford, PA 16701.

FOR FURTHER INFORMATION CONTACT: Justin Woldt, Supervisory Natural Resource Specialist, 814–363–6089, or *justin.woldt@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Twin Lakes Recreation Area campground is proposed at $12 per night with a $6 fee for hookups. The group campground fee is proposed at $50 per night, and a group pavilion site fee of $35 per half day and $50 per full day are proposed.

New fees would provide increased visitor opportunities as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for campgrounds and group sites will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: December 21, 2021.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–28142 Filed 12–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Hoosier National Forest is proposing to charge new fees at five recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Hoosier National Forest, 811 Constitution Avenue, Bedford, IN 47421.

FOR FURTHER INFORMATION CONTACT: Stacy Duke, Forest Recreation Program Manager, 812–276–4726, *stacy.duke@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Hickory Ridge, Blackwell, Shirley Creek, Young's Creek Horse, and Buzzard Roost campgrounds are proposed at $10 per night.

New fees would provide increased visitor opportunities, as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: December 21, 2021.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–28137 Filed 12–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Colville National Forest is proposing to charge new fees at eight recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Colville National Forest, 765 South Main Street, Colville, WA 99114.

FOR FURTHER INFORMATION CONTACT: Allison Ginn, Recreation Program Lead, 509–380–3586 or *allison.ginn@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal the Crescent Lake, Davis Lake, Little Twin Lakes, and Trout Lake campgrounds are proposed at $10 per night and $15 per night at Big Meadow Lake campground. In addition, a $5 per extra vehicle fee is proposed at these campgrounds. This proposal would implement new fees at two recreation rentals: Frater Cabin and Salmo Lookout at $75 per night. A $5 day-use fee per vehicle at Swan Lake Day Use area is also proposed. The full suite of Interagency passes would be honored as well as the Northwest Forest Pass.

New fees would provide increased visitor opportunities, as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for campgrounds and cabins will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: December 21, 2021.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–28141 Filed 12–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Lincoln National Forest is proposing to charge new fees at four recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Lincoln National Forest, 3463 Las Palomas, Alamogordo, New Mexico 88310.

FOR FURTHER INFORMATION CONTACT: LaTasha Wauneka, Recreation Staff Assistant, 575–682–5320 or *latasha.wauneka@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, Sitting Bull Falls group picnic area is proposed at $50 per day. A $5 day-use fee per vehicle at Schoolhouse Picnic, Cedar Creek Picnic, and Trestle Recreation Area would be added to improve services and facilities. A new state-wide New Mexico annual pass for day use sites is being proposed for $40. The full suite of Interagency passes would be honored.

New fees would provide increased visitor opportunities as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Advanced reservations for the group picnic area will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: December 21, 2021.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–28138 Filed 12–27–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; U.S. Census—Age Search

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension, of U.S. Census—Age Search, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 28, 2022.

ADDRESSES: Interested persons are invited to submit written comments by email to *deborah.johnson@census.gov.* Please reference U.S. Census—Age Search in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–0607–0117, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Debbie Johnson, Chief, Fiscal Services Office, National Processing Center. Ms. Johnson can be reached by telephone on 812–218–3053 or by email at *deborah.johnson@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau proposes an extension of the Age Search Service Program. The Age Search is a service provided by the U.S. Census Bureau for persons who need official transcripts of personal data as proof of age for pensions, retirement plans, Medicare, and Social Security. The transcripts are also used as proof of citizenship to obtain passports or to provide evidence of family relationship for rights of inheritance. The Age Search forms are used by the public in order to provide the Census Bureau with the necessary information to conduct a search of historical population decennial census records in order to provide the requested transcript. The Age Search service is self-supporting and is funded by the fees collected from the individuals requesting the service.

II. Method of Collection

The Form BC–600, *Application for Search of Census Records,* is a paper public-use form that is submitted by applicants requesting information from the decennial census records. This application form is available online in PDF format for individuals to download and complete. Applicants must enclose the appropriate fee by check or money order with the completed and signed Form BC–600 or BC–600(SP) and return by mail to the U.S. Census Bureau, Post Office Box 1545, Jeffersonville, Indiana 47131.

The Form BC–649 (L), which is called a *Not Found Letter,* advises the applicant that the search for information from the census records was unsuccessful. The BC–658 (L) is sent to the applicant when insufficient information has been received on which to base a search of the census records. These two forms request additional information from the applicant to aid in the search of census records.

III. Data

OMB Control Number: 0607–0117.

Form Number(s): BC–600, BC–600(SP), BC–649(L), and BC–658(L).

Type of Review: Regular submission, Request for an Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: Total 2,885 respondents.
BC–600 2,426 respondents
BC–649(L) 449 respondents
BC–658(L) 10 respondents

Estimated Time Per Response:
BC–600 12 minutes
BC–649(L) 6 minutes
BC–658(L) 6 minutes

Estimated Total Annual Burden Hours: 531 hours.

Estimated Total Annual Cost to Public: $167,394. The Age Search processing fee is $65.00 per case. An additional charge of $20 per case for expedited requests requiring results within one day is also available. It is expected that 485 individuals will request the expedited service.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 8.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–28165 Filed 12–27–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–83–2021]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Notification of Proposed Production Activity; CooperVision Manufacturing PR LLC (Disposable Contact Lenses); Juana Diaz, Puerto Rico

CooperVision Manufacturing PR LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Juana Diaz, Puerto Rico, within FTZ 7. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 16, 2021.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material/component described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz*. The proposed material/component would be added to the production authority the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status material/component is modified organosiloxane liquid (duty rate is 3.0%). The request indicates that the material/component is subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is February 7, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov*.

Dated: December 21, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–28169 Filed 12–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–84–2021]

Foreign-Trade Zone (FTZ) 80—San Antonio, Texas; Notification of Proposed Production Activity CGT U.S., Ltd. (Polyvinyl Chloride (PVC) Coated Upholstery Fabric Cover Stock) New Braunfels, Texas

CGT U.S., Ltd. (CGT) submitted a notification of proposed production activity to the FTZ Board for its facility in New Braunfels, Texas within Subzone 80E. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 8, 2021.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed material would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status material is 100% polyester woven weft pile fabric—dyed (duty rate, 9.8%). The request indicates that the proposed material will be admitted to the zone in privileged foreign (PF) status (19 CFR 146.41), thereby precluding inverted tariff benefits on this item. The request also indicates that the material is subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in PF status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 7, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: December 22, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–28192 Filed 12–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–60–2021]

Foreign-Trade Zone (FTZ) 171—Liberty County, Texas, Authorization of Production Activity CCZJV–GPX (Pipe Spools and Valves), Baytown, Texas

On August 24, 2021, CCZJV–GPX submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 171, in Baytown, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 49509, September 3, 2021). On December 22, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 22, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–28174 Filed 12–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Carbon Activated Tianjin Co., Ltd. (Carbon Activated) sold certain activated carbon from the People's Republic of China (China) at less than normal value during the period of review (POR), April 1, 2019, through March 31, 2020.

DATES: Applicable December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn or Joshua Simonidis, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0339 or (202) 482–0608, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2021, Commerce published the *Preliminary Results.*[1] For events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On October 7, 2021,[3] in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing the final results until December 17, 2021.

Scope of the Order

The merchandise subject to the *Order*[4] is certain activated carbon. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

In the Issues and Decision Memorandum, we addressed all issues raised in the interested parties' case and rebuttal briefs. In Appendix I to this notice, we provided a list of the issues raised by the parties. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, parties can directly access a complete version of the Issues and Decision Memorandum on the internet at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain revisions to the margin calculations for Datong Juqiang,[5] and consequently, to the rate assigned to the non-examined, separate rate respondents.[6]

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily determined that Beijing Pacific Activated Carbon Products Co., Ltd.; Jilin Bright Future Chemicals Co., Ltd.; Shanxi Dapu International Trade Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; Shanxi Tianxi Purification Filter Co., Ltd.; and Tianjin Channel Filters Co., Ltd., had no shipments of subject merchandise to the United States during the POR.[7] We received no information to contradict this determination. Therefore, we continue to find that these companies had no shipments of subject merchandise during the POR and will issue appropriate liquidation instructions that are consistent with our ''automatic assessment'' clarification for these final results.[8]

Separate Rate Respondents

In our *Preliminary Results,* we determined that Carbon Activated, Datong Juqiang, and seven other companies demonstrated their eligibility for separate rates.[9] We received no argument since the issuance of the *Preliminary Results* that provide a basis for reconsideration of these determinations. Therefore, for these final results, we continue to find that the nine companies listed in the table in the ''Final Results'' section of this notice are eligible for a separate rate.

[1] *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 33988 (June 28, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Certain Activated Carbon from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Thirteenth Antidumping Duty Administrative Review,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Activated Carbon from the People's Republic of China: Extension of Deadline for Final Results of the Thirteenth Antidumping Duty Administrative Review,'' dated October 7, 2021.

[4] *See Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China,* 72 FR 20988 (April 27, 2007) (*Order*).

[5] *See* Memorandum, ''Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China: Final Results Calculation Memorandum for Datong Juqiang Activated Carbon Co., Ltd.'' (Datong Juqiang's Final Calculation Memorandum), dated concurrently with this memorandum; *see also* Memorandum, ''Thirteenth Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results,'' dated concurrently with this memorandum.

[6] For details on the changes made since the *Preliminary Results, see* the Issues and Decision Memorandum.

[7] *See Preliminary Results,* 86 FR at 33988.

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Practice Refinement*).

[9] *See Preliminary Results* PDM at 4–8.

Rate for Non-Examined Separate Rate Respondents

In the *Preliminary Results,*[10] and consistent with Commerce's practice,[11] we assigned the non-examined, separate rate companies a rate equal to the weighted-average of the calculated weighted-average dumping margins for the mandatory respondents that are not zero, *de minimis* (*i.e.,* less than 0.5 percent), or based entirely on facts available, weighted by the total U.S. sales quantities from the public version of the submissions from the mandatory respondents.[12] No parties commented on the methodology for calculating this separate rate. For the final results, we continue to apply this approach, as it is consistent with the intent of, and our use of, section 735(c)(5)(A) of the Act.[13]

Final Results of the Review

For companies subject to this review, which established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the POR from April 1, 2019, through March 31, 2020:

Exporters	Weighted-average dumping margin (USD/kg) [14]
Carbon Activated Tianjin Co., Ltd	1.13
Datong Juqiang Activated Carbon Co., Ltd	0.31
Review-Specific Rate Applicable to the Following Companies: [15]	
Datong Municipal Yunguang Activated Carbon Co., Ltd	0.47
Jacobi Carbons AB [16]	0.47
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	0.47
Ningxia Huahui Environmental Technology Co., Ltd. (formerly Ningxia Huahui Activated Carbon Co., Ltd.) [17]	0.47
Ningxia Mineral & Chemical Limited	0.47
Shanxi Sincere Industrial Co., Ltd	0.47
Tancarb Activated Carbon Co., Ltd	0.47

In the *Preliminary Results,* Commerce found that 61 companies for which a review was requested [18] did not establish eligibility for a separate rate because they did not file a separate rate application or a separate rate certification, as appropriate.[19] No interested party commented on Commerce's preliminary determination with respect to these 61 companies. Therefore, for these final results we determine these companies to be part of the China-wide entity. Because no party requested a review of the China-wide entity, and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews,[20] we did not conduct a review of the China-wide entity. Thus, the weighted-average dumping margin for the China-wide entity (*i.e.,* 2.42 USD/kg) [21] is not subject to change as a result of this review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is

[10] *Id.* at 9–11.

[11] *See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158, 56160 (September 12, 2011) (*Vietnam Shrimp*).

[12] *See* Memorandum, ''Certain Activated Carbon from the People's Republic of China: Calculation of Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

[13] *See Vietnam Shrimp,* 76 FR 56160.

[14] In the second administrative review of the *Order,* Commerce determined that it would calculate per-unit weighted-average dumping margins and assessment rates for all future reviews. *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70211 (November 17, 2010) (*AR2 Carbon*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

[15] This is the rate applicable to the non-examined separate rate respondents, as discussed above.

[16] In the third administrative review of the *Order,* Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd. (Tianjin Jacobi), and Jacobi Carbons Industry (Tianjin) (Jacobi Carbons) (collectively, Jacobi) should be treated as a single entity, and because there were no facts presented on the record of this review which would call into question our prior finding, we continue to treat these companies as part of a single entity for this administrative review, pursuant to sections 771(33)(E), (F), and (G) of the Act, and 19 CFR 351.401(f). *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review,* 76 FR 67142, 67145, n.25 (October 31, 2011); *see also Preliminary Results* PDM. Further, in a changed circumstances review of the *Order,* Commerce determined that Jacobi should be collapsed with its new wholly-owned Chinese affiliate, Jacobi Adsorbent Materials (JAM), and the single entity, inclusive of JAM, should be assigned the same AD cash deposit rate assigned to Jacobi for purposes of determining AD liability in this proceeding. *See Certain Activated Carbon from the People's Republic of China: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 86 FR 58874 (October 25, 2021). Therefore, for these final results, we have assigned the new Jacobi single entity, inclusive of JAM, the same AD rate for cash deposit purposes as the rate assigned to Jacobi for purposes of assessment.

[17] In a changed circumstances review of the *Order,* Commerce found that Ningxia Huahui Environmental Technology Co., Ltd. is the successor-in-interest to Ningxia Huahui Activated Carbon Co. Ltd. (Ninxia Huahui), and should be assigned the same AD cash deposit rate assigned to Ningxia Huahui for purposes of determining AD liability in this proceeding. *See Certain Activated Carbon from the People's Republic of China: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 86 FR 64184 (November 17, 2021). Therefore, for these final results, we have assigned the same AD rate for cash deposit purposes to Ningxia Huahui Environmental Technology Co., Ltd. as the rate assigned to Ningxia Huahui for assessment purposes.

[18] *See* Appendix II of this notice for a full list of the 61 companies.

[19] *See Preliminary Results* PDM at 8. The total number of company names for which Commerce initiated this review is 76. Six of those companies under review submitted no shipment certifications. Two of those companies for which Commerce initiated this review are the mandatory respondents, and seven are separate rate applicants. One of the separate rate applicants, Jacobi, includes two other company names from the initiation notice in its single-entity group. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 35068 (June 8, 2020) at 35070.

[20] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[21] *See, e.g., Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 70163, 70165 (November 25, 2014).

filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For each individually-examined respondent in this review which has a final weighted-average dumping margin that is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer- (or customer-) specific per-unit duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's (or customer's) examined sales to the total sales quantity associated with those sales, in accordance with 19 CFR 351.212(b)(1).[22] We will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to determine whether the per-unit assessment rates are *de minimis*.[23] Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[24]

For the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, the assessment rate will be equal to the rate assigned to them for the final results (*i.e.,* 0.47 USD/kg). For the companies identified as part of the China-wide entity, we will instruct CBP to apply a per-unit assessment rate of 2.42 USD/kg to all entries of subject merchandise during the POR which were produced or exported by those companies. Pursuant to a refinement in our non-market economy practice, for sales that were not reported in the U.S. sales data submitted by companies individually examined during this review, we will instruct CBP to liquidate entries associated with those sales at the rate for the China-wide entity. Furthermore, where we found that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the China-wide entity.[25]

[22] *See AR2 Carbon* IDM at Comment 3.

[23] For calculated (estimated) *ad valorem* importer-specific assessment rates used in determining whether the per-unit assessment rates are *de minimis, see* Memorandum, ''Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China: Preliminary Results Calculation Memorandum for Carbon Activated,'' dated June 21, 2021; and Datong Juqiang's Final Calculation Memorandum and attached Margin Calculation Program Logs and Outputs.

[24] *See* 19 CFR 351.106(c)(2).

[25] For a full discussion of this practice, *see Assessment Practice Refinement,* 76 FR at 65694.

Cash Deposit Requirements

The following per-unit cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Carbon Activated, Datong Juqiang, and the non-examined separate rate respondents, the cash deposit rate will be equal to their weighted-average dumping margins established in the final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin for the China-wide entity (*i.e.,* 2.42 USD/kg); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These per-unit cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 17, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Issues and Decision Memorandum

Appendix II

Companies Not Eligible for a Separate Rate and Treated as Part of the China-Wide Entity

1. AM Global Shipping Lines Co., Ltd.
2. Apex Maritime (Tianjin) Co., Ltd.
3. Ardic Worldwide Logistics Ltd.
4. Beijing Kang Jie Kong International Cargo Agent Co Ltd
5. Bengbu Modern Environmental Co., Ltd.
6. Brilliant Logistics Group Inc.
7. China Combi Works Oy Ltd.
8. China International Freight Co., Ltd.
9. Cohesion Freight (HK) Ltd.
10. Datong Municipal Yunguang
11. De Well Container Shipping Corp.

12. Derun Charcoal Carbon Co., Ltd.
13. Endurance Cargo Management Co., Ltd.
14. Envitek (China) Ltd.
15. Excel Shipping Co., Ltd.
16. Fujian Xinsen Carbon Co., Ltd.
17. Fuzhou Yihuan Carbon Co., Ltd.
18. Fuzhou Yuemengfeng Trade Co., Ltd.
19. Gongyi City Bei Shan Kou Water Purification Materials Factory
20. Guangdong Hanyan Activated Carbon Manufacturing Co., Ltd.
21. Guangzhou Four E'S Scientific Co., Ltd.
22. Hangzhou Hengxing Activated Carbon
23. Henan Dailygreen Trading Co., Ltd.
24. Honour Lane Shipping Ltd.
25. Ingevity Corp.
26. Ingevity Performance Materials
27. Jiangsu Kejing Carbon Fiber Co., Ltd.
28. Jiangxi Yuanli Huaiyushan Active Carbon
29. King Freight International Corp.
30. M Chemical Company, Inc.
31. Meadwestvaco Trading (Shanghai)
32. Muk Chi Trade Co., Ltd.
33. Nanping Yuanli Active Carbon Co.
34. Pacific Star Express (China) Company Ltd.
35. Panalpina World Transport (China) Ltd.
36. Pingdingshan Green Forest Activated Carbon Factory
37. Pingdingshan Lvlin Activated Carbon Co., Ltd.
38. Pudong Prime International Logistics
39. Safround Logistics Co.
40. Seatrade International Transportation
41. Shanghai Caleb Industrial Co. Ltd.
42. Shanghai Express Global International
43. Shanghai Line Feng Int'l Transportation
44. Shanghai Pudong International Transportation
45. Shanghai Sunson Activated Carbon
46. Shanghai Xinjinhu Activated Carbon
47. Shanxi DMD Corp.
48. Shanxi Industry Technology Trading (ITT)
49. Shenzhen Calux Purification Technology Co., Ltd.
50. Shijiazhuang Tangju Trading Co.
51. Sinoacarbon International Trading Co., Ltd.
52. The Ultimate Solid Logistics Ltd.
53. T.H.I. Group (Shanghai) Ltd.
54. Tianjin Maijin Industries Co., Ltd.
55. Translink Shipping Inc.
56. Trans-Power International Logistics Co., Ltd.
57. Triple Eagle Container Line
58. U.S. United Logistics (Ningbo) Inc.
59. Yusen Logistics Co., Ltd.
60. Zhejiang Topc Chemical Industry
61. Zhengzhou Zhulin Activated Carbon

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with November anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with November anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity,

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for respondent selection. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than November 30, 2022.

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
AD Proceedings	
AUSTRIA: Strontium Chromate, A–433–813	11/1/20–10/31/21
Habich GmbH.	
FRANCE: Strontium Chromate, A–427–830	11/1/20–10/31/21
Societe Nouvelle des Couleurs Zinciques.	
INDIA: Welded Stainless Pressure Pipe, A–533–867	11/1/20–10/31/21
Apex Tubes Private Ltd.	
Apurvi Industries.	
Arihant Tubes.	
Divine Tubes Pvt. Ltd.	
Heavy Metal & Tubes.	
Hindustan Inox, Ltd.	
J.S.S. Steelitalia Ltd.	
Linkwell Seamless Tubes Private Limited.	
Maxim Tubes Company Pvt. Ltd.	
MBM Tubes Pvt. Ltd.	
Mukat Tanks & Vessel Ltd.	
Neotiss Ltd.	
Prakash Steelage Ltd.	
Quality Stainless Pvt. Ltd.	
Raajratna Metal Industries Ltd.	
Ratnadeep Metal & Tubes Ltd.	
Ratnamani Metals & Tubes Ltd.	
Remi Edelstahl Tubulars.	
Shubhlaxmi Metals & Tubes Private Limited.	
SLS Tubes Pvt. Ltd.	
Steamline Industries Ltd.	
INDONESIA: Monosodium Glutamate, A–560–826	11/1/20 –10/31/21
PT Cheil Jedang Indonesia.	
PT Miwon Indonesia.	
MEXICO: Seamless Refined Copper Pipe and Tube, A–201–838	11/1/20–10/31/21
GD Affiliates S. de R.L. de C.V.	
Nacional de Cobre, S.A. de C.V.	
IUSA, S.A. de C.V.	
MEXICO: Steel Concrete Reinforcing Bar, A–201–844	11/1/20–10/31/21
Aceros Especiales Simec Tlaxcala, S.A. de C.V.	
ArcelorMittal Mexico SA de CV.	
Compania Siderurgica del Pacifico S.A. de C.V.	
Deacero S.A.P.I. de C.V.	
Fundiciones de Acero Estructurales, S.A. de C.V.	
Grupo Acerero S.A. de C.V.	
Grupo Simec.	
Grupo Chant, S.A.P.I. de C.V.	
Operadora de Perfiles Sigosa,S.A. de C.V.	
Orge S.A. de C.V.	
Perfiles Comerciales Sigosa, S.A. de C.V.	
RRLC S.A.P.I. de C.V.	
Sidertul S.A. de C.V.	
Siderurgica del Occidente y Pacifico S.A. de C.V.	
Siderurgicos Noroeste, S.A. de C.V.	
Simec International, S.A. de C.V.	
Simec International 6 S.A. de C.V.	
Simec International 7 S.A. de C.V.	
Simec International 9 S.A. de C.V.	
REPUBLIC OF KOREA: Certain Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/20–10/31/21
Aju Besteel.	
Bookook Steel.	
Chang Won Bending.	
Dae Ryung.	
Daewoo Shipbuilding & Marine Engineering (Dsme).	
Daiduck Piping.	
Dong Yang Steel Pipe.	
Dongbu Steel.	
Eew Korea Company.	
Histeel.	
Husteel Co., Ltd.	
Hyundai Rb.	
Hyundai Steel (Pipe Division).	
Hyundai Steel Company.	
Kiduck Industries.	
Kum Kang Kind.	
Kumsoo Connecting.	
Miju Steel Mfg.	

	Period to be reviewed
Nexteel Co., Ltd.	
Samkang M & T.	
Seah Fs.	
Seah Steel.	
Steel Flower.	
Vesta Co., Ltd.	
Ycp Co.	
THE PEOPLE'S REPUBLIC OF CHINA: Diamond Sawblades and Parts Thereof, A–570–900	11/1/20–10/31/21
ASHINE Diamond Tools Co., Ltd.	
Bosun Tools Co., Ltd.	
Chengdu Huifeng New Material Technology Co. Ltd.	
Danyang City Ou Di Ma Tools Co., Ltd.	
Danyang Hantronic Import & Export Co., Ltd.	
Danyang Huachang Diamond Tool Manufacturing Co., Ltd.	
Danyang Like Tools Manufacturing Co., Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang Tongyu Tools Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Diamond Tools Technology (Thailand) Co., Ltd.	
Fujian Quanzhou Aotu Precise Machine Co., Ltd.	
Guilin Tebon Superhard Material Co., Ltd.	
Hangzhou Deer King Industrial and Trading Co., Ltd.	
Hangzhou Kingburg Import & Export Co., Ltd.	
Hebei XMF Tools Group Co., Ltd.	
Henan Huanghe Whirlwind International Co., Ltd.	
Hong Kong Hao Xin International Group Limited.	
Hubei Changjiang Precision Engineering Materials Technology Co., Ltd.	
Hubei Sheng Bai Rui Diamond Tools Co., Ltd.	
Husqvarna (Hebei) Co., Ltd.	
Huzhou Gu's Import & Export Co., Ltd.	
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	
Jiangsu Fengtai Diamond Tools Co., Ltd.	
Jiangsu Huachang Diamond Tools Manufacturing Co., Ltd.	
Jiangsu Inter-China Group Corporation.	
Jiangsu Yaofeng Tools Co., Ltd.	
Jiangsu Youhe Tool Manufacturer Co., Ltd.	
Orient Gain International Limited.	
Pantos Logistics (HK) Company Limited.	
Protec Tools Co., Ltd.	
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Hyosung Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Qingyuan Shangtai Diamond Tools Co., Ltd.	
Quanzhou Sunny Superhard Tools Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	
Shanghai Jingquan Industrial Trade Co., Ltd.	
Shanghai Starcraft Tools Co. Ltd.	
Shanghai Vinon Tools Industrial Co.	
Sino Tools Co., Ltd.	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Baiyi Diamond Tools Co., Ltd.	
Wuhan Sadia Trading Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co. Ltd.	
Wuhan ZhaoHua Technology Co., Ltd.	
Xiamen ZL Diamond Technology Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd.	
ZL Diamond Technology Co., Ltd.	
ZL Diamond Tools Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic, A–570–831	11/1/20–10/31/21
Laiwu Ever Green Food Co., Ltd.	
Laiwu Manhing Vegetables Fruits Corp.	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Wu Qiang Xian Long Gao Trading LLC.	
Zhengzhou Harmoni Spice Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Forged Steel Fittings, A–570–067	11/1/20–10/31/21
Both-Well (Taizhou) Steel Fittings Co., Ltd.	
Cixi Baicheng Hardware Tools, Ltd.	
Dalian Guangming Pipe Fittings Co., Ltd.	
Eaton Hydraulics (Luzhou) Co., Ltd.	
Eaton Hydraulics (Ningbo) Co., Ltd.	

	Period to be reviewed
Jiangsu Forged Pipe Fittings Co., Ltd.	
Jiangsu Haida Pipe Fittings Group Co.	
Jinan Mech Piping Technology Co., Ltd.	
Jining Dingguan Precision Parts Manufacturing Co., Ltd.	
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd.	
Luzhou City Chengrun Mechanics Co., Ltd.	
Ningbo HongTe Industrial Co., Ltd.	
Ningbo Long Teng Metal Manufacturing Co., Ltd.	
Ningbo Save Technology Co., Ltd.	
Ningbo Zhongan Forging Co., Ltd.	
Q.C. Witness International Co., Ltd.	
Qingdao Bestflow Industrial Co., Ltd.	
Shanghai Lon Au Stainless Steel Materials Co., Ltd.	
Witness International Co., Ltd.	
Xin Yi International Trade Co., Limited.	
Yancheng Boyue Tube Co., Ltd.	
Yancheng Haohui Pipe Fittings Co., Ltd.	
Yancheng Jiuwei Pipe Fittings Co., Ltd.	
Yancheng Manda Pipe Industry Co., Ltd.	
Yingkou Guangming Pipeline Industry Co., Ltd.	
Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Terephthalate (Pet) Film, A–570–924	11/1/20–10/31/21
Fuwei Films (Shandong) Co., Ltd.	
Shaoxing Xiangyu Green Packing Co., Ltd.	
Sichuan Dongfang Insulating Material Co., Ltd.	
Tianjin Wanhua Co., Ltd.	
CVD Proceedings	
INDIA: Stainless Steel Flanges, C–533–878	1/1/20–12/31/20
Jay Jagdamba Forgings Private Limited [5].	
Katariya Steel Distributors [6].	
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates, C–570–991	1/1/20–12/31/20
Hebei Jiheng Chemical Co., Ltd.	
Heze Huayi Chemical Co., Ltd.	
Juancheng Kangtai Chemical Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Forged Steel Fittings, C–570–068	1/1/20–12/31/20
Both-Well (Taizhou) Steel Fittings Co., Ltd.	
Cixi Baicheng Hardware Tools, Ltd.	
Dalian Guangming Pipe Fittings Co., Ltd.	
Eaton Hydraulics (Luzhou) Co., Ltd.	
Eaton Hydraulics (Ningbo) Co., Ltd.	
Jiangsu Forged Pipe Fittings Co., Ltd.	
Jiangsu Haida Pipe Fittings Group Co. Ltd.	
Jinan Mech Piping Technology Co., Ltd.	
Jining Dingguan Precision Parts Manufacturing Co., Ltd.	
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd.	
Luzhou City Chengrun Mechanics Co., Ltd.	
Ningbo HongTe Industrial Co., Ltd.	
Ningbo Long Teng Metal Manufacturing Co., Ltd.	
Ningbo Save Technology Co., Ltd.	
Ningbo Zhongan Forging Co., Ltd.	
Q.C. Witness International Co., Ltd.	
Qingdao Bestflow Industrial Co., Ltd.	
Shanghai Lon Au Stainless Steel Materials Co., Ltd.	
Witness International Co., Ltd.	
Xin Yi International Trade Co., Limited.	
Yancheng Boyue Tube Co., Ltd.	
Yancheng Haohui Pipe Fittings Co., Ltd.	
Yancheng Jiuwei Pipe Fittings Co., Ltd.	
Yancheng Manda Pipe Industry Co., Ltd.	
Yingkou Guangming Pipeline Industry Co., Ltd.	
Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd.	
TURKEY: Steel Concrete Reinforcing Bar, C–489–819	1/1/20–12/31/20
Acemar International Limited.	
A G Royce Metal Marketing.	
Agir Haddecilik A.S.	
Ans Kargo Lojistik Tas ve Tic.	
As Gaz Sinai ve Tibbi Gazlar A.S.	
Asil Celik Sanayi ve Ticaret A.S.	
Bastug Metalurji Sanayi AS.	
Baykan Dis Ticaret.	
Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S [7].	
Demirsan Haddecilik Sanayi Ve Ticaret AS.	
Diler Dis Ticaret AS.	

	Period to be reviewed
Ege Celik Endustrisi Sanayi ve Ticaret A.S. Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S[8]. Izmir Demir Celik Sanayi A.S. Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S[9]. Kibar dis Ticaret A.S. Kocaer Haddecilik Sanayi Ve Ticar A.S. Meral Makina Iml Ith Ihr Gida. Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi. MMZ Onur Boru Profil A.S. Ozkan Demir Celik Sanayi A.S. Sami Soybas Demir Sanayi ve Ticaret. Wilmar Europe Trading BV. Yucel Boru Ihracat Ithalat ve Pazarlama.	

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[10] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[12] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as

[5] This company's name was incorrect in the initiation notice that published on November 29, 2021 (86 FR 67685).

[6] This company was omitted from the initiation notice that published on November 29, 2021 (86 FR 67685).

[7] Commerce previously found these companies to be cross owned. *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015,* 83 FR 16051 (April 13. 2018).

[8] Commerce previously found this company to be cross owned with: Mardas Marmara Deniz Isletmeciligi A.S.; Artmak Denizcilik Ticaret ve Sanayi A.S.; Oraysan Insaat Sanayi ve Ticaret A.S.; Artim Demir Insaat Turizm Sanayi Ticaret Ltd. Sti.; Anka Entansif Hayvancilik Gida Tarim Sanayi ve Ticaret A.S.; Eras Tasimacilik Taahhut Insaat ve Ticaret A.S.; and Karsan Gemi Insaa Sanayi Ticaret A.S. *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission, in part; 2018,* 86 FR 53279 (September 27, 2021).

[9] Commerce previously found these companies to be cross owned with: Kaptan Is Makinalari Hurda Alim Satim Ltd. Sti; Efesan Demir San. Ve Tic. A.S.; Martas Marmara Ereglisi Liman Tesisleri A.S.; Aset Madencilik A.S.; and Nur Gemicilik ve Tic. A.S. *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission, in Part; 2018,* 86 FR 53279 (September 27, 2021).

[10] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[12] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

otherwise specified by Commerce.[13] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: December 21, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–28172 Filed 12–27–21; 8:45 am]

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[13] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–817]

Ripe Olives From Spain: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that the producers/exporters subject to this review made sales of subject merchandise in the United States at less than normal value during the period of review (POR) August 1, 2019, through July 31, 2020.

DATES: Applicable December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Jacob Keller or Christopher Williams, 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) 482–4849 and 202–482–5166, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2021, Commerce published the *Preliminary Results* of the 2019–2020 administrative review of the antidumping duty order on ripe olives from Spain.[1] This administrative review covers five producers or exporters of the subject merchandise including the two mandatory respondents, Agro Sevilla Aceitunas S.Coop. And. (Agro Sevilla) and Angel Camacho Alimentacion S.L. (Angel Camacho). We invited interested parties to comment on the *Preliminary Results.* On October 8, 2021, we received case briefs from the domestic interested party, Musco Family Olive Company (Musco) and from the mandatory respondents, Agro Sevilla and Angel Camacho.[2] On October 19, 2021, Musco, Agro Sevilla, and Angel Camacho submitted rebuttal briefs.[3] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the *Order*[4] are ripe olives. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum and are listed in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on the comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in in the Issues and Decision memorandum, we made certain changes for the final results of review.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margins exist for the period August 1, 2019, through July 31, 2020:

[1] *See Ripe Olives from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 50052 (September 7, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Musco's Letters, ''Ripe Olives from Spain; 2nd Administrative Review Musco Case Brief Concerning Agro Sevilla,'' dated October 8, 2021; and ''Ripe Olives from Spain; 2nd Administrative Review Musco Case Brief Concerning Camacho,'' dated October 8, 2021; *see also* Agro Sevilla's Letter, ''Agro Sevilla's Case Brief: Ripe Olives from Spain (08/01/2019–07/31/2020),'' dated October 8, 2021; and Angel Camacho's Letter, ''Camacho's Case Brief: Ripe Olives from Spain (08/01/2019–07/31/2020),'' dated October 8, 2021.

[3] *See* Musco's Letters, ''Ripe Olives from Spain; 2nd Administrative Review Musco Rebuttal Brief Concerning Agro Sevilla,'' dated October 19, 2021; and ''Ripe Olives from Spain; 2nd Administrative Review Musco Rebuttal Brief Concerning Camacho,'' dated October 19, 2021; *see also* Agro Sevilla's Letter, ''Agro Sevilla's Rebuttal Brief: Ripe Olives from Spain (08/01/2019–07/31/2020),'' dated October 19, 2021; and Angel Camacho's Letter, ''Rebuttal Brief of Angel Camacho Alimentacion, S.L.: Ripe Olives from Spain (08/01/2019–07/31/2020),'' dated October 19, 2021.

[4] *See Ripe Olives from Spain: Antidumping Duty Order,* 83 FR 37465 (August 1, 2018) (*Order*); *see also Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order,* 83 FR 39691 (August 10, 2018) (*Order*).

[5] *See* Memorandum, ''Ripe Olives from Spain: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Producer/exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas S.Coop. And	2.78
Angel Camacho Alimentacion S.L	4.51
Review-Specific Weighted-Average Rate Applicable to the Following Companies	
Aceitunas Guadalquivir, S.L	3.56
Alimentary Group Dcoop S. Coop. And	3.56
Internacional Olivarera, S.A	3.56

Disclosure

We intend to disclose the calculations performed in connection with these final results to parties in this proceeding within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Agro Sevilla and Angel Camacho we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).[6] Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties.

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established in these final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice for all shipments of ripe olives entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for the companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent, the all-others rate established in the less-than-fair-value investigation for this proceeding.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sactionable violation.

Notification to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 21, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–28173 Filed 12–27–21; 8:45 am]

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[6] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Ripe Olives from Spain: Antidumping Duty Order,* 83 FR 37465 (August 1, 2018).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Capital Construction Fund Agreement, Certificate Family of Forms and Deposit/Withdrawal Report.

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 28, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov*. Please reference OMB Control Number 0648–0041 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Richard VanGorder, Financial Assistance Specialist, NOAA/NMFS/F/MB5, 1315 East-West Highway, Room 13113, Silver Spring, MD 20910, (301) 427–8784, or *Richard.VanGorder@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

The Merchant Marine Act of 1936, as amended by Public Law 91–469 and Public Law 99–514, provides for the administration of a Capital Construction Fund (CCF) Program by NOAA's National Marine Fisheries Service (NMFS). The law requires that applicants enter into formal Agreements with the Secretary of Commerce. The Agreement allows the fishermen to defer taxable income from operation of their fishing vessels if the money is placed into an account to fund the construction, reconstruction, or replacement of a fishing vessel. The program requirements are detailed at 50 CFR part 259. The Agreement is a contract between the Secretary of Commerce and the Agreement holder specifying the obligations of each party. Schedule A specifies the vessel which earned the income which is eligible for deposit in to a CCF account. Schedule B specifies the construction, acquisition, or reconstruction objectives planned under the Agreement. The Certificate of Construction/Reconstruction certifies the total cost at completion of Schedule B objectives.

Under a Capital Construction Fund (CCF) Agreement, the participant cannot deposit more than the amount specified at 46 U.S.C. 53505. NMFS must approve any withdrawals made before they take place. It is essential that a reasonably detailed record be kept of each participant's deposit/withdrawal activity. If withdrawn monies are not used for allowed purposes, the withdrawn amount (a nonqualified withdrawal) is considered income to the participant in the year withdrawn and taxed at the highest marginal tax rate for the entity involved.

Respondents will be commercial fishing industry individuals, partnerships, and corporations which entered into Capital Construction Fund (CCF) agreements with the Secretary of Commerce. The information collected from applicants for the CCF Agreement (NOAA Form 88–14) is used to determine their eligibility to participate in the CCF Program. The information collected from agreement holders for the Certificate Family of Forms is used to identify their program eligible vessels, their program projects, and to certify the cost of a project at completion. The information collected on the Deposit/Withdrawal Report (NOAA Form 34–82) is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected on the Deposit/Withdrawal Report must also be reported semi-annually to the Secretary of Treasury in accordance with Public Law 115– 97.

NMFS is proposing to add an additional form to the Certificate of Family Forms, the Schedule of Tax Basis, which is required upon completion of a Schedule B project in order to determine the remaining tax basis of the qualified vessel.

II. Method of Collection

The information will be collected on forms submitted electronically or by mail.

III. Data

OMB Control Number: 0648–0041.

Form Number(s): NOAA Form 34–82, NOAA Form 88–14.

Type of Review: Regular submission (Revision and extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time per Response: NOAA Form 34–82, 3.5 hours; NOAA Form 88–14, 30 minutes; and 2.5 hours for the Certificate Family of Forms (includes Fishing Vessel CCF Application, Schedule A, Schedule B, Schedule of Tax Basis, and Certificate of Construction/Reconstruction).

Estimated Total Annual Burden Hours for Respondents: 4,963 hours.

Estimated Total Annual Cost for Respondents: $4,419 in recordkeeping/reporting costs.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: 46 U.S.C. 535, Public Law 115– 97 *and* 50 CFR part 259

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–28189 Filed 12–27–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB665]

Council Coordination Committee Meeting

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

ACTION: Notice of a public meeting; information regarding the agenda.

SUMMARY: The National Marine Fisheries Service, Office of Sustainable Fisheries will host a virtual meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors on January 18, 2022. The intent of this meeting is to discuss issues of relevance to the Councils and NMFS, including issues related to the implementation of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act. The meeting is open to the public.

DATES: The meeting will begin at 3 p.m. Eastern on Tuesday, January 18, 2022, and adjourn by 4 p.m. Eastern.

ADDRESSES: The meeting will be held online via WebEx. Attendees can find information on how to join at *https://www.fisheries.noaa.gov/national/partners/council-coordination-committee* and *http://www.fisherycouncils.org/ccc-meetings.*

FOR FURTHER INFORMATION CONTACT: Lindsay Fullenkamp by email at *lindsay.fullenkamp@noaa.gov* or at (301) 427–8500.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act established the CCC. The CCC consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils or other Council members or staff. Updates to this meeting and additional information will be posted on *https://www.fisheries.noaa.gov/national/partners/council-coordination-committee* and *http://www.fisherycouncils.org/* when available.

Proposed Agenda

Tuesday, January 18, 2022—3 p.m.–4 p.m. Eastern

1. Consideration of changes to the process of integrating Section 7 of the Endangered Species Action with the Magnuson-Stevens Act
2. Public Comment
3. Wrap-up

Special Accommodations

If you have particular access needs please contact Lindsay Fullenkamp at *lindsay.fullenkamp@noaa.gov* at least 7 business days prior to the meeting for accommodation.

Dated: December 20, 2021.

Ngagne Jafnar Gueye,

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

[FR Doc. 2021–28187 Filed 12–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Pacific Islands Region Permit Family of Forms

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 help 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 September 15, 2021 (86 FR 51345) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

Title: Pacific Islands Region Permit Family of Forms.

OMB Control Number: 0648–0490.

Form Number(s): None.

Type of Request: Regular submission (revision of a current information collection).

Number of Respondents: 279.

Average Hours per Response:

- 15 minutes for Hawaii longline limited entry renewal online, 30 minutes for Hawaii longline limited entry renewal by emailed document submission.
- 1 hour for Hawaii longline limited entry permit transfer document.
- 30 minutes for Western Pacific (WP) general longline, WP receiving vessel, PRIA troll and handline, WP bottomfish, pelagic squid jig, crustacean, and WP precious coral applications.
- 45 minutes for American Samoa longline limited entry vessel registration.
- 75 minutes for American Samoa longline limited entry permit transfer, renewal, or additional permit applications.
- 2 hours for coral reef fishing special/transshipment permit application, permit appeal, and longline prohibited area exemption.
- 15 minutes for main Hawaiian Islands non-commercial bottomfish permit application.

Total Annual Burden Hours: 152.

Needs and Uses: All vessel owners or permit holders fishing with specified gear in the federally managed fisheries covered by this information collection in the Exclusive Economic Zone around Hawaii, American Samoa, Guam, Northern Mariana Islands, and Pacific Remote Island Areas must have the permits and to register their vessels to the permits. Each vessel that lands catch in these islands must be registered to a permit. NMFS, the Western Pacific Fishery Management Council, and Federal enforcement agencies use the information to monitor and manage the fisheries.

This request is for a revision to merge the permit application forms from two currently approved information collections—Pacific Islands Region Coral Reef Ecosystem Permit Form (OMB Control No. 0648–0463) and Non-commercial Permit and Reporting Requirements in the Main Hawaiian Islands Bottomfish Fishery (OMB Control No. 0648–0577)—into the currently approved Pacific Islands Region Permit Family of Forms (OMB Control No. 0648–0490).

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: As required.

Respondent's Obligation: Voluntary for open access permits; Required to Obtain or Retain Benefits for limited entry permits.

Legal Authority: 50 CFR 665.

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 *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection or OMB Control Number 0648–0490.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–28167 Filed 12–27–21; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2021–0022]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget's (OMB's) approval for an existing information collection titled, ''Generic Information Collection Plan for Consumer Complaint and Information Collection System (Testing and Feedback).''

DATES: Written comments are encouraged and must be received on or before February 28, 2022 to be assured consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2021–0022 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Consumer Complaint and Information Collection System (Testing and Feedback).

OMB Control Number: 3170–0042.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 655,000 (three-year total: 1,965,000).

Estimated Total Annual Burden Hours: 110,833 (three-year total: 332,499).

Abstract: The Bureau has undertaken a variety of service delivery-focused activities supported by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–2013 (Dodd-Frank Act). These activities (which include consumer complaint/inquiry processing, referral, and monitoring) involve several interrelated systems.[1] The streamlined process of the generic clearance will allow the Bureau to implement these systems efficiently which is in line with the Bureau's commitment to continuous improvement of its delivery of services through iterative testing and feedback collection.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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 respondents, including through the use of automated collection techniques or other forms of information technology. 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.

[1] These interrelated systems include secure, web-based portals that allow consumers, companies, and agencies to access complaints and an online ''Tell Your Story'' feature. The ''Tell Your Story'' feature allows consumers to share feedback about their experiences in the consumer financial marketplace.

Anthony May,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2021–28126 Filed 12–27–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Development of the National Levee Safety Program

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency (FEMA) are launching a new National Levee Safety Program, authorized by the National Levee Safety Act of 2007. The purpose of the National Levee Safety Program is to improve the way levees are managed throughout the United States and its territories in order to reduce disaster suffering and improve the resiliency of communities behind levees. There are four major components that are intended to work together to accomplish the goals of the program: National Levee Safety Guidelines; Integrated Levee Management; National Levee Database and Data Collection; and Implementation Support. This notice announces the start of Phase 1 which is the solicitation of input on the purpose and scope of each of the components of the National Levee Safety Program in order to develop priorities and options for their implementation.

DATES: Comments related to the purpose and scope of the National Levee Safety Program must be submitted on or before March 31, 2022.

ADDRESSES: You may submit comments identified by docket number COE–2021–0007 by any of the following methods:

Federal eRulemaking Portal: Visit *www.regulations.gov* and follow the instructions for submitting comments.

Email: Send an email to *hq-leveesafety@usace.army.mil* and include the docket number, COE–2021–0007, in the subject line of the message.

Mail: U.S. Army Corps of Engineers Vicksburg District, ATTN: Levee Safety Center—RM 221, 4155 East Clay Street, Vicksburg, MS 39183.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE–2021–0007. All comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to USACE without going through *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, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy Conforti at 202–365–6586, email *hq-leveesafety@usace.army.mil* or visit *www.leveesafety.org.*

SUPPLEMENTARY INFORMATION: One of the foundations of the National Levee Safety Program is stakeholder engagement with those who are responsible for, are impacted by, or have interest in levees and related policies including federal/state/local governments, tribes, levee owners/operators, businesses, floodplain managers and residents. The goals for the stakeholder engagement process are to:

1. Understand the needs of the stakeholders this program is intended to support;

2. provide opportunities for meaningful input to shape decisions and outcomes on program design, components, and products; and,

3. ensure that the unique challenges related to levees faced by disadvantaged communities and tribes are well understood and incorporated into solutions.

The purpose of the National Levee Safety Program is to improve the way levees are managed throughout the United States and its territories in order to reduce disaster suffering and improve the resiliency of communities behind levees. Managing flood risk is a shared responsibility between federal, tribal, state, and local entities. USACE and FEMA are interested in the views of the public regarding how the National Levee Safety Program and each of its components can be implemented to best serve those responsible for and impacted by flood risk management efforts. The four major components of the National Levee Safety Program are intended to work together to accomplish the goals of the program: National Levee Safety Guidelines; Integrated Levee Management; National Levee Database and Data Collection; and Implementation Support. There are fact sheets and additional information introducing each of these components at *www.leveesafety.org.*

USACE and FEMA will be seeking feedback from stakeholders at various phases of the program's development over the next 2–3 years. Phase 1 is starting during the Winter of 2021 with a focus on gathering initial input on the purpose and scope of each of the components of the National Levee Safety Program to better understand the needs and priorities of the public. Phase 2 is anticipated to occur during the Summer of 2022 with a focus on soliciting feedback on priorities and options identified during Phase 1 (scoping). Phase 3 is anticipated to occur during the Fall of 2023 with a focus on soliciting feedback on draft program implementation products. During each phase, stakeholders will be able to submit comments through a variety of methods. Each phase will have an open comment period under docket number COE–2021–0007. For more information about the program, its key components, and opportunities to get involved please visit *www.leveesafety.org.*

During Phase 1 of program development, USACE will be hosting seven public meetings and four public webinars to provide an overview of the program and its key components and opportunities for submitting feedback. There will be a 100-person limit for each public meeting and webinar. To attend an in-person public meeting, you must be fully vaccinated for COVID–19 and may be required to provide proof of vaccination before entry into the meeting. For information about the public meetings and webinars, including how to register to attend, visit *www.leveesafety.org.*

Questions to Shape the Focus of the Program: Commentors are encouraged to use the following questions to guide their feedback on the purpose and scope of the National Levee Safety Program and its components as described at *www.leveesafety.org:*

Overall Program Focus and Purpose

1. Do you believe the stated vision/mission/objectives of a national approach will significantly improve levee safety in the Nation in the future? Any suggestions for improvement?

2. Do you understand the general approach for the development of the program (*e.g.,* stakeholder engagement, key components, etc.)? If not, what is unclear? Any suggestions for improvements?

3. What is the single most important challenge related to levees you think this program should try to help address? Do you see it adequately addressed in this approach?

National Levee Safety Guidelines

1. Which topics do you think you will find the most useful? Why?

2. Are there any missing topics that you think should be included?

3. Are there any areas of content where templates, specific methodologies, tools, or other aids would be particularly helpful to you?

Integrated Levee Management

1. Is clarifying the roles and responsibilities for levee related

activities at the federal, tribal, state, levee owner, and community levels the right place to start or are we missing anyone?

2. What is the biggest value of standing up state levee safety programs?

3. What do you think would be the most important activities for state levee safety programs?

4. Other than funding, what are the biggest barriers states might have in standing up levee safety programs?

5. For the states/tribes/regional district grants, the legislation reserves 25 percent be used to identify and assess non-Federal levees, but what other priorities or activities should the remaining 75 percent of grant funding go towards?

6. Are there any federal programs that are hampering your ability or providing a disincentive to adequately perform flood risk or levee management activities? If so, please explain?

7. Where do you see opportunities for federal programs to be adjusted/realigned/reprioritized to better support flood risk management/levee safety in communities with levees?

National Levee Database and Data Collection

1. What are the most important decisions you need to make to improve flood risk management decisions in your community or on your levee? What data do you most need to support these decisions?

2. How might USACE encourage participation of levee owners or states in either providing levee information or participating in USACE-led levee inspections and risk assessments?

3. What types of levee information is most meaningful to people who live and work behind levees? What role can/should the National Levee Database play in providing this information?

These scoping questions, along with background information on the National Levee Safety Program and its key components, can be found at *www.leveesafety.org.*

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2021–28056 Filed 12–27–21; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0145]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; District Survey on Use of Funds Under Title II, Part A

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 27, 2022.

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 Andrew Brake, (202) 453–6136.

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: District Survey on Use of Funds Under Title II, Part A.

OMB Control Number: 1810–0618.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 4,452.

Total Estimated Number of Annual Burden Hours: 13,252.

Abstract: The U.S. Department of Education is requesting clearance for a revision to 1810–0618 in order to continue collecting data annually from school districts about how Title II, Part A funds are used to support authorized activities and improve equitable access to teachers for low-income and minority students; including professional development for teachers, principals, and other school leaders. The reporting requirements are outlined in Section 2104(b) of the Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act of 2015 (ESSA).

The annual survey will include a state representative sample of traditional school districts, a nationally representative sample of charter school districts, and an annual request for each state to provide a list of districts that receive Title II, Part A funds and each district's allocated Title II, part A amount. The survey will be sent to district Title II, Part A coordinators and administered using an electronic instrument.

Dated: December 21, 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. 2021–28106 Filed 12–27–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0170]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State Charter School Facilities Incentive Grants Program

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 27, 2022.

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 Clifton Jones, 202–205–2204.

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: State Charter School Facilities Incentive Grants Program.

OMB Control Number: 1855–0012.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 480.

Abstract: The State Charter School Facilities Incentive Grants Program allows States to apply for Federal assistance. These grants are made to States to provide them with an incentive to create new or enhance existing per-pupil facilities aid programs for charter schools. The applicants will provide a description of their proposed activities and provide information necessary to determine which grant applications should be funded. An additional part of the application consists of assurances regarding the applicant's compliance with applicable Federal laws and regulations. The information provided in the application will allow field readers and the Department of Education to determine if applicants are eligible and identify which applications most merit funding.

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: December 21, 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. 2021–28123 Filed 12–27–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0167]

2020/22 Beginning Postsecondary Students (BPS:20/22) Field Test; Correction

AGENCY: National Center for Education Statistics (NCES), Institute of Education Sciences, Department of Education (ED) .

ACTION: Correction notice.

On December 15, 2021, the U.S. Department of Education published a 30-day comment period notice in the **Federal Register** with FR DOC# 2021–27084 (Page 71252, Column 3; Page 71253, Column 1, Column 2) seeking public comment for an information collection entitled, ''2020/22 Beginning Postsecondary Students (BPS:20/22) Field Test''. The title is incorrect. The correct title is 2020/22 Beginning Postsecondary Students (BPS:20/22) Full Scale Study.

The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: December 15, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–28059 Filed 12–27–21; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: EAC Progress Report

AGENCY: U.S. Election Assistance Commission.

ACTION: Request for public comment on modified EAC Progress Report to be used for both interim and final progress reporting for all EAC grants.

DATES: Comments should be submitted by 5 p.m. Eastern on Friday, February 25, 2022.

FOR FURTHER INFORMATION CONTACT: To view the proposed EAC–PR format, see: *https://www.eac.gov/payments-and-grants/reporting.*

For information on the EAC–PR, contact Kinza Ghaznavi, Office of Grants Management, Election Assistance Commission, *Grants@eac.gov.*

Written comments and recommendations for the proposed information collection should be sent directly to *Grants@eac.gov.*

All requests and submissions should be identified by the title of the information collection.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) a modification of the previously approved information collection OMB Control Number 3265–0021 EAC Progress Report (EAC–PR).

The EAC Office of Grants Management (EAC/OGM) is responsible for distributing, monitoring and providing technical assistance to states and grantees on the use of federal funds. EAC/OGM also reports on how the funds are spent, negotiates indirect cost

rates with grantees, and resolves audit findings on the use of HAVA funds.

The EAC–PR has been developed for both interim and final progress reports for grants issued under HAVA authority. This revised format builds upon that report for the various grant awards given by EAC and provides terminology clarification. A ''For Comment'' version of the draft format for use in submission of interim and final Progress Reports is posted on the EAC website at: *https://www.eac.gov/payments-and-grants/reporting.* The PR will directly benefit award recipients by making it easier for them to administer federal grant and cooperative agreement programs through standardization of the types of information required in progress reports—thereby reducing their administrative effort and costs.

After obtaining and considering public comment, the EAC will prepare the format for final clearance. Comments are invited on (a) ways to enhance the quality, utility, and clarity of the information collected from respondents, including the use of automated collection techniques or other forms of information technology; and (b) 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.

SUPPLEMENTARY INFORMATION:

Description: The EAC proposes to collect program progress data for HAVA grantees building upon the approved form OMB Control No: 3265–0021. EAC will use this data to ensure grantees are proceeding in a satisfactory manner in meeting the approved goals and purpose of the project.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in Code of Federal Regulations TITLE 2, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Respondents: All EAC grantees.

ANNUAL BURDEN ESTIMATES

EAC grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
251	EAC–PR	35	2	1	70
101	EAC–PR	20	2	1	40
2018	EAC–PR	56	2	1	112
CARES	EAC–PR	15	2	1	30
Total					252

The estimated cost of the annualized cost of this burden is: $5,727.96, which is calculated by taking the annualized burden (252 hours) and multiplying by an hourly rate of $22.73 (GS–8/Step 5 hourly basic rate).

Kevin Rayburn,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021–28199 Filed 12–27–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Notice of 229 Boundary Revision for the Argonne National Laboratory (ANL)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of 229 boundary revision for the Argonne National Laboratory.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), pursuant to the Atomic Energy Act of 1954, as amended, as implemented by DOE's regulations regarding Trespassing on DOE property which published in the **Federal Register** on October 31, 1969, prohibits the unauthorized entry, and the unauthorized introduction of weapons or dangerous materials, into or upon the following described facility of the ANL of the DOE.

DATES: This action is effective on December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. James Durant, III, Office of Chief Counsel, Office of Science, Chicago Office, 9800 South Cass Ave., Lemont, Illinois 60439, (630) 252–2034, *james.durant@science.doe.gov*.

SUPPLEMENTARY INFORMATION: This security boundary is designated pursuant to Section 229 of the Atomic Energy Act of 1954. This revised boundary supersedes and/or re-describes the entry previously contained in the **Federal Register** notice published on October 31, 1969, 34 FR 17671 for the ANL of the Department of Energy.

The following amendments are made:

Argonne National Laboratory is a science and engineering research national laboratory managed by UChicago Argonne, LLC for the United States DOE's Office of Science. ANL is located in the County of DuPage, Town of Lemont, State of Illinois, and is located approximately 25 miles south of the City of Chicago. The ANL 229 Security Boundary is bounded by: North, Interstate 55; South, Bluff Road; East, Cass Ave. and West, Lemont Ave. (Latitude: 41°42′33.00″ N and Longitude: −87°58′55.17″ W).

The previous ANL 229 Security Boundary conveyed 1,991.731 acres, more or less. This revised ANL 229 Security Boundary retained 1,517.586 acres, more or less and is further described as: That part of Sections Three (3), Four (4), Five (5), Eight (8), Nine (9), Ten (10), Eleven (11), Fifteen (15), Sixteen (16), and Seventeen (17), Township 37 North, Range 11 East of the Third Principal Meridian, DuPage County, Illinois. The ANL 229 Security Boundary for these areas is indicated by fencing and/or cable and post configuration.

Signing Authority

This document of the Department of Energy was signed on December 3, 2021, by Dr. Joanna M. Livengood, Manager, Argonne Site Office, Office of Science, pursuant to delegated authority from the Secretary of Energy. The document with the original signature and date is maintained by the 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 December 22, 2021

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–28147 Filed 12–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Wednesday, January 19, 2022; 11:00 a.m.–1:00 p.m.

ADDRESSES: Online Virtual Meeting. To receive the meeting access information and call-in number, please contact the Federal Coordinator, Gary Younger, at the telephone number or email listed below by five days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Gary Younger, Federal Coordinator, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA 99354; Phone: (509) 372–0923; or Email: *gary.younger@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Discussion of Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gary Younger at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gary Younger. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signed in Washington, DC, on December 22, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–28198 Filed 12–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an open meeting of the President's Council of Advisors on Science and Technology (PCAST). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday January 20, 2022; 3:00 p.m. to 5:00 p.m. ET

Friday January 21, 2022; 2:45 p.m. to 5:00 p.m. ET

ADDRESSES: Information to participate virtually can be found on the PCAST website closer to the meeting date at: *www.whitehouse.gov/PCAST/meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Sarah Domnitz, Designated Federal Officer, PCAST, email: *PCAST@ostp.eop.gov* or telephone: (202) 881–6399.

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from the White House, cabinet departments, and other Federal agencies. See the Executive Order at *whitehouse.gov.* PCAST is consulted on and provides analyses and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Sarah Domnitz. Information about PCAST can be found at: *www.whitehouse.gov/PCAST.*

Tentative Agenda: PCAST will hear from invited speakers on and discuss measuring and monitoring greenhouse gases and accelerating innovation in energy technologies. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Public Participation: The meeting is open to the public. It is the policy of the PCAST to accept written public comments no longer than 10 pages and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 21, 2022, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov,* no later than 12:00 p.m. Eastern Time on January 13, 2022. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12:00 p.m. Eastern Time on January 13, 2022, so that the comments can be made available to the PCAST members for their consideration prior to this meeting.

PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Minutes: Minutes will be available within 45 days at: *www.whitehouse.gov/PCAST/meetings.*

Signed in Washington, DC, on December 22, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–28208 Filed 12–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–493]

Application To Export Electric Energy; SociVolta, Inc.

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: SociVolta, Inc. (Applicant or SociVolta) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before January 27, 2022.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

FOR FURTHER INFORMATION CONTACT: Matt Aronoff, 202–586–5863, *matthew.aronoff@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 13, 2021, SociVolta filed an application with DOE (Application or App.) to ''transmit electric energy from the United States to Mexico for a period of five (5) years.'' App. at 1. SociVolta states that it ''is a Canadian company with its principal place of business in Montreal, Quebec,'' adding that it ''was incorporated in Quebec under a Canadian federal charter.'' *Id.* SociVolta represents that it ''does not have any affiliates or upstream owners that possess any ownership interest or involvement in any other company that is a traditional utility or that owns, operates, or controls any electric generation, transmission or distribution facilities, nor do they have any direct involvement with the energy industry other than through the ownership of SociVolta.'' *Id.* at 2.

SociVolta further claims that it would ''purchase power to be exported from a variety of sources such as power marketers, independent power producers, or U.S. electric utilities and federal power marketing entities as those terms are defined in Sections 3(22) and 3(19) of the [FPA].'' App. at 3. SociVolta contends that its proposed exports would be ''surplus to the system of the generator and, therefore, the electric power that [it would] export on either a firm or interruptible basis [would] not impair the sufficiency of the electric power supply within the U.S.'' *Id.* SociVolta adds that its proposed exports would ''not impair or tend to impede the sufficiency of electric supplies in the U.S. or the regional coordination of electric utility planning or operations.'' *Id.* at 4.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning SociVolta's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–493. Additional copies are to be provided directly to Ruta Kalvaitis Skučas, 1601 K St. NW, Washington, DC 20006, *rskucas@klgate.com;* and Daniel Harris, 5455 De Gaspe Ave., Suite 710, Montreal, Quebec H2T 3B3 Canada, *info@socivolta.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at *https://energy.gov/node/11845,* or by emailing Matt Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on December 22, 2021.

Christopher Lawrence,

Management and Program Analyst, Electricity Delivery Division, Office of Electricity.

[FR Doc. 2021–28200 Filed 12–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR22–1–000]

Petition of the Liquids Shippers Group for Expedited Order Directing Compliance With Form No. 6 Reporting Requirements; Notice of Petition

Take notice that on December 14, 2021, pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(5) (2021) and section 20(1) of the Interstate Commerce Act (ICA), 49 U.S.C. app. 20(1) (1988), the Liquids Shippers Group [1] (Petitioner) petitioned the Commission to issue an order by February 18, 2022 directing every jurisdictional oil pipeline [2] to correctly record interstate revenues in Account Nos. 230 through 260 and to report those revenues on page 700 when submitting its annual FERC Form No. 6 filing for 2021, and for every year thereafter, all 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.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

[1] For the purpose of this Petition, the LSG includes: Anadarko Energy Services Company, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Crescent Point Energy Corp., Devon Gas Services, L.P., Marathon Oil Company, Murphy Exploration and Production Company—USA, Ovintiv Marketing Inc., and Pioneer Natural Resources USA, Inc.

[2] The term ''oil pipelines'' includes FERC-jurisdictional crude oil, refined products, and petroleum liquids pipelines.

''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance 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 January 13, 2022.

Dated: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28204 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2527–004; ER12–1502–007; ER12–1504–007; ER15–190–019; ER17–2–005; ER18–1343–012; ER20–1487–003.

Applicants: Frontier Windpower II, LLC, Carolina Solar Power, LLC, Frontier Windpower, LLC, Duke Energy Renewable Services, LLC, Cimarron Windpower II, LLC, Ironwood Windpower, LLC, Caprock Solar I LLC.

Description: Triennial Updated Market Power Analysis for the Southwest Power Pool of the Duke SPP MBR Sellers.

Filed Date: 12/20/21.

Accession Number: 20211220–5269.

Comment Date: 5 p.m. ET 2/18/22.

Docket Numbers: ER19–2434–002; ER19–2534–002.

Applicants: Citizens Energy Corporation, Citizens Imperial Solar LLC.

Description: Triennial Market Power Analysis for Southwest Region of Citizens Imperial Solar LLC, et al.

Filed Date: 12/20/21.

Accession Number: 20211220–5266.

Comment Date: 5 p.m. ET 2/18/22.

Docket Numbers: ER21–2655–002.

Applicants: Southwestern Public Service Company.

Description: Tariff Amendment: SPS-Llano-LGIA-Second Amnd-Supl Filing-101–0.0.2 to be effective 1/20/2022.

Filed Date: 12/21/21.

Accession Number: 20211221–5101.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER21–2900–002.

Applicants: Duke Energy Florida, LLC, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC.

Description: Tariff Amendment: Duke Energy Progress, LLC submits tariff filing per 35.17(b): Errata Filing of Revisions to Joint OATT (Network Contract Demand) to be effective 11/17/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5075.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–210–001.

Applicants: ENGIE 2020 ProjectCo-NH1 LLC.

Description: Tariff Amendment: Amendment to Market-Base Rate Schedule Submittal to be effective 12/26/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5124.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–692–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6264; Queue No. V1–026 and V1–027 to be effective 11/19/2021.

Filed Date: 12/20/21.

Accession Number: 20211220–5241.

Comment Date: 5 p.m. ET 1/10/22.

Docket Numbers: ER22–693–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6282; Queue No. AD2–160/AE2–253 to be effective 11/19/2021.

Filed Date: 12/20/21.

Accession Number: 20211220–5246.

Comment Date: 5 p.m. ET 1/10/22.

Docket Numbers: ER22–694–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–12–21_SA 3421 MEC-Heartland Divide Wind II 1st Rev GIA (J583) to be effective 12/7/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5027.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–695–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–12–21_SA 3473 Ameren IL-Hickory Point Solar Energy 1st Rev GIA (J815) to be effective 12/8/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5032.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–696–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3877 WAPA & Central Power Electric Coop Interconnection Agr to be effective 12/20/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5047.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–697–000.

Applicants: The Connecticut Light and Power Company.

Description: § 205(d) Rate Filing: Related Facilities Agreement—Revolution Wind, LLC to be effective 12/21/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5048.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–698–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule No. 283 to be effective 11/29/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5079.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–699–000.

Applicants: Valley Electric Association, Inc.

Description: § 205(d) Rate Filing: Annual TRBA Filing 2021 to be effective 1/1/2022.

Filed Date: 12/21/21.

Accession Number: 20211221–5092.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–700–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Engineering and Procurement Agreement—Copco No. 2 to be effective 2/19/2022.

Filed Date: 12/21/21.

Accession Number: 20211221–5125.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–701–000.

Applicants: PacifiCorp.

Description: Tariff Amendment: Termination of RS 748 BPA Constr Agmt Green Springs BAA Move to be effective 3/15/2022.

Filed Date: 12/21/21.

Accession Number: 20211221–5165.

Comment Date: 5 p.m. ET 1/11/22.

Docket Numbers: ER22–702–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OATT Sch. 12-Appendices re: 2022 RTEP Annual Cost Allocations to be effective 1/1/2022.

Filed Date: 12/21/21.

Accession Number: 20211221–5175.

Comment Date: 5 p.m. ET 1/11/22.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM22–6–000.

Applicants: South Texas Electric Cooperative, Inc.

Description: Application of South Texas Electric Cooperative, Inc. to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 12/21/21.

Accession Number: 20211221–5143.

Comment Date: 5 p.m. ET 1/18/22.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR21–3–001.

Applicants: North American Electric Reliability Corporation.

Description: Joint Compliance Filing of The North American Electric Reliability Corporation and Texas Reliability Entity, Inc. for Approval of Amendment to the Bylaws of Texas Reliability Entity, Inc.

Filed Date: 12/21/21.

Accession Number: 20211221–5174.

Comment Date: 5 p.m. ET 1/11/22.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28209 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15239–000]

PacifiCorp; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2021, PacifiCorp filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Crooked Creek Pumped Storage Project (Crooked Creek Project or project) to be located near Valley Falls, Lake County, Oregon. 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 upper reservoir with a surface area of 52 acres and a storage volume of approximately 2,344 acre-feet created by a 4,200-foot-long, 100-foot-high embankment dam; (2) a lower reservoir with a surface area of 50 acres and a storage volume of approximately 2,052 acre-feet created by a 4,300-foot-long, 130 foot-high embankment dam; (3) a 2-mile-long excavated tunnel and 1.3-mile-long steel penstock totaling 3.3 miles with a diameter of 18-feet connecting the upper reservoir with the powerhouse/pump station; (4) a 150-foot-long, 50-foot-wide concrete powerhouse/pump station located on the lower reservoir shoreline containing three 167-megawatt generating/pumping units; (5) a 19.7-mile, 500-kilovolt transmission line interconnecting to PacifiCorp's existing Mile Hi substation in Lakeview, Oregon; (6) an 8.7 mile underground pipeline diverting water from the Chewaucan River to the project for initial and maintenance fill; and, (7) appurtenant facilities. The estimated annual generation of the Crooked Creek Project would be 1,460 gigawatt-hours.

Applicant Contact: Tim Hemstreet, Managing Director, Renewable Energy Development, PacifiCorp, 825 NE Multnomah, Suite 1800, Portland, OR 97232; email: *Tim.Hemstreet@pacificorp.com;* phone: (503) 813–6170.

FERC Contact: Kristen Sinclair; email: *kristen.sinclair@ferc.gov;* phone: (202) 502–6587.

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–15239–000.

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–15239) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28203 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD21–6–000]

Commission Information Collection Activity (FERC–725B4); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the information collection requirements associated with Reliability Standards CIP–004–7 and CIP–011–3 in Docket No. RD21–6–000. The burden for the requirements will be included in FERC–725B4 (Mandatory Reliability Standards for Critical Infrastructure Protection [CIP] Reliability Standards).

DATES: Comments on the collections of information are due February 28, 2022.

ADDRESSES: You may submit your comments (identified by Docket No. RD21–6–000) on FERC–725B4 by one of the following methods:

Electronic filing through *http://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* or by telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725B4, Mandatory Reliability Standards: Critical Infrastructure Protection Reliability Standards CIP–004–7 and CIP–011–3.[1]

OMB Control No.: TBD.

Type of Request: Approval of proposed changes as described in Docket No. RD21–6–000.

Abstract: On September 15, 2021 the North American Electric Reliability Corporation (NERC) filed a petition requesting approval of two Reliability Standards CIP–004–7 (Cyber Security, Personnel and Training) and CIP–011–3 (Cyber Security, Information Protection). NERC described the proposed Reliability Standards as ''Addressing Bulk Electric System Cyber System Information Access Management.'' The petition was noticed on September 22, 2021, with interventions and comments due by October 6, 2021.[2] The Commission did not receive any interventions or comments.

On December 7, 2021, the Designated Letter Order (DLO) in Docket No. RD21–6–000 approved the proposed Reliability Standards, and found that the modified Reliability Standards enhance security as discussed below.

At present, Reliability Standards CIP–004–6 require Responsible Entities to control access to Bulk Electric System Cyber System Information (BCSI) by managing access to a designated storage location, such as an electronic document or physical file room. Reliability Standard CIP–004–7 removes references to ''designated storage locations'' of BCSI and requires an access management program to authorize, verify and revoke provisioned access to BCSI. This change updates CIP–004 by focusing on controls at the file level (*e.g.,* rights, permissions, privileges) of BCSI and reduces the need for access to only a physical, designated storage location for BCSI.

Reliability Standard CIP–011–3 clarifies the requirements of protecting and handling BCSI with the goal of providing flexibility for Responsible Entities to use third-party data storage and analysis systems. Specifically, Reliability Standard CIP–011–3 requires Responsible Entities to implement specific controls related to BCSI during storage handling use, and disposal of information when implementing services provided by third parties.

Type of Respondents: Businesses and other for-profit entities.

Estimate of Annual Burden: The Commission estimates 686 responses annually, and per-response burdens of 10 hours and $850.20. The total estimated burdens per year are 6,860 hours and $583,237.20. These burdens are itemized in the following table:

	A. Number of respondents[3]	B. Annual number of responses per respondent	C. Total number of responses (Column A × Column B)	D. Average burden hours[4] & cost per response[5]	E. Total annual burden hours & total annual cost[6] (Column C × Column D)	F. Cost per respondent ($) (Column E ÷ Column A)
CIP–004–7	343	1	343	10 hours & $850.20	3,430 hours & $291,619.60	10 hours & $850.20.
CIP–011–3	343	1	343	10 hours & $850.20	3,430 hours & $291,619.60	10 hours & $850.20.
Totals	.....	.....	686	.....	6,860 hours & $583,237.20	20 hours & $1,700.40

[1] FERC–725B4 is an interim information collection number to accommodate the need to seek timely approval during the pendency of an unrelated information collection request pertaining to FERC–725B (OMB Control No. 1902–0248). In addition, the implementation plan for CIP–004–7 and CIP–011–3 provides that those Reliability Standards become effective on the first day of the first calendar quarter that is 24 calendar months after the effective date of the Commission's order, so that Responsible Entities have sufficient time to come into compliance with the revised Reliability Standards. Thus, FERC–725B continues to cover the current requirements of the standards, before implementation of the revised requirements of Docket No. RD21–6–000.

[2] 86 FR 52667, at 52668.

[3] The number of respondents is based on the NERC Compliance Registry as of June 22, 2021. Currently there are 1,508 unique NERC Registered Entities, subtracting 16 Canadians Entities yields 1,492 U.S. NERC Registered Entities subject to the CIP Standards. However, only those NERC Registered Entities that own Medium Impact or High Impact BES Cyber System are subject to the CIP Standards in this filing which is estimated to be 343 NERC Registered Entities.

[4] Of the average estimated twenty (20) hours per response, all twenty (20) hours are for the one-time effort of updating or changing documentation for record-keeping burden that is already accounted for.

[5] Commission staff estimates that the average industry hourly cost for this information collection is $85.02/hour based on the following occupations from the Bureau of Labor Statistics: (1) Manager (Occupational Code: 11–0000): $97.89/hour; and (2) Electrical Engineer (Occupational Code 17–2071): $72.15/hour. Source: *http://bls.gov/oes/current/naics3_221000.htm,* as of June 2021.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28206 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15246–000]

PacifiCorp; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2021, PacifiCorp filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Winter Ridge Pumped Storage Project (Winter Ridge Project or project) to be located near Summer Lake and Paisley, Lake County, Oregon. 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.

Two alternatives are being considered for the Winter Ridge Project. Alternative 1 would consist of the following: (1) An upper reservoir approximately two miles west of Summer Lake with a surface area of 85 acres and a storage volume of approximately 4,285 acre-feet created by a 4,700-foot-long, 120-foot-high embankment dam; (2) a lower reservoir with a surface area of 43.6 acres and a storage volume of approximately 2,156 acre-feet created by a 5,320-foot-long, 80-foot-high embankment dam; (3) a 2.23-mile-long steel penstock with a diameter of 15-feet connecting the upper reservoir with the powerhouse/pump station; (4) a 150-foot-long, 50-foot-wide concrete powerhouse/pump station located on the lower reservoir shoreline containing three 167-megawatt generating/pumping units; (5) a 9.3-mile, 500-kilovolt transmission line interconnecting to PacifiCorp's jointly owned Sycan substation; (6) a 19.2 mile underground pipeline diverting water from the Chewaucan River near Paisley to the project for initial and maintenance fill; and, (7) appurtenant facilities.

Alternative 2 would consist of the same facilities described in alternative 1 except: (1) The lower reservoir would have a surface area of 50 acres and a storage volume of approximately 2,000 acre-feet created by a 4,100-foot-long, 170-foot-high embankment dam; (2) the upper reservoir would connect to the powerhouse/pump station by a 0.9-mile-long excavated tunnel and 1.5-mile-long steel penstock both having a diameter of 15-feet; and (3) the transmission line would be 9.8 miles in length interconnecting to the same substation.

The estimated annual generation of the Winter Ridge Project would be 1,460 gigawatt-hours.

Applicant Contact: Tim Hemstreet, Managing Director, Renewable Energy Development, PacifiCorp, 825 NE Multnomah, Suite 1800, Portland, OR 97232; email: *Tim.Hemstreet@pacificorp.com;* phone: (503) 813–6170.

FERC Contact: Kristen Sinclair; email: *kristen.sinclair@ferc.gov;* phone: (202) 502–6587.

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–15246–000.

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–15246) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28207 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the

official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
None.		
Exempt:		
1. CP17–458–000	12–14–2021	U.S. Congressman Tom Cole.
2. EL21–85–000, EL21–103–000	12–17–2021	U.S. Congress.[1]

Dated: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28201 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–517–001]

Golden Pass LNG Terminal LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Golden Pass LNG Export Variance Request No. 15 Amendment Project

On February 25, 2021 and supplemented on May 19, 2021, Golden Pass LNG Terminal LLC (Golden Pass) filed a Golden Pass LNG Export Project Variance Request No. 15 Amendment (Amendment). The Amendment involves modification to the ongoing construction workforce and work hours at the authorized Golden Pass LNG Export Terminal, in Jefferson County, Texas. If authorized, the Amendment would increase the workforce numbers, amount of traffic volume, and work week/hour limits that were not previously reviewed during preparation of the final Environmental Impact Statement (EIS) for the Golden Pass LNG Export Project (Docket Nos. CP14–517–000 and CP14–518–000), which the Commission authorized on December 21, 2016. Golden Pass's proposed Amendment would increase construction to 24-hour-day and 7 days a week at the Golden Pass LNG Export Terminal throughout the remaining construction period, which it anticipates completing in 2025.

On November 3, 2021 the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Amendment for the proposed project variance request No. 15. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Amendment and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—February 7, 2022
90-Day Federal Authorization Decision Deadline—May 9, 2022

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Amendment's progress.

Project Amendment Description

Golden Pass identified the need for an increased workforce at the Golden Pass LNG Export Terminal site. The final EIS for the Golden Pass LNG Export Project reviewed a peak construction workforce of 2,900 employees; Golden Pass is requesting the authority to increase the potential peak workforce to 7,700 workers per day. Golden Pass is also requesting the authority to increase traffic volumes to accommodate the additional workforce, and a 7-day-per-week, 24-hour-per-day, construction schedule for the remaining construction period at the terminal site; Golden Pass anticipates completing the Golden Pass LNG Export Project in 2025. There are no revisions to land requirements for the Amendment.

Background

On November 10, 2021, the Commission issued a Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Golden Pass LNG Export Variance Request No. 15 Amendment Project and Notice of Public Scoping Session (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the Sierra Club, James D. Kemp, RESTORE, Alfred V. Duhamel, and Donald F. Breeden expressing concerns on light pollution, air quality, noise pollution, impacts on socioeconomics and environmental justice communities, greenhouse gas emissions, climate change, public health and safety, and access to non-proprietary information. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC

[1] Members of Congress, Sean Casten, Cheri Bustos, Bradley S. Schneider, and Danny K. Davis.

[1] 40 CFR 1501.10 (2020).

website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP14–517), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28210 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR22–13–000.

Applicants: Gulf Coast Express Pipeline LLC.

Description: Submits tariff filing per 284.123(b),(e)/: Fuel Filing 12.1.2021 to be effective 12/1/2021.

Filed Date: 12/20/2021.

Accession Number: 20211220–5000.

Comments/Protests Due: 5 p.m. ET 1/10/22.

Docket Numbers: RP22–423–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming—Leidy South—Full In-Svc—Seneca to be effective 12/19/2021.

Filed Date: 12/17/21.

Accession Number: 20211217–5313.

Comment Date: 5 p.m. ET 12/29/21.

Docket Numbers: RP22–424–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement-Kiowa Power Partners, LLC to be effective 12/17/2021.

Filed Date: 12/17/21.

Accession Number: 20211217–5340.

Comment Date: 5 p.m. ET 12/29/21.

Docket Numbers: RP22–425–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Jan 1 Capacity Releases to be effective 1/1/2022.

Filed Date: 12/20/21.

Accession Number: 20211220–5027.

Comment Date: 5 p.m. ET 1/3/22.

Docket Numbers: RP22–426–000.

Applicants: NGO Transmission, Inc.

Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 1/1/2022.

Filed Date: 12/20/21.

Accession Number: 20211220–5062.

Comment Date: 5 p.m. ET 1/3/22.

Docket Numbers: RP22–427–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Duke Energy Progress Releases to be effective 1/1/2022.

Filed Date: 12/20/21.

Accession Number: 20211220–5064.

Comment Date: 5 p.m. ET 1/3/22.

Docket Numbers: RP22–428–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Update to Non-Conforming Negotiated Rate Agreement (Apache #612956) to be effective 12/18/2021.

Filed Date: 12/20/21.

Accession Number: 20211220–5229.

Comment Date: 5 p.m. ET 1/3/22.

Docket Numbers: RP22–429–000.

Applicants: Stagecoach Pipeline & Storage Company LLC.

Description: § 4(d) Rate Filing: Stagecoach Pipeline & Storage Company LLC—NRA Vitol, Twin Eagle & Direct Energy to be effective 1/1/2022.

Filed Date: 12/21/21.

Accession Number: 20211221–5000.

Comment Date: 5 p.m. ET 1/3/22.

Docket Numbers: RP22–430–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Panda 624 to Tenaska 54638) to be effective 12/22/2021.

Filed Date: 12/21/21.

Accession Number: 20211221–5021.

Comment Date: 5 p.m. ET 1/3/22.

Docket Numbers: RP22–431–000.

Applicants: Carolina Gas Transmission, LLC.

Description: Compliance filing: CGT—2021 Interruptible Revenue Sharing Report to be effective N/A.

Filed Date: 12/21/21.

Accession Number: 20211221–5046.

Comment Date: 5 p.m. ET 1/3/22.

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.

Filings in Existing Proceedings

Docket Numbers: RP21–100–006.

Applicants: National Grid, LLC.

Description: Submits tariff filing per 154.203: Motion to Place Suspended Revised Tariff Records into Effect to be effective 12/18/2021.

Filed Date: 12/17/21.

Accession Number: 20211217–5332.

Comment Date: 5 p.m. ET 12/29/21.

Docket Numbers: RP22–99–001.

Applicants: Portland Natural Gas Transmission System.

Description: Compliance filing: Reservation Charge Credits Compliance to be effective 12/1/2021.

Filed Date: 12/17/21.

Accession Number: 20211217–5262.

Comment Date: 5 p.m. ET 12/29/21.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: December 21, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–28202 Filed 12–27–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9307–01–OAR]

Announcing Upcoming Virtual Meeting on Biofuel Greenhouse Gas Modeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency announces an upcoming workshop on biofuel greenhouse gas (GHG) modeling. This is a virtual meeting and open to the public. The purpose of this workshop is to solicit information on the current scientific understanding of greenhouse gas modeling of land-based biofuels used in the transportation sector. The

information gathered as part of this workshop will be used to inform a range of current and future actions, including EPA's methodology for quantifying the greenhouse gas emissions under the Renewable Fuels Standard. Through this workshop, we will initiate a public process for getting input on (i) how to incorporate the best available science into an update of our lifecycle analysis (LCA) of biofuels, and (ii) what steps EPA should take next in this work area. The meeting is being conducted by EPA's Office of Transportation and Air Quality in consultation with the U.S. Department of Agriculture and the Department of Energy.

DATES: EPA will hold a virtual public meeting on Monday, February 28, 2022 and Tuesday, March 1, 2022 from 12:00 p.m. to 4:00 p.m. Eastern Standard Time (EST) each day. Please monitor the website *https://www.epa.gov/renewable-fuel-standard-program/workshop-biofuel-greenhouse-gas-modeling* for any changes to meeting logistics. The final meeting agenda will be posted on the website. In addition, EPA will be accepting comments related to the questions described in the **SUPPLEMENTARY INFORMATION** section below via the federal docketing system. Comments identified by docket ID number: OAR–2021–0921, must be received on or before April 01, 2022.

ADDRESSES: For information on the public meeting or to register to attend, please visit *https://www.epa.gov/renewable-fuel-standard-program/workshop-biofuel-greenhouse-gas-modeling.* Submit your comments, identified by docket identification (ID) number: OAR–2021–0921, using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or information whose disclosure is restricted by statute. Comments submitted to the EPA, including any personal information that is in the body of the submission, will be publicly posted to *https://www.regulations.gov* and are also made available for in-person viewing at the EPA Docket Center's Reading Room. There are some exceptions. Please see additional instructions on commenting or visiting the docket, along with more information about dockets generally, available at *http://www.epa.gov/*dockets.

Please note that due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Public Reading Room are closed to visitors with limited exceptions. The EPA/DC 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: Any member of the public who wishes to attend the meeting please visit *https://www.epa.gov/renewable-fuel-standard-program/workshop-biofuel-greenhouse-gas-modeling* to register for the workshop no later than February 27, 2022.

Further information concerning this public meeting and general information can be found at: *https://www.epa.gov/renewable-fuel-standard-program/workshop-biofuel-greenhouse-gas-modeling.* Other related inquiries can be directed to Diana Galperin, Office of Transportation and Air Quality, at 202–564–5687 or *Galperin.diana@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public meetings. Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

For individuals with disabilities: For information on access or services for individuals with disabilities, please email *RFSpathways@epa.gov.* To request accommodate of a disability, please email *RFSpathways@epa.gov,* preferably at least 10 business days prior to the meeting, to give EPA as much time as possible to process your request.

Background: Biofuel greenhouse gas modeling is used by EPA and other federal agencies for research and policy decision purposes across a variety of programs. For example, EPA is required to model the lifecycle greenhouse gas emissions of biofuels under the RFS Program when determining whether an individual biofuel meets the greenhouse gas emission reduction requirement established by the Clean Air Act. In addition, EPA is required to more broadly evaluate the greenhouse gas emissions associated with the overall RFS program when setting future volume obligations. Finally, the greenhouse gas emissions of biofuels are an important consideration of emerging policies designed to meet deep decarbonization goals.

This workshop seeks to solicit information on the current scientific understanding of greenhouse gas modeling of land-based biofuels and how this information can be applied to a range of current and future actions. EPA is explicitly seeking comment on the following questions: (1) What sources of data exist and how can they be used to inform the assumptions that drive GHG estimates; (2) how best to characterize the sources of uncertainty associated with quantifying the GHG emissions associated with biofuels; and (3) what model(s) are available to evaluate the lifecycle GHG emissions of land-based biofuels, and do the model(s) meet the Clean Air Act requirements for quantifying the direct and significant indirect emissions from biofuels.

Dated: December 21, 2021.

Sarah Dunham,

Office of Transportation and Air Quality.

[FR Doc. 2021–28079 Filed 12–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0276; FRL–9212–01–OAR]

Multi-Agency Radiation Survey and Site Investigation Manual, Revision 2; Reopening of the Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability with request for public comment; reopening of public comment period.

SUMMARY: On June 16, 2021, the Department of Defense (DoD), Department of Energy (DOE), Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) announced for public comment the availability of a draft revision document, entitled the ''Multi-Agency Radiation Survey and Site Investigation Manual'' (MARSSIM). A 90-day comment period was provided for the draft MARSSIM revision that expired on September 14, 2021. A request for an extension to the comment period has been received from several stakeholders. EPA is reopening the comment period for the draft manual for an additional 45 days.

DATES: The comment period for the draft MARSSIM revision has been reopened and now must be received on or before February 11, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2021–0276, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may

publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *http://www2.epa.gov/dockets/commenting-epa-dockets.*

You may obtain publicly available information related to this action, including copies of the MARSSIM Revision 2, by any of the following methods:

NRC's Agencywide Documents Access 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.'' Please refer to ML21008A572 when contacting the NRC about the availability of the MARSSIM Revision 2 draft. 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.*

You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 between 8 a.m. and 4 p.m. (EST), Monday through Friday, except Federal holidays. The DOE, EPA, and NRC each have a publication number for MARSSIM. They are: For the DOE, DOE/AU–0002; for the EPA, EPA 402–P–20–001; for the NRC, NUREG–1575, Revision 2. A free single copy of the draft MARSSIM Revision 2 may be requested by email to *DISTRIBUTION.Resource@nrc.gov.*

The MARSSIM Revision 2 document is also available for download at: *https://www.epa.gov/radiation/multi-agency-radiation-survey-and-site-investigation-manual-marssim.*

Further Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2021–0276 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions and additional information on submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Any of the following points of contact for each agency for technical information: DoD: Gerald A. Falo, Phone: (410) 436–4852, *gerald.a.falo.civ@mail.mil,* U.S. Army Public Health Center, E5158, Room 58, 8252 Blackhawk Road, Aberdeen Proving Ground, MD 21010; DOE: Amanda Anderson (EM–3.11), Phone: (240) 702–5556, *amanda.anderson@em.doe.gov,* U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; EPA: Kathryn Snead; Phone: (202) 343–9228, *snead.kathryn@epa.gov,* U.S. Environmental Protection Agency, Mail Stop 6608T, 1200 Pennsylvania Avenue NW, Washington DC 20460–1000; NRC: Sarah Tabatabai, Phone: (301) 415–2382, *sarah.tabatabai@nrc.gov,* U.S. Nuclear Regulatory Commission, Mail Stop TWF 10 A–12 11555 Rockville Pike, Rockville, MD 20852–2738. Questions concerning the multi-agency document development project should be addressed to Kathryn Snead, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, MC 6608T, Washington, DC 20460, (202) 343–9228, *snead.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* The EPA may publish any comment received to its public docket. Do not submit CBI information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the files on the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number EPA–HQ–OAR–2021–0276 and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions: The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 16, 2021 (86 FR 32034), the Department of Defense (DoD), Department of Energy (DOE), Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) announced for public comment the availability of a draft revision document, entitled the ''Multi-Agency Radiation Survey and Site Investigation Manual'' (MARSSIM).

MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soil and building surfaces for demonstrating compliance with regulations. MARSSIM, when finalized as Revision 2, will update this multi-agency consensus document.

MARSSIM was originally developed by the technical staffs of the four Federal agencies having authority for control of radioactive materials: DoD, DOE, EPA and NRC (60 FR 12555; March 7, 1995). The four agencies issued Revision 1 to MARSSIM in August 2000, and additional edits to Revision 1 in June 2001. MARSSIM has not been updated since 2001; updates prior to 2001 primarily consisted of minor non-technical edits. Revision 2 updates the science, clarifies methods, and implements lessons learned from over 20 years of the document's use in industry.

A summary of changes in MARSSIM Revision 2 includes the following: (1) Added measurement quality objectives (MQOs) and measurement uncertainty, (2) expanded measurement methods to include scan-only surveys, (3) updated

survey instrumentation information, (4) added Scenario B (''assumed to meet the criteria until proven otherwise''), (5) increased emphasis on regulator interface during survey design, (6) improved description of the lower bound of the gray region (LBGR), (7) updated references, (8) changed English units to International System of Units (SI), (9) avoided using the term ''Area Factor,'' (10) included additional examples in Chapter 5, and (11) reorganized Chapter 4.

The public review is a necessary step in the development of a final multi-agency consensus document. The document will also undergo concurrent, independent, scientific peer review. The draft has not been approved by the participating agencies for use, in part or in whole, and should not be used, cited, or quoted, except for the purposes of providing comments as requested.

Commenters are requested to focus on technical accuracy and understandability. Commenters are also requested to address five questions while reviewing MARSSIM Revision 2:

(1) Do the revisions to MARSSIM provide greater clarity while maintaining a practical and implementable approach to performing environmental radiological surveys of surface soil and building surfaces?

(2) Are the revisions to MARSSIM technically accurate?

(3) Does MARSSIM Revision 2 provide useful examples and descriptions of approaches to implementing surveys and the statistics by which they are interpreted?

(4) Is the information in MARSSIM Revision 2 understandable and presented in a logical sequence? How can the presentation of material be modified to improve the understandability of the manual?

Comments may be submitted as proposed modified text, or as a discussion. Comments should be accompanied by supporting bases, rationale, or data. To ensure efficient and complete comment resolution, commenters are requested to reference the page number and the line number of MARSSIM Revision 2 to which the comment applies. Enter only the beginning page and line number, even if your comment applies to several pages or lines to follow.

Comments corresponding to an entire chapter, an entire section, or an entire table should be referenced to the line number for the title of the chapter section, or table. Comments on footnotes should be referenced to the line in the main text where the footnote is indicated. Comments on figures should be referenced to the page on which the figure appears. Figures do not have line numbers. The figure number should be included in the text of the comment. Comments on the entire manual should be referenced to the title page.

Title: Draft Multi-Agency Radiation Survey and Site Investigation Manual, Revision 2.

Jonathan Edwards,

Director, Office of Radiation and Indoor Air, Environmental Protection Agency.

[FR Doc. 2021–28080 Filed 12–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0013; FRL 9149–01–OW]

Proposed Renewal Information Collection Request; Comment Request; EPA Program Information on Source Water Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR) for EPA Program Information on Source Water Protection (OMB Control No. 2040–0197) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described in this document. This is a proposed extension of the existing ICR, which is approved through July 31, 2022. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2004–0013, online using *https://www.regulations.gov* (our preferred method), by email to the Office of Water (OW) Docket at *OW-Docket@epa.gov* or by mail to the Water Docket, EPA Docket Center (WJC West), MC 28221T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanities, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Sherri Comerford, Drinking Water Protection Division—Prevention Branch, Office of Ground Water and Drinking Water (MC 4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–4639; email address: *comerford.sherri@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents that explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the Water Docket, EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to Section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable the agency to evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA is collecting data from the states on their advancement toward substantial implementation of protection strategies for all community water systems (CWSs). EPA and states use this voluntary collection of data to track and understand the progress toward increasing the percentage of CWSs (and the populations they serve)

where risk is minimized through source water protection. Source water protection data that states submit directly to the Source Water Protection Information System (SDWIS) is accessible to the public via EPA's website. Availability of this information, together with source water and demographic indicators that are publicly available via EPA's Drinking Water Mapping Application to Protect Source Waters (DWMAPS), promotes equity by empowering communities to include these considerations in their own analyses and outreach efforts.

Form Notification: None.

Respondents/affected entities: 51.

Respondent's obligation to respond: Voluntary.

Frequency of response: Annual.

Total estimated annual burden: 288 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $16,721 (per year).

Changes in Estimates: EPA anticipates the annual totals for estimated burden and costs at 288 hours and $16,721, respectively. There is an expected decrease of hours in the total estimated respondent burden compared to what was identified in the ICR currently approved by OMB due to voluntary reporting that would decrease in frequency from quarterly to annual reporting. State databases are fully developed, and tracking is routine, which EPA believes will result in efficiencies that would allow states to minimize hourly burden and cost.

Radhika Fox,

Assistant Administrator.

[FR Doc. 2021–28152 Filed 12–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2021–0068; FRL–8732–06–OCSPP]

Certain New Chemicals; Receipt and Status Information for November 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA) to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 11/01/2021 to 11/30/2021.

DATES: Comments identified by the specific case number provided in this document must be received on or before January 27, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0068 and the specific case number for the chemical substance related to your comment, through the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@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. What action is the Agency taking?

This document provides the receipt and status reports for the period from 11/01/2021 to 11/30/2021. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the TSCA section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices*. This information is updated on a weekly basis.

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

Under TSCA, 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory*.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will

not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the TSCA section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 11/01/2021 TO 11/30/2021

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–21–0020	2	11/05/2021	Cinder Biological, Inc	(G) Enzyme production	(G) CinderBio-1.
J–21–0021	2	11/05/2021	Cinder Biological, Inc	(G) Enzyme production	(G) CinderBio-1.
J–21–0022	2	11/05/2021	Cinder Biological, Inc	(G) Enzyme production	(G) CinderBio-1.
J–21–0023	2	11/05/2021	Cinder Biological, Inc	(G) Enzyme production	(G) CinderBio-1.
J–21–0024	2	11/05/2021	Cinder Biological, Inc	(G) Enzyme production	(G) CinderBio-1.
J–21–0025	2	11/05/2021	Cinder Biological, Inc	(G) Enzyme production	(G) CinderBio-1.
J–22–0001	1	10/26/2021	CBI	(G) Chemical production ...	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–22–0002	1	10/26/2021	CBI	(G) Chemical production ...	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–22–0003	1	10/26/2021	CBI	(G) Chemical production ...	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–22–0004	1	10/26/2021	CBI	(G) Chemical production ...	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–22–0005	1	10/26/2021	CBI	(G) Chemical production ...	(G) Chromosomally-modified Saccharomyces cerevisiae.
J–22–0006	1	10/26/2021	CBI	(G) Chemical production ...	(G) Chromosomally-modified Saccharomyces cerevisiae.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 11/01/2021 TO 11/30/2021—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–22–0007	1	10/27/2021	CBI	(G) Production of DNA for use in internal manufacturing.	(G) Strain of Escherichia coli modified with genetically-stable, plasmid-borne DNA for the production of plasmid-borne DNA.
P–19–0134A	8	11/04/2021	CBI	(S) Binder for moisture cure coatings.	(G) [5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane], [Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane], polymer with [Poly(oxy-1,4-butanediyl), .alpha.-hydro-.omega.-hydroxy-], [Cyclic amine—ketone adduct, reduced], and [1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-].
P–20–0060	5	11/10/2021	CBI	(S) Solvent-based pigmented one- and two-component polyurethane coatings Automotive Refinish General Industrial Coil.	(G) Bismuth Carboxylate complexes.
P–20–0096A	5	11/09/2021	Solenis LLC	(G) Use in papermaking process.	(G) Unsaturated dicarboxylic acid polymer with 2-(dialkylamino)alkyl-alkyl-alkanoate, N, N-dialkyl-alkene amide, 2-propenamide and salt of alkyl-substituted alkene sulfonate.
P–20–0127A	5	11/09/2021	Kuraray America, Inc	(S) Industrial Solvent	(S) 2H-Pyran, tetrahydro-4-methyl-.
P–20–0182A	2	11/19/2021	Eastman Chemical Company, Inc.	(G) Plasticizer for PVC formulations.	(S) 1,4-Benzenedicarboxylic acid, bis[2-(2-butoxyethoxy)ethyl] ester (9 CI).
P–21–0017A	2	11/05/2021	Sumitomo Chemical Advanced Technologies LLC.	(S) Substance used to improve physical properties in rubber products.	(G) [(Substituted-carbomonocyclic) amino] oxoalkenoic acid, inorganic salt.
P–21–0049A	5	11/18/2021	CBI	(G) Monomer	(G) Alkanoic acid, polyhalo-(halo-oxo-alkenyl)oxyalkyl ester.
P–21–0050A	5	11/18/2021	CBI	(G) Monomer	(G) Alkenoic acid, halo-polylhaloalkyl ester.
P–21–0089A	4	11/09/2021	CBI	(G) Emulsifier	(G) Lignin, modified, reaction products with alkylamine by-products, hydrochlorides.
P–21–0090A	4	11/09/2021	CBI	(G) Component in paving formulations.	(G) Lignin, modified, reaction products with alkylamine by-products.
P–21–0138A	3	11/15/2021	LG Energy Solution Michigan Inc.	(S) Electrode material for use in the manufacture of batteries.	(G) Lithium metal oxide.
P–21–0172A	6	11/04/2021	Silco, Inc	(S) Moisture reactive polymer for use in sealants and coatings.	(G) Siloxanes and Silicones, di-Me, trimethoxysilyl group terminated.
P–21–0173A	3	11/09/2021	ICM Products Inc	(G) Additive for finishing of textiles/fabrics.	(G) Siloxanes and silicones polyether, polymer with aliphatic isocyanate, 2-dimethylaminoethanol and polyglycol ether.
P–21–0213	2	10/28/2021	ICM Products Inc	(G) Textile finishing agent	(G) Siloxanes and Silicones, alkyl methyl, dimethyl.
P–21–0218	3	11/17/2021	Honeycomb Techno Research USA Inc.	(G) Electric Molding	(G) Phenol biphenylene polycondensate.
P–22–0001	1	10/04/2021	CBI	(G) Raw material for manufacturing chemicals.	(G) Alkane, disubstituted.
P–22–0008	2	11/22/2021	CBI	(G) Biocatalyst used in a variety of products.	(S) .beta.-N-Acetylhexosaminidase.
P–22–0010	1	11/17/2021	H.B. Fuller Company	(S) This chemical is being used as part of an industrial adhesive.	(G) Amino alkanoic acid, N-[3-(Trimethoxysilyl)Propyl]-, 3-(Trimethoxysilyl)Propyl ester.
P–22–0012	1	11/24/2021	CBI	(G) Photolithography	(G) Sulfonium, tricarbocyclic-, 2-heteroatom-substituted-4-(halocarbocyclic)carboxylate (1:1).
SN–21–0012	3	11/15/2021	Showa Denko Materials (America), Inc.	(S) Epoxy molding compound.	(S) Oxirane, 2,2″-[methylenebis[(2,6-dimethyl-4,1-phenylene)oxymethylene]]bis-.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 11/01/2021 TO 11/30/2021

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–21–0006	11/08/2021	11/08/2021	N	(G) Modified saccharomyces cerevisiae.
J–21–0011	11/11/2021	10/28/2021	N	(G) Saccharomyces cerevisiae fermenting C5 sugars, modified.
J–21–0016	11/08/2021	10/11/2021	N	(G) Modified saccharomyces cerevisiae.
P–01–0925A	11/11/2021	04/16/2004	Update generic chemical name.	(G) 1,2-Ethanediamine, n-[3-trialkoxysilyl) propyl]reaction products with dialkoxymethyl[3-(oxyanylalkoxy) propyl] silane and trialkoxy [3-(oxyanylalkoxy) propyl] silane.
P–01–0926A	11/11/2021	04/16/2004	Update generic chemical name.	(G) Alkenoic acid, 2-methyl-, butyl ester, polymer with 2-hydroxy-3-phenoxypropyl 2-propenoate and methyl 2-methyl-2-propenoate.
P–16–0539A	11/24/2021	09/17/2020	Update generic chemical name.	(G) Sulfonium, tricarbocyclic-, alpha, alpha, beta, beta-polyhalopolyhydrospiro[4,7-methano-1,3-heteropolycyclic-2,2-cycloalkane]-5-alkanesulfonate (1:1).
P–16–0548A	11/03/2021	07/09/2020	Update generic chemical name.	(G) Aromatic sulfonium, [([aromatic]-thio)phenyl]phenyl-, fluoro-alkyl phosphate.
P–17–0206	11/05/2021	07/30/2020	Multiple chemicals in a single submission were split out.	(G) Imino alkane amine phosphate.
P–17–0206	11/05/2021	07/30/2020	Multiple chemicals in a single submission were split out.	(G) Imino alkane amine phosphate.
P–17–0343A	11/01/2021	04/09/2018	Update generic chemical name.	(G) Heteropolycyclic-alkanol, carbomonocycle-alkanesulfonate.
P–18–0012A	11/02/2021	08/31/2021	Update generic chemical name.	(G) Vegetable oil, polymer with alkyl dialcohol, polyglycol, aromatic dicarboxylic acid and vegetable oil.
P–18–0023A	11/03/2021	09/30/2021	Update generic chemical name.	(G) 1,2-propanediol, 3-[(2-ethylhexyl)oxy]- hydrogen phosphate.
P–18–0035	11/01/2021	06/10/2020	Multiple chemicals in a single submission were split out.	(S) Propenoic acid, 2-methyl-, 1,3-dioxolan-4-ylmethyl ester.
P–18–0035A	11/01/2021	06/10/2020	Multiple chemicals in a single submission were split out.	(S) 2-propenoic acid, 2-methyl-, 1,3-dioxan-5-yl ester.
P–18–0273	11/11/2021	10/20/2021	N	(S) 1,4-cyclohexanedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester.
P–18–0282	11/01/2021	10/06/2021	N	(G) Fatty acid ester, polyether, diisocyanate polymer,
P–19–0020A	11/02/2021	08/27/2021	Update generic chemical name.	(G) Alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs.
P–21–0078	11/17/2021	11/03/2021	N	(G) Phenol, polymer with alkyl-(alkylalkylenyl)cyclohexene, mixed dialkylcyclohexadienes, mixed alkyl-(alkylalkylidene)cyclohexenes and 3,7,7-trimethylbicyclo[4.1.0]hept-3-ene,

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 11/01/2021 TO 11/30/2021

Case No.	Received date	Type of test information	Chemical substance
P–16–0206	10/27/2021	Fish Acute Toxicity Test, Freshwater and Marine (OECD Test Guideline 203).	(G) Formaldehyde ketone condensate polymer.
P–16–0543	11/02/2021	Exposure Monitoring Report (September 2021)	(G) Halogenophosphoric acid metal salt.
P–16–0543	11/02/2021	Exposure Monitoring Report (June 2021)	(G) Halogenophosphoric acid metal salt.

TABLE III—TEST INFORMATION RECEIVED FROM 11/01/2021 TO 11/30/2021—Continued

Case No.	Received date	Type of test information	Chemical substance
P–20–0014	11/01/2021	*Pimephales Promelas* (Fathead minnow) Acute Semi-Static Renewal 96-Hour Definitive Toxicity Test using OCSPP 850.1085 Fish Acute Toxicity Test mitigate by Humic Acid.	(G) Sugars, polymer with alkanetriamine.
P–20–0014A	11/18/2021	Disassociation Constants in Water (OECD Test Guideline 112).	(G) Sugars, polymer with alkanetriamine.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 21, 2021.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2021–28085 Filed 12–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2021–0693; FRL–9157–01–OCSPP]

EPA Administrator Determination Extends TRI Reporting Requirements to Certain Contract Sterilization Facilities; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the extension of the Toxics Release Inventory (TRI) reporting requirements to certain contract sterilization facilities under its discretionary authority through the Emergency Planning and Community Right-to-Know Act (EPCRA). Pursuant to this authority, EPA decided to extend the reporting requirements for ethylene oxide releases and other waste management activities to 29 contract sterilization facilities; and to extend the reporting requirements for ethylene glycol to 16 of those facilities. EPA is applying this discretionary authority in response to concerns over potential health effects of ethylene oxide exposure and in support of the public's right-to-know.

FOR FURTHER INFORMATION CONTACT: Stephanie Griffin, Data Gathering and Analysis Division, Office of Pollution Prevention and Toxics, (7410M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1463; email address: *griffin.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

The determination, signed by the Administrator on December 16, 2021 (Ref. 1), is directed to the 29 specific facilities identified in Unit II.A. of this document. This determination may also be of interest to the general public and users of TRI data, including researchers, non-profit organizations in the environmental and public health sectors, and state and local governments. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

EPA made this determination pursuant to EPCRA section 313(b)(2), [42 U.S.C. 11023], which provides EPA with the authority to extend the reporting requirements of EPCRA section 313 to any particular facility at the Administrator's discretion:

> The Administrator, on [their] own motion . . . , may apply the requirements of [EPCRA section 313] to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under [EPCRA section 313(c)] if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

C. How can I get copies of this document and other related information?

The docket for this determination, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0693, is available at *http://www.regulations.gov.* Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

D. What action is the Agency taking?

Pursuant to EPCRA section 313(b)(2), the EPA Administrator signed a determination on December 16, 2021 that extended TRI reporting requirements to 29 facilities for ethylene oxide and, in 16 cases, for ethylene glycol (Ref. 1). After considering facility-specific factors including chemical toxicity, proximity to population centers, the facility's history of chemical releases, and other factors the EPA Administrator deems appropriate (such as potential environmental justice concerns), the EPA believes the public would benefit from increased information disclosure related to the releases of ethylene oxide (and in some cases, ethylene glycol) at these facilities. This discretionary authority extends TRI reporting requirements to facilities identified by the Administrator if they manufacture, process, or otherwise use the TRI toxic chemical over the respective activity threshold over the course of a year, regardless of the facility's industry sector (*i.e.,* North American Industry Classification System (NAICS) code) or number of full-time employee-equivalents. Going forward, EPCRA section 313(a) will require these facilities to report to TRI if they meet TRI reporting thresholds for on-site activities involving ethylene oxide or ethylene glycol over the course of a year.

E. Why is the Agency taking this action?

Ethylene oxide is a flammable, colorless gas used to sterilize equipment, such as medical equipment, among other manufacturing applications, including the manufacture of ethylene glycol. In December 2016, EPA's Integrated Risk Information System (IRIS) Program updated its cancer assessment for ethylene oxide and characterized the chemical as

''carcinogenic to humans'' by the inhalation route of exposure (Ref. 2).

Congress established the TRI to further the public's right to know about chemical releases from certain facilities in their communities. However, not all facilities are currently subject to TRI reporting requirements (see 40 CFR part 372). EPA recognizes and shares the public's concerns about the harmful effects of ethylene oxide on human health and the environment, so the Agency exercised its authority under EPCRA section 313(b)(2) to increase the information available to the public on releases of ethylene oxide and ethylene glycol from certain sterilization facilities that were not currently subject to TRI reporting requirements.

F. What are the estimated incremental impacts of this action?

This determination extends TRI reporting requirements to 29 facilities for ethylene oxide, and to 16 of those facilities for ethylene glycol. While this action does not directly require facilities to report to TRI or use EPA's TRI reporting forms, these facilities may ultimately submit up to 45 TRI reporting forms pursuant to EPCRA section 313(a) and 40 CFR part 372, if chemical activity reporting thresholds are met for those chemicals over the course of a year. 45 TRI reporting forms would result in estimated incremental impacts of up to $107,408 annually across all affected entities. There are no annualized operation or maintenance costs. All affected entities have annual cost impacts of less than 1%.

II. Background

A. Which facilities does this determination apply to?

The Administrator's determination extends the TRI reporting requirements in EPCRA section 313 to the following facilities, for the indicated chemicals. The Agency has created a separate docket for each facility, which includes any correspondence between EPA and the facility on this matter:

1. Andersen Sterilizers, 3154 Caroline Drive, Haw River, NC 27258; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0694.
2. Boston Scientific Corporation, 8 Industrial Drive, Coventry, RI 02816; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0696.
3. ETO Sterilization-Plant #2, 2500 Brunswick Avenue, Linden, NJ 07036; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0697.
4. Fuchs North America, 3800 Hampstead Mexico Road, Hampstead, MD 21074; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0698.
5. International Sterilization Laboratory, 217 Sampey Road, Groveland, FL 34736; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0699.
6. Isomedix Operations, Inc., 1435 Isomedix Place, El Paso, TX 79936; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0700.
7. Isomedix Operations, Inc., 1175 Isuzu Parkway, Grand Prairie, TX 75050; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0701.
8. Isomedix Operations, Inc., 435 Whitney Street, Northborough, MA 01532; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0702.
9. LEMCO Ardmore, 3204 Hale Road, Ardmore, OK 73401; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0703.
10. Long Island Sterilization, 175 Wireless Boulevard, Hauppauge, NY 11788; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0704.
11. Medline Industries, 1160 South Northpoint Boulevard, Waukegan, IL 60085; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0705.
12. Parter Medical Products Inc, 17115 Kingsview Avenue, Carson, CA 90746; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0707.
13. Professional Contract Sterilization, Inc., 40 Myles Standish Boulevard, Taunton, MA 02780; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0708.
14. Sterigenics-Salt Lake City Facility, 5725 West Harold Gatty Drive, Salt Lake City, UT 84116; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0714.
15. Sterigenics U.S. LLC, 2971 Olympic Industrial Court SE, Suite 116, Atlanta, GA 30339; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0709.
16. Sterigenics U.S. LLC, 1302 Avenue T, Grand Prairie, TX 75050; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0711.
17. Sterigenics U.S. LLC, 84 Park Road, Queensbury, NY 12804; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0713.
18. Sterigenics U.S., Inc., 4900 Gifford Avenue, Vernon, CA 90058; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0716.
19. Sterigenics U.S., LLC, 18021 Withers Cove Park Drive, Charlotte, NC, 28278, Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1), EPA–HQ–OPPT–2021–0710.
20. Sterigenics U.S., LLC, 687 Wanamaker Avenue, Ontario, CA 91761; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0712.
21. Sterigenics-Santa Teresa, NM, 2400 Airport Road, Santa Teresa, NM 88008; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0715.
22. Sterilization Services of Tennessee, 2396 Florida Street, Memphis, TN 38109; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0717.
23. Steris Inc., 380 90th Avenue Northwest, Coon Rapids, MN 55433; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0718.
24. Steris Isomedix Services Inc, 7685 Saint Andrews Avenue, San Diego, CA 92154; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0720.
25. Steris Isomedix Services Inc, 3459 S Clinton Avenue, South Plainfield, NJ 07080; Ethylene oxide (CASRN: 75–21–8), Ethylene glycol (107–21–1); Docket ID: EPA–HQ–OPPT–2021–0721.
26. Steris, Inc., 43425 Business Park Drive, Temecula, CA 92590; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0719.
27. Steris-Isomedix Services, 2072 Southport Road, Spartanburg, SC 29306; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0722.
28. Steritec, Inc., 1705 Enterprise Street, Athens, TX 75751; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0723.
29. Trinity Sterile, Inc., 201 Kiley Drive, Salisbury, MD 21801; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0724.

B. How did EPA select these facilities?

In identifying these facilities, EPA considered a variety of data available on ethylene oxide usage and releases, including historical TRI data and data reported to other EPA programs. Information available to EPA suggests these contract sterilization facilities use the highest amounts of ethylene oxide in this sector.

EPA believes that these facilities are likely to exceed the 10,000 pounds per year ''otherwise used'' TRI reporting threshold for ethylene oxide. While EPA's discretionary authority to extend TRI reporting requirements to specific facilities is not limited to facilities that currently meet the TRI reporting thresholds, EPA determined that it is appropriate to consider the quantity of ethylene oxide or ethylene glycol potentially manufactured, processed, or otherwise used on-site when evaluating whether reporting requirements should be extended to certain facilities. In addition, EPA reviewed previous TRI reporting forms to identify which facilities may also be likely to exceed the chemical activity reporting thresholds for ethylene glycol.

EPA also considered other factors enumerated in EPCRA section 313(b)(2) in the identifying these facilities, including the facilities' proximity to a population center (*e.g.,* the density of the population, including children,

living near the facilities) and other factors the Administrator deems are appropriate (*e.g.,* proximity of the facilities to nearby schools and communities, especially those with potential environmental justice concerns).

C. Did EPA conduct any outreach to facilities prior to this action?

In October 2021, EPA sent letters to 31 facilities providing notice that EPA was considering exercising this discretionary authority. These letters also provided the facilities with the opportunity to respond or provide any additional information before EPA made its determination.

EPA received communications from 19 facilities. Some included inquiries on the scope of the discretionary authority under EPCRA section 313(b)(2) and TRI reporting; others acknowledged that the facility would be prepared to submit any TRI reporting forms to EPA should they be required by EPCRA section 313(a) and 40 CFR part 372. All communications with facilities under this authority have been uploaded to facility-specific dockets, which are listed in Unit II.A.

Additionally, one facility indicated that they no longer conduct any ethylene oxide sterilization on-site, they have sold their previous sterilization establishment, and all sterilization activity has been contracted out-of-state. A separate facility also provided information to EPA regarding the size of and technology used in their operations to support their claim of using very low levels of ethylene oxide such that they would be unlikely to ever meet TRI reporting thresholds. After reviewing this information, EPA decided not to extend reporting requirements to these two facilities. Those facilities and their dockets are listed below:

1. Andersen Scientific, 1001 Aviation Parkway, Suite 600, Morrisville, NC 27560; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0695.

2. NovoSci Corporation, 2021 Airport Road, Conroe, TX 77301; Ethylene oxide (CASRN: 75–21–8); Docket ID: EPA–HQ–OPPT–2021–0706.

D. What reporting may be required under EPCRA section 313(a) and 40 CFR part 372 following the Administrator's determination under EPCRA section 313(b)(2)?

EPCRA requires reporting to provide information on releases and other waste management of TRI chemicals. This information is used by the public and assists EPA and other regulatory agencies in determining whether future regulations are needed. Among other data elements, facilities must report (1) the quantities of routine and accidental releases; (2) releases resulting from catastrophic or other one-time events of TRI chemicals; (3) the maximum amount (in ranges) of the TRI chemical on-site during the calendar year; and (4) the amount contained in wastes managed on-site or transferred off-site. Facilities reporting to TRI must submit either a Form R for each chemical, or a Form A Certification Statement for applicable chemicals. Form R is the standard TRI reporting form. Form A Certification Statement is a simplified certification form available to facilities to report on chemicals for which the facility neither (1) manufactures, processes, or otherwise uses above one million pounds; nor (2) exceeds 500 pounds for total quantities released or otherwise managed as waste on-site and quantities transferred off-site for waste management. More information on the data reported on TRI reporting forms, including instructions for reporting facilities, can be found in the current TRI Reporting Forms and Instructions (Ref. 3).

Under EPCRA section 313(a) and 40 CFR part 372, the facilities listed in this notice may be required to submit TRI reporting forms for ethylene oxide (and ethylene glycol, where noted) if they manufacture, process, or otherwise use the chemical above the respective activity thresholds in 40 CFR 372.25. Reporting on ethylene oxide and ethylene glycol would begin with Reporting Year 2022, and Reporting Year 2022 forms from these facilities will be due to EPA by July 1, 2023. This reporting requirement will continue to apply for each subsequent reporting year where the facility's chemical activities meet or exceed the respective activity threshold.

III. 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. EPA. Determination of the Administrator of the Environmental Protection Agency Under the Emergency Planning and Community Right-to-Know Act Section 313(b)(2) to Apply the Requirements of EPCRA Section 313 to Certain Contract Sterilization Facilities. December 16, 2021.

2. U.S. EPA. Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide (EPA/635/R–16/350Fa). December 2016. Available at *https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1025tr.pdf.*

3. U.S. EPA. Toxic Chemical Release Inventory Reporting Forms and Instructions. Available at *https://www.epa.gov/tri/rfi.*

Authority: 42 U.S.C. 11023.

Dated: December 21, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–28067 Filed 12–27–21; 8:45 am]

BILLING CODE 6560–50–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 official items (subject accounts) in order for those covered institutions to integrate certain information technology systems that hold the requisite information to calculate deposit insurance in accordance with part 370.

DATES: The FDIC's grant of exception relief is effective as of December 20, 2021.

FOR FURTHER INFORMATION CONTACT: Cassandra Knighton, 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 or the Rule).[1] Part 370 generally requires covered institutions to implement the information technology system and recordkeeping capabilities needed to quickly calculate

[1] 12 CFR part 370.

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 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 December 20, 2021.

I. Exception Relief for Additional Time To Integrate Information Technology Systems That Contain the Requisite Information To Calculate Deposit Insurance for Official Items

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 official items, as described in 12 CFR 370.4(c), for up to 18 months after the compliance date. One covered institution requested exception relief from the recordkeeping and information technology system requirements with respect to interest payments made to customers via official items and official items used in the accounts payable process to remit vendor payments. The covered institution previously completed system enhancements that provide the name, address, and amount of the official items; however, the government identification number, where it is available, is not immediately accessible by its part 370 calculation system because the systems that create the payments are not connected to the core deposit and accounts payable systems that store the customer information. The covered institution requested exception relief in order to develop, test, implement, and validate its planned solution that requires it to source the government identification number from the systems that contain customer information and provide that data into the part 370 calculation system. The other covered institution requested exception relief from the information technology system and recordkeeping requirements for official items for which the covered institution may have sufficient information to make a deposit insurance calculation but does not have the capability to retrieve the information or reliably tie it to the payee. The covered institution does not currently have a method for tracing official items back to the original loan or deposit servicing information technology systems in a manner that would permit it to associate government identification numbers, if available, with other payee information in the covered institution's payment systems. The covered institution requested exception relief in order to assess and implement a solution to this issue that would seek to appropriately balance the requirements of the Rule and consumer data security and other considerations.

As conditions of this exception relief, these covered institutions must: Provide documentation that describes the process put in place to manually calculate deposit insurance for the subject accounts in the event of failure during the relief period; maintain the capability to restrict access to the deposit accounts subject to this exception in the event of failure until a deposit insurance determination can be made and place all such accounts into the pending file of its part 370 output files during the relief period; 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 December 20, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–28143 Filed 12–27–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2021–19]

Privacy Act of 1974; New System of Records

AGENCY: Federal Election Commission.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Federal Election Commission (''the FEC'' or ''the Commission'' or ''the agency'') is publishing for comment a new system of records that is maintained by the Commission. This new system has been entitled FEC 17, Reasonable Accommodation. This system has been proposed as a result of a reevaluation of the manner in which the Commission maintains records.

DATES: Comment on the establishment of the new system of records must be received no later than January 27, 2022. The new system of records will be effective February 7, 2022 unless the Commission receives comments that would result in a contrary determination.

ADDRESSES: Comments should be addressed in writing to Gregory Baker, Co-Chief Privacy Officer, Federal Election Commission, 1050 First Street NE, Washington, DC 20463, by close of business on January 27, 2022.

FOR FURTHER INFORMATION CONTACT: Gregory Baker, Co-Chief Privacy Officer, Federal Election Commission, (202) 694–1612.

SUPPLEMENTARY INFORMATION: The Privacy Act regulates the collection, maintenance, use and dissemination of information about individuals by Federal agencies. Its basic rule generally prohibits the disclosure of any individual's ''record,'' if contained in a ''system of records'' to a third party without the individual's consent. See 5 U.S.C. 552a(b). A ''system of records'' is any group of records in which records can be retrieved by the individual's name, or by a unique identifier assigned to the individual. See 5 U.S.C. 552a(a)(5).

There are a number of exceptions to the basic rule of nondisclosure without consent. Among them is an exception that permits nonconsensual disclosure

for a ''routine use''—that is, a use compatible with the purposes for which the record was collected. 5 U.S.C. 552a(b)(3). Individuals are also, again with exceptions, guaranteed access to their records, and the right to request amendment of their records if they believe the records are inaccurate. See generally 5 U.S.C. 552a(d). To facilitate these provisions, each agency must periodically review its systems of records and publish a notice in the **Federal Register** containing certain specified information about them. The FEC has undertaken and completed such a review and determined that the FEC needed to establish a Reasonable Accommodation system of records.

The FEC proposes to establish the system of records entitled FEC 17, Reasonable Accommodations. FEC 17 would cover documents collected and maintained by the Equal Employment Opportunity (''EEO'') Office at the Federal Election Commission. These records would be collected under the authority of The Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR 1605 (Guidelines on Discrimination Because of Religion); 29 CFR 1614 (Federal Sector Equal Employment Opportunity); 29 CFR 1614.203 (Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act); 5 U.S.C. 302, 1103; Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000); Americans with Disabilities Act Amendments Act (ADAAA) of 2008; and Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010).

As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and OMB Circular A–130, the FEC has submitted a report describing the new and altered systems of records covered by this notice to the Office of Management and Budget and to Congress.

Dated: December 21, 2021.

On behalf of the Commission,

Gregory Baker,

Co-Chief Privacy Officer, Federal Election Commission.

FEC 17: REASONABLE ACCOMMODATIONS

SYSTEM NAME:

Reasonable Accommodations for the Federal Election Commission (FEC); FEC–17.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Records are maintained by the Equal Employment Opportunity (''EEO'') Office at the Federal Election Commission, 1050 1st St. NE, Washington, DC 20463.

SYSTEM MANAGER(S):

EEO Director, EEO Office at the Federal Election Commission, 1050 1st St. NE, Washington, DC 20463.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR 1605 (Guidelines on Discrimination Because of Religion); 29 CFR 1614 (Federal Sector Equal Employment Opportunity); 29 CFR 1614.203 (Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act); 5 U.S.C. 302, 1103; Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000); Americans with Disabilities Act Amendments Act (ADAAA) of 2008; and Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010).

PURPOSE(S):

The purpose of this system of records is to allow FEC to collect and maintain records on applicants for employment, employees and other individuals who participate in FEC programs or activities who request or receive reasonable accommodations or other appropriate modifications from FEC for medical or religious reasons; to process, evaluate, and make decisions on individual requests; and to track and report the processing of such requests agency-wide to comply with applicable requirements in law and policy.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FEC employees (including unpaid interns and other similarly situated individuals), and prospective employees of the FEC, who make a request for and/or receive a reasonable accommodation or other appropriate modifications from the FEC for a disability or sincerely held religious belief, practice, or observance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include identifying information regarding persons needing a reasonable accommodation (*e.g.,* name, title/series/grade, telephone number, date of request, email address, office, description of accommodation requested, and reason for request); requester's name and contact information (if different than the employee or prospective employee who needs an accommodation); and the status of the response within the FEC. Records in this system may include: The original written request; the FEC's response; the name, title and telephone number of office or staff members deciding or referring the matter; related letters or memoranda; copies of any enclosures/attachments, including medical records or information related to religious belief and exemption; the date an accommodation request was approved or denied; the reason a request was denied; the date an accommodation was provided; whether the recommended time frames were met as outlined in the Reasonable Accommodation Procedures; the reason the reasonable accommodation was needed; the type(s) of reasonable accommodation requested; the type(s) of accommodation provided; the source of technical assistance; whether medical or other appropriate supporting information was required to process the request, and if so, an explanation of why it was required; and other request-related information.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals who request and/or receive a reasonable accommodation or other appropriate modification from OPM, directly or indirectly from an individual's medical provider or another medical professional who evaluates the request, directly or indirectly from an individual's religious or spiritual advisors or institutions, and from management officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), these records and information contained in the records may be disclosed outside of the FEC as a routine use pursuant to subsection (b)(3) of the Privacy Act as follows:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of an individual who is the subject of the record.

B. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

C. Where a record, either on its face or in conjunction with other

information, indicates a violation or potential violation of law, to any civil or criminal law enforcement authority or other appropriate agency, whether federal, state, local, foreign, or tribal, charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing a statute, rule, regulation, or order.

D. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by the FEC to be arguably relevant to the proceeding.

E. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

F. To a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation, or pursuit of other appropriate personnel matter.

G. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to FEC employees.

H. To a former employee of the FEC for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable FEC regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the FEC requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

I. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

J. A record from this system may be disclosed to the Office of Management and Budget (OMB), Department of Labor (DOL), Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), Office of Special Counsel (OSC) or the Department of Justice (DOJ), or other agencies to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.

K. A record from this system may be disclosed to physicians or other medical professionals to provide them with or obtain from them the necessary medical documentation and/or certification for reasonable accommodation.

L. A record from this system of records may be disclosed as a routine use to provide information to the OPM and/or MSPB for review, audit, or reporting purposes.

M. To appropriate agencies, entities, and persons when (1) the FEC suspects or has confirmed that there has been a breach of the system of records; (2) the FEC has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, FEC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FEC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

N. To another Federal agency or Federal entity, when the FEC 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.

O. To first aid and safety personnel if the individual's medical condition requires emergency treatment.

P. To a Federal agency or entity authorized to procure assistive technologies and services in response to a request for reasonable accommodation

Q. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator, or other duly authorized official engages in investigation or settlement of a grievance, complaint, or appeal filed by an individual who requested a reasonable accommodation or other appropriate modification

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records in this system of records are stored electronically on the FEC's local area network or with FedRAMP-authorized cloud service providers segregated from non-government traffic and data, with access limited to a small number of personnel. In addition, paper records are stored in locked file cabinets in access-restricted offices at 1050 1st St. NE, Washington, DC 20463.

RETRIEVABILITY:

The records are retrieved by the name of the individual making a request for reasonable accommodation or for whom the accommodation was requested (if different than the individual making the request); in the case of electronic databases, information may possibly be retrieved by other identifying search terms.

SAFEGUARDS:

Records in this system of records are under the custody of designated employees of the Commission. Paper records are kept in locked file cabinets. All electronic records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include the application of appropriate access control mechanisms to ensure the confidentiality, integrity, and availability of those records and that they are only accessed by those with a need to know and dictated by their official duties. In general, records and technical equipment are maintained in buildings with restricted access.

RETENTION AND DISPOSAL:

Records are retained under the NARA's General Records Schedule 2.3: Employee Relations Records, Item 020, Reasonable accommodation records, Reasonable accommodation program files, and Item 021, Reasonable accommodation employee case files. Destroy 3 years after being superseded, but longer retention is authorized if required for business use (Item 020). Destroy 3 years after employee separation from the agency or all appeals are concluded, whichever is later, but longer retention is authorized if required for business use (Item 021).

NOTIFICATION PROCEDURE:

A request for notification of the existence of records may be made in person or in writing to the Federal Election Commission, Attn: Co-Chief Privacy Officers, 1050 1st St. NE, Washington, DC 20463, or by emailing *privacy@fec.gov.* For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

An individual interested in gaining access to a record pertaining to them must make a request in writing addressed to the Federal Election

Commission, Attn: Co-Chief Privacy Officers, 1050 1st St. NE, Washington, DC 20463, or by emailing *privacy@fec.gov.* The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought must be signed and must include the requestor's full name, current address, reason the requester believes the records contains their PII, and date. For additional information, refer to the Commission's access regulations at 11 CFR parts 1.1–1.5, 41 FR 43064 (1976).

CONTESTING RECORD PROCEDURES:

Individuals interested in contesting the information contained in their records or the denial of access to such information should notify the Co-Chief Privacy Officers at the Federal Election Commission, 1050 1st St. NE, Washington, DC 20463. For additional information, refer to the Commission's regulations for contesting initial denials for access to or amendment of records, 11 CFR parts 1.7–1.9, 41 FR 43064 (1976).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–28222 Filed 12–27–21; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2021–N–15]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an information collection known as the ''American Survey of Mortgage Borrowers,'' which has been assigned control number 2590–0015 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which expired on March 31, 2021.

DATES: Interested persons may submit comments on or before February 28, 2022.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'American Survey of Mortgage Borrowers, (No. 2021–N–15)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''American Survey of Mortgage Borrowers, (No. 2021–N–15)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Saty Patrabansh, Manager, National Mortgage Database Program, *Saty.Patrabansh@fhfa.gov,* (202) 649–3213; or Angela Supervielle, Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

FHFA is seeking OMB clearance under the PRA for a collection of information known as the ''American Survey of Mortgage Borrowers'' (ASMB). The ASMB, conducted annually or biennially, is a voluntary survey of individuals who currently have a first mortgage loan secured by single-family residential property. The 2020 survey questionnaire consisted of 92 questions designed to learn directly from mortgage borrowers about their mortgage experience, any challenges they may have had in maintaining their mortgage, and their experience with mortgage forbearance and the COVID–19 pandemic. It requested specific information on: The mortgage; the mortgaged property; the borrower's experience with the loan servicer; any serious life events that had happened to the borrower in 2020; and the borrower's financial resources and financial knowledge. FHFA is also seeking clearance to pretest future iterations of the survey questionnaire and related materials from time to time through the use of focus groups. A copy of the 2020 survey questionnaire appears at the end of this notice.

The ASMB is a component of the ''National Mortgage Database'' (NMDB) Program, which is a joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB). The NMDB Program is designed to satisfy the Congressionally-mandated requirements of section 1324(c) of the Federal Housing Enterprises Financial Safety and Soundness Act.[1] Section 1324(c) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages, in order to enable it to prepare a detailed annual report on the mortgage market activities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for review by the appropriate Congressional oversight committees. Section 1324(c) also authorizes and requires FHFA to compile a database of otherwise unavailable residential mortgage market information to make that information available to the public in a timely fashion.

As a means of fulfilling these and other statutory requirements, as well as to support policymaking and research regarding the residential mortgage markets, FHFA and CFPB jointly established the National Mortgage Database Program in 2012. The Program is designed to provide comprehensive information about the U.S. mortgage market and has three primary components: (1) The NMDB; (2) the quarterly National Survey of Mortgage Originations (NSMO); and (3) the ASMB.

The NMDB is a de-identified loan-level database of closed-end first-lien residential mortgage loans that is representative of the market as a whole, contains detailed loan-level information on the terms and performance of the mortgages and the characteristics of the associated borrowers and properties, is continually updated, has an historical component dating back to 1998, and provides a sampling frame for surveys to collect additional information. The core

[1] 12 U.S.C. 4544(c).

data in the NMDB are drawn from a random 1-in-20 sample of all closed-end first-lien mortgage files outstanding at any time between January 1998 and the present in the files of Experian, one of the three national credit repositories. A random 1-in-20 sample of mortgages newly reported to Experian is added each quarter.

The NMDB also draws information on mortgages in the NMDB datasets from other existing sources, including the Home Mortgage Disclosure Act (HMDA) data that are maintained by the Federal Financial Institutions Examination Council (FFIEC), property valuation models, and data files maintained by Fannie Mae and Freddie Mac and by federal agencies. FHFA obtains additional data from the quarterly NSMO, which provides critical and timely information on newly-originated mortgages and those borrowing that are not available from any existing source, including: The range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics of borrowers for these types of loans.[2]

While the NSMO provides information on newly-originated mortgages, the ASMB solicits information on borrowers' experience with maintaining their existing mortgages, including their experience maintaining mortgages under financial stress, their experience in soliciting financial assistance, their success in accessing federally-sponsored programs designed to assist them, and, where applicable, any challenges they may have had in terminating a mortgage loan. This type of information is not available from any other source. From 2016 to 2018, the ASMB questionnaire was sent out annually to a stratified random sample of 10,000 borrowers in the NMDB. The ASMB survey was not conducted in 2019, but the ASMB questionnaire was sent out again in 2020 to a stratified random sample of 10,000 borrowers in the NMDB. In 2020, the ASMB had a 21.5 percent overall response rate, which yielded 2,119 survey responses.

When fully processed, the information collected through the ASMB will be used, in combination with information obtained from existing sources in the NMDB, to assist FHFA in understanding how the performance of existing mortgages is influencing the residential mortgage market, what different borrower groups are discussing with their servicers when they are under financial stress, and consumers' opinions of federally-sponsored programs designed to assist them, including mortgage relief such as forbearance. This important, but otherwise unavailable, information will assist FHFA in the supervision of its regulated entities (Fannie Mae, Freddie Mac, and the Federal Home Loan Banks) and in the development and implementation of appropriate and effective policies and programs. The information will also be used for research and analysis by CFPB and other federal agencies that have regulatory and supervisory responsibilities/mandates related to mortgage markets and to provide a resource for research and analysis by academics and other interested parties outside of the government.

As it has done in the past, FHFA expects to continue to sponsor focus groups to pretest possible survey questions and revisions to the survey materials. Such pretesting ultimately helps to ensure that the survey respondents can and will answer the survey questions and will provide useful data on their experiences with maintaining their existing mortgages. FHFA uses information collected through the focus groups to assist in drafting and modifying the survey questions and instructions, as well as the related communications, to read in the way that will be most readily understood by the survey respondents and that will be most likely to elicit usable responses. Such information is also used to help determine how best to organize and format the survey questionnaire.

B. Burden Estimate

This information collection comprises two components: (1) The ASMB survey; and (2) the pre-testing of the survey questionnaire and related materials through the use of cognitive testing. FHFA conducted the survey annually from 2016 through 2018 and again in 2020. Although the ASMB began as an annual survey, it will be conducted biennially, with plans to conduct the next survey in 2022. For purposes of these burden estimates, however, FHFA assumes that it will conduct the survey once annually over the next three years and that it will conduct two rounds of pre-testing on each set of survey materials.

FHFA has analyzed the total hour burden on members of the public associated with conducting the survey (5,000 hours) and with pre-testing the survey materials (24 hours) and estimates the total annual hour burden imposed on the public by this information collection to be 5,024 hours. The estimate for each phase of the collection was calculated as follows:

I. Conducting the Survey

FHFA estimates that the ASMB questionnaire will be sent to 10,000 recipients each time it is conducted. Although it expects that only about 2,000 of those surveys will be returned, FHFA has calculated the burden estimates below as if all of the surveys will be returned. Based on the reported experience of respondents to earlier ASMB questionnaires, FHFA estimates that it will take each respondent 30 minutes to complete each survey, including the gathering of necessary materials to respond to the questions. This results in a total annual burden estimate of 5,000 hours for the survey phase of this collection (1 survey per year × 10,000 respondents per survey × 30 minutes per respondent = 5,000 hours).

II. Pre-Testing the Materials

FHFA estimates that it will sponsor two focus groups prior to conducting each annual survey, with 12 participants in each focus group, for a total of 24 focus group participants. It estimates the participation time for each focus group participant to be one hour, resulting in a total annual burden estimate of 24 hours for the pre-testing phase of the collection (2 focus groups per year × 12 participants in each group × 1 hour per participant = 24 hours).

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

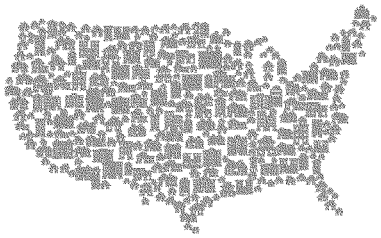
Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[2] OMB has cleared the NSMO under the PRA and assigned it control no. 2590–0012, which expires on July 30, 2023.

What happened with your mortgage over the last year?

The COVID-19 pandemic and your mortgage



The most effective way to understand the benefits and problems with mortgages and owning a home is to ask you about your experiences. It is especially important today as many people faced difficult financial situations because of the COVID-19 pandemic.

You can complete this paper copy or complete the survey online. The online version may be easier to complete because it skips questions that do not apply to you. Online responses are also processed more quickly making it less likely that you will receive reminders to complete this survey. The online questionnaire can be completed in either English or Spanish as explained below.

To complete the survey online, in English or Spanish

Go to: www.ASMBsurvey.com

Enter the unique access code provided in the letter we sent you.

Para contestar la encuesta por Internet en inglés o en español

*Vaya a: **www.ASMBsurvey.com***

Ingrese el código de acceso único que se le envió en la carta.

ABOUT THE SPONSORS: The **Federal Housing Finance Agency** and the **Consumer Financial Protection Bureau** are working together to sponsor this survey. We are doing this because the agencies are concerned with improving the mortgage process for future homeowners. Your experience will help us understand mortgages today and the issues facing borrowers. Thank you for helping us assist future borrowers.

You can find more information on our websites - fhfa.gov and consumerfinance.gov

Thank you for sharing your experience with us.

We look forward to hearing from you.

Privacy Act Notice: In accordance with the Privacy Act, as amended (5 U.S.C. § 552a), the following notice is provided. The information requested on this survey is collected pursuant to 12 U.S.C. 4544 for the purposes of gathering information for the National Mortgage Database. Routine uses which may be made of the collected information can be found in the Federal Housing Finance Agency's System of Records Notice (SORN) FHFA-21 National Mortgage Database. Providing the requested information is voluntary. Submission of the survey authorizes FHFA to collect the information provided and to disclose it as set forth in the referenced SORN.

Paperwork Reduction Act Statement: 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB No. 2590-0015
Expires 3/31/2021

1. At any time in 2020, did you have a mortgage loan?

- ☐ Yes, I had (or still have) at least one mortgage loan
- ☐ No, I did not have a mortgage loan on any property → **Go to 64 on page 7**

2. Which one of these reasons best describes why you took out this mortgage? *If you had more than one mortgage in 2020, please refer to the mortgage you took out the earliest as you complete this survey.*

- ☐ To buy a property
- ☐ To refinance or modify an earlier mortgage
- ☐ To add/remove co-signer(s)/co-owners(s)
- ☐ To finance a construction loan
- ☐ To take out a new loan on a mortgage-free property
- ☐ Some other purpose (specify) _____

3. When did you take out this mortgage?

_____ / _____
month year

4. When you took out this mortgage, what was the dollar amount you borrowed?

$ _____ .00

☐ Don't know

5. What was the monthly payment, including the amount paid to escrow for taxes and insurance?

$ _____ .00

☐ Don't know

6. What was the interest rate on this mortgage?

_____ %

☐ Don't know

7. Who signed or co-signed for this mortgage? *Mark all that apply*

- ☐ I signed
- ☐ Spouse/partner including a former spouse/partner
- ☐ Parents
- ☐ Children
- ☐ Other relatives
- ☐ Other (e.g. friend, business partner)

8. When you took out this mortgage, did this mortgage have...

	Yes	No	Don't Know
A prepayment penalty *(fee if the mortgage is paid off early)*	☐	☐	☐
An escrow account for taxes and/or homeowner insurance	☐	☐	☐
An adjustable rate *(one that can change over the life of the loan)*	☐	☐	☐
A balloon payment	☐	☐	☐
Interest-only monthly payments	☐	☐	☐
Private mortgage insurance	☐	☐	☐

9. When you took out this mortgage, how satisfied were you with the...

	Very	Somewhat	Not At All
Mortgage lender/broker you used	☐	☐	☐
Application process	☐	☐	☐
Documentation process required for the loan	☐	☐	☐
Loan closing process	☐	☐	☐
Information in mortgage disclosure documents	☐	☐	☐
Timeliness of mortgage disclosure documents	☐	☐	☐
Settlement agent	☐	☐	☐

10. At the time you took out this mortgage, how satisfied were you that it was the one with the...

	Very	Somewhat	Not At All
Best terms to fit your needs	☐	☐	☐
Lowest interest rate you could qualify for	☐	☐	☐
Lowest closing cost	☐	☐	☐

The Property

11. When did you first become the owner of this property?

_____ / _____
month year

12. Which one of the following best describes this property?

- ☐ Single-family detached house
- ☐ Mobile home or manufactured home
- ☐ Townhouse, row house, or villa
- ☐ 2-unit, 3-unit, or 4-unit dwelling
- ☐ Apartment (or condo/co-op) in apartment building
- ☐ Unit in a partly commercial structure
- ☐ Other (specify) _____

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13. What was the purchase price of this property, or if you built it, how much did the construction and land cost?

$ _____ .00 ☐ Don't know

14. About how much do you think this property is worth in terms of what could it sell for now or the sale price if you sold it?

$ _____ .00 ☐ Don't know

15. Did the COVID-19 pandemic affect how you decided on how much this property is worth?

- ☐ Yes, worth more because of the pandemic
- ☐ Yes, worth somewhat less because of the pandemic
- ☐ Yes, worth a lot less because of the pandemic
- ☐ No

16. Which one of the following best describes how you use this property today?

- ☐ Primary residence *(where you spend the majority of your time)*
- ☐ Seasonal or second home
- ☐ Home for other relatives
- ☐ Rental or investment property
- ☐ Vacant
- ☐ No longer have the property
- ☐ Other (specify) _____

17. Did we mail this survey to the address of the property you financed with this mortgage?

- ☐ Yes
- ☐ No

18. What do you think will happen to the prices of homes in this property's neighborhood over the next couple of years?

- ☐ Increase a lot
- ☐ Increase a little
- ☐ Stay about the same
- ☐ Decrease a little
- ☐ Decrease a lot

19. In the next couple of years, how do you expect the overall desirability of living in this property's neighborhood to change?

- ☐ Become more desirable
- ☐ Stay about the same
- ☐ Become less desirable

Mortgage Forbearance

20. Earlier this year, in response to the COVID-19 pandemic, many borrowers were able to obtain a forbearance *(a deferral, payment holiday, temporary pause or reduction in mortgage payments)***. Did you get a forbearance?**

- ☐ Yes, had an immediate need for forbearance
- ☐ Yes, obtained forbearance in case it might be needed in the future
- ☐ No

21. Were any of the following a reason you did not or could not get a forbearance?

	Yes	No
Did not know about it	☐	☐
Did not think I needed it	☐	☐
Did not qualify for what was offered	☐	☐
Not available for my loan	☐	☐
It was unclear how the delayed payments would be repaid	☐	☐
Concerned all delayed payments had to be paid in full at the end of forbearance	☐	☐
Concerned about the effect on my credit score	☐	☐
Received another form of mortgage relief	☐	☐
Other (specify) _____	☐	☐

Skip to 29 on page 3

22. (If Yes in 20) How did you apply for your initial forbearance?

	Yes	No
On the phone with a live person	☐	☐
Automated phone system	☐	☐
Online portal	☐	☐
By mail/email	☐	☐
Other (specify) _____	☐	☐

23. When you first got forbearance were you…

	Yes	No
Given options for the length of the forbearance period	☐	☐
Clear on what would happen at the end of the forbearance period and how to repay suspended payments	☐	☐
Provided with a document describing the agreement	☐	☐

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24. What was the time period of your initial forbearance?

- ☐ 3 months
- ☐ 6 months
- ☐ Other _____ months

25. What is the current status of your forbearance?

- ☐ Still in initial forbearance period
- ☐ In an extended forbearance period
- ☐ Out of forbearance

26. Which one of the following best describes how your deferred payments will be repaid when your forbearance period is or was up?

- ☐ The deferred amount was/will be due at the end of the mortgage
- ☐ Paid or will pay the total deferred amount when the forbearance period is up
- ☐ Loan modification or other repayment plan
- ☐ Other (specify) _____
- ☐ Unsure/Don't know
- ☐ N/A, Don't have/expect to have any deferred or reduced payments

27. How confident are you that you will be able to repay the deferred payments?

- ☐ Very
- ☐ Somewhat
- ☐ Not at all
- ☐ Already paid off
- ☐ N/A, No deferred/reduced payments

28. How satisfied were you with the process of getting and working through the forbearance?

- ☐ Very
- ☐ Somewhat
- ☐ Not at all

Difficulty Making Mortgage Payments

29. Did you have any concerns or difficulties making your mortgage payments at any time in 2020?

- ☐ Yes
- ☐ No → **Skip to 45 on page 5**

30. Were your concerns/difficulties related to the COVID-19 pandemic?

- ☐ Yes
- ☐ No

31. When you had concerns/difficulties in 2020, what happened to the mortgage payments?

- ☐ Made all payments in full and on time
- ☐ Made all payments but some were late or partial
- ☐ Did not make all my payments

32. Did any of the following cause you to have concerns/difficulties in making your mortgage payments?

	Yes	No
Layoff, unemployment, or reduced pay/hours of work	☐	☐
Retirement	☐	☐
Business failure	☐	☐
Separation, divorce or partner left	☐	☐
Illness, disability or death of someone in your household	☐	☐
Disaster affecting this property	☐	☐
Increase in required mortgage payments	☐	☐
Payments for other mortgages (e.g. HELOC, 2nd mortgage)	☐	☐
Payments for other large debts	☐	☐
Other unexpected expenses not listed above (specify) _____	☐	☐
Other loss of income not listed above (specify) _____	☐	☐

33. Did you do any of the following to address your concerns/difficulties paying this mortgage in 2020?

	Yes	No
Borrowed money from family or friend	☐	☐
Borrowed from or cashed out a retirement account	☐	☐
Borrowed money somewhere else	☐	☐
Put the property up for sale	☐	☐
Sold other assets	☐	☐
Delayed making any major purchases	☐	☐
Made smaller or delayed payments on credit cards or other loans (not your mortgage)	☐	☐
Reduced other expenses/purchases	☐	☐
Increased work hours	☐	☐
Started a second job	☐	☐
Started a new or better paying job	☐	☐
Applied for/received unemployment benefits	☐	☐

34. Did you have any discussions with a representative of your lender/servicer regarding your payment concerns/difficulties in 2020?

☐ Yes
☐ No → **Skip to 36**

35. Were the discussions about…

	Yes	No
Mortgage forbearance	☐	☐
A loan modification	☐	☐
Refinancing your mortgage	☐	☐
Available government programs	☐	☐
Financial counseling	☐	☐
Debt consolidation	☐	☐
A way to get caught up on missed payments	☐	☐
Selling or giving up the property	☐	☐

36. Since the beginning of 2020, have you been offered any of the following by your lender/servicer?

	Yes	No	Don't Know
A repayment plan to make up missed payments	☐	☐	☐
A pre-approved plan to modify your mortgage payment permanently	☐	☐	☐
A way for you to apply to modify your mortgage payment permanently	☐	☐	☐
A way to sell the property to satisfy the mortgage	☐	☐	☐
A way to give the property to the lender to satisfy the mortgage	☐	☐	☐

37. Were any of the following a challenge to you in getting help to address your payment concerns/difficulties in 2020?

	Yes	No
Not knowing how to apply for programs	☐	☐
The application process for programs was too much trouble	☐	☐
Did not think I qualified for any program	☐	☐
Did not feel comfortable talking with the lender/servicer representative	☐	☐
Was told I did not qualify for a program	☐	☐
Turned down for the programs I applied to	☐	☐
Difficulty getting the correct documents submitted in a timely fashion	☐	☐
Lender/servicer was unable to help me	☐	☐
Difficulty in reaching or communicating with lender/servicer	☐	☐
Lender/servicer gave inconsistent or conflicting information	☐	☐
Other problem (specify) _____	☐	☐

38. Overall, how satisfied were you with your lender/servicer?

☐ Very
☐ Somewhat
☐ Not at all

39. When you had payment concerns/difficulties, did you talk to a professional housing counselor or take a course about managing your finances from an expert?

☐ Yes
☐ No → **Skip to 43**

40. Was your counseling or course…

	Yes	No
In person, one-on-one	☐	☐
In person, in a group	☐	☐
Over the phone	☐	☐
Online	☐	☐
Required	☐	☐

41. How many hours was your counseling or course?

☐ Less than 3 hours
☐ 3 – 6 hours
☐ 7 – 12 hours
☐ More than 12 hours

42. Overall, how helpful was your counseling or course?

☐ Very
☐ Somewhat
☐ Not at all

43. Did you seek input about possible steps to address your payment concerns/difficulties from…

	Yes	No
A real estate agent	☐	☐
Family or friends	☐	☐
Lawyer	☐	☐
Financial planner	☐	☐
Bank or credit union	☐	☐
Government/private agency	☐	☐
Other (specify) _____	☐	☐

44. Did you pay someone who promised to resolve your payment concerns/difficulties?

☐ Yes and it was helpful
☐ Yes but it was not helpful
☐ No

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The Property/Mortgage Today

45. Compared to January 2020, how would you describe your situation today?

- ☐ Still own the property and have a mortgage
- ☐ Still own the property but no mortgage
- ☐ In the process of foreclosure now

Skip to 55

- ☐ No longer own the property
- ☐ Other (specify) _____

Skip to 57 on page 6

46. Did you ever consider selling this property?

- ☐ Yes → **Skip to 48**
- ☐ No

47. Were any of the following a reason you did not consider selling this property?

	Yes	No
Not enough equity in the property	☐	☐
Selling is too much trouble, very stressful	☐	☐
Problems were not yet severe enough to warrant selling	☐	☐
Wanted to stay as long as I could/try to work out problems	☐	☐

48. Compared to January 2020, how would you describe your mortgage today?

- ☐ No change to mortgage (except for forbearance)
- ☐ Mortgage was refinanced
- ☐ Mortgage was modified

Skip to 52

49. At any time in 2020, did you ever consider refinancing or modifying this mortgage?

- ☐ Yes
- ☐ No → **Skip to 55**

50. Did you take any specific action to refinance or modify this mortgage?

- ☐ Shopped around for rates, information, etc.
- ☐ Talked with a lender/servicer and was told I did not qualify for a refinance or modification
- ☐ Applied but withdrew the application
- ☐ Applied but was rejected by the lender/servicer
- ☐ Applied, was accepted, but decided not to change
- ☐ Did not take any action

51. Were any of the following a reason you did not or could not refinance or modify this mortgage?

	Yes	No
Not enough income to qualify	☐	☐
Low credit score, credit issues	☐	☐
Too much other debt	☐	☐
Savings not worth the cost or hassle	☐	☐
New loan not better than what I had	☐	☐
Low appraisal/home value	☐	☐
Other (specify) _____	☐	☐

Skip to 55 →

Refinance or Loan Modification

52. When did you refinance or modify the loan?

_____ / _____
month year

53. How does the new loan compare to the old loan?

	Higher	Same	Lower
Monthly payment	☐	☐	☐
Principal balance	☐	☐	☐
Interest rate	☐	☐	☐
Remaining years/months on loan	☐	☐	☐

54. Did you refinance or modify the loan for any of the following reasons?

	Yes	No
Change to a fixed-rate loan	☐	☐
Get a lower interest rate	☐	☐
Remove private mortgage insurance	☐	☐
Get a lower monthly payment	☐	☐
Consolidate or pay down other debt	☐	☐
Buy out co-signer(s)/co-owners(s)	☐	☐
Repay the loan more quickly	☐	☐
Take out cash	☐	☐

Still Own the Property

55. In the next year or two, how likely is it that you will...

	Very	Somewhat	Not At All
Sell this property	☐	☐	☐
Move but keep your property	☐	☐	☐
Refinance the mortgage on your property	☐	☐	☐
Pay off your mortgage and own the property mortgage-free	☐	☐	☐
Lose your property because you cannot afford the payment	☐	☐	☐

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56. Did you do any of the following as a result of the COVID-19 pandemic?

	Yes	No
Delay or cancel a major home improvement or remodeling project	☐	☐
Delay or cancel maintenance	☐	☐
Delay or cancel a planned move or sale of the property	☐	☐
Sell investment property or second home	☐	☐
Rented out part of the property or added roommates	☐	☐
Take out a home equity loan/line of credit	☐	☐

Skip to 64 on page 7 →

No Longer Own the Property

57. Which one of the following best describes what happened to the property you no longer have?

- ☐ Sold the property at reduced price agreed to by lender (short sale)
- ☐ Sold the property - regular sale
- ☐ Property in foreclosure now
- ☐ Property was taken in foreclosure
- ☐ Gave home to lender to cancel mortgage debt (deed-in-lieu, mortgage release, "cash for keys")
- ☐ Walked away and let the lender have the property
- ☐ Other (specify)

_____

58. When did this happen?

_____ / _____
month year

59. Was what happened to your property primarily…

- ☐ Your or your family's decision
- ☐ Lender or servicer's decision
- ☐ Other (specify)

_____

60. Which one of the following best describes why you no longer have this property?

- ☐ Could not afford the mortgage and related expenses (maintenance, taxes, condo fees, etc.)
- ☐ Owed more on the loan than the property was worth or could sell it for
- ☐ Could afford the property, but no longer have it for other reasons (specify)

_____

61. Do you currently own or rent your primary residence?

- ☐ Own → **Skip to 64 on page 7**
- ☐ Rent
- ☐ Live with family or friends

62. When do you think you might purchase another primary residence?

- ☐ Less than 3 years
- ☐ 3 – 5 years
- ☐ More than 5 years
- ☐ Never

63. Would any of the following events cause you to consider either buying sooner or at all?

	Yes	No
Increase in income/more hours at work	☐	☐
Improved credit score	☐	☐
Saving more for a down payment	☐	☐
Paying off other debts first	☐	☐
Lower interest rate	☐	☐
Lower required credit score	☐	☐
Other (specify) _____	☐	☐

☐ Nothing, will not buy again

Your Household

64. What is your current marital status?

- ☐ Married
- ☐ Separated
- ☐ Never married
- ☐ Divorced
- ☐ Widowed

65. Do you have a partner who shares the decision-making and responsibilities of running your household but is not your legal spouse?

☐ Yes ☐ No

Please answer the following questions for you and your spouse or partner, if applicable.

66. Age at last birthday: You _____ years Spouse/Partner _____ years

67. Sex:

	You	Spouse/Partner
Male	☐	☐
Female	☐	☐

68. Highest level of education achieved:

	You	Spouse/Partner
Some schooling	☐	☐
High school graduate	☐	☐
Technical school	☐	☐
Some college	☐	☐
College graduate	☐	☐
Postgraduate studies	☐	☐

69. Hispanic or Latino:

	You	Spouse/Partner
Yes	☐	☐
No	☐	☐

70. Race: *Mark all that apply.*

	You	Spouse/Partner
White	☐	☐
Black or African American	☐	☐
American Indian or Alaska Native	☐	☐
Asian	☐	☐
Native Hawaiian or Pacific Islander	☐	☐

71. Work status in January 2020: *Mark all that apply.*

	You	Spouse/Partner
Self-employed full time	☐	☐
Self-employed part time	☐	☐
Employed full time	☐	☐
Employed part time	☐	☐
Retired	☐	☐
Unemployed, temporarily laid-off, furloughed	☐	☐
Not working for pay *(student, homemaker, disabled)*	☐	☐

72. How was pay received in January 2020? *Mark all that apply.*

	You	Spouse/Partner
Salary	☐	☐
Commissions	☐	☐
Bonus	☐	☐
Contract worker	☐	☐
Hourly wages	☐	☐
Tips	☐	☐
Self-employed/other	☐	☐
Not working in January 2020	☐	☐

73. Did any of these work changes happen in 2020? *Mark all that apply.*

	You	Spouse/Partner
Reduced hours at work	☐	☐
Reduction in pay	☐	☐
Temporarily laid-off, furloughed	☐	☐
Job loss, unemployment	☐	☐
Retired as planned	☐	☐
Retired earlier than planned	☐	☐
None of the above	☐	☐

74. Current work status: *Mark all that apply.*

	You	Spouse/Partner
No change from beginning of year	☐	☐
Self-employed full time	☐	☐
Self-employed part time	☐	☐
Employed full time	☐	☐
Employed part time	☐	☐
Retired	☐	☐
Unemployed, temporarily laid-off, furloughed	☐	☐
Not working for pay *(student, homemaker, disabled)*	☐	☐

75. Ever serve on active duty in the U.S. Armed Forces, Reserves or National Guard?

	You	Spouse/ Partner
Never served in the military	☐	☐
Only on active duty for training in the Reserves or National Guard	☐	☐
Now on active duty	☐	☐
On active duty in the past, but not now	☐	☐

76. Besides you (and your spouse/partner), who else permanently lives in your home? *Mark all that apply.*

- ☐ Children/grandchildren 12 and under
- ☐ Children/grandchildren age 13 -18
- ☐ Children/grandchildren age 19 or older
- ☐ Parents of you or your spouse/partner
- ☐ Other relatives like siblings or cousins
- ☐ Non-relatives
- ☐ No one else

77. Has anyone temporarily moved into your home? *Mark all that apply.*

- ☐ College students
- ☐ Other adult children
- ☐ Grandchildren
- ☐ Parents
- ☐ Someone else
- ☐ No one

78. In 2020, did any of the following happen?

	Yes	No
Married, remarried or new partner	☐	☐
New permanent addition to your household (not spouse/partner)	☐	☐
Death of household member	☐	☐
Separated, divorced or partner left	☐	☐
Person other than spouse/partner left your household	☐	☐
Disability or serious illness of a household member	☐	☐

79. Do you speak a language other than English at home?

- ☐ Yes
- ☐ No → **Skip to 81**

80. How well do you speak English?

- ☐ Very well
- ☐ Well
- ☐ Not well
- ☐ Not at all

81. In 2019, what was your total annual household income before taxes?

- ☐ Less than $35,000
- ☐ $35,000 to $49,999
- ☐ $50,000 to $74,999
- ☐ $75,000 to $99,999
- ☐ $100,000 to $174,999
- ☐ $175,000 or more

82. What do you think your total annual household income will be in 2020 compared to 2019?

- ☐ A lot higher
- ☐ Somewhat higher
- ☐ About the same
- ☐ Somewhat lower
- ☐ A lot lower

83. How likely is it that your total annual household income in 2021 will return to what it was in 2019?

- ☐ Very likely
- ☐ Somewhat likely
- ☐ Not at all likely

84. Does your total annual household income include any of the following sources?

	Yes	No
Wages or salary	☐	☐
Business or self-employment	☐	☐
Interest or dividends	☐	☐
Alimony or child support	☐	☐
Social Security, pension or other retirement benefits	☐	☐

85. Does anyone in your household have any of the following?

	Yes	No
401(k), 403(b), IRA, or pension plan	☐	☐
Stocks, bonds, or mutual funds (*not in retirement accounts or pension plans*)	☐	☐
Certificates of deposit	☐	☐
Investment real estate	☐	☐

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86. Which one of the following statements best describes the amount of financial risk you are willing to take when you save or make investments?

- ☐ Take substantial risks expecting to earn substantial returns
- ☐ Take above-average risks expecting to earn above-average returns
- ☐ Take average risks expecting to earn average returns
- ☐ Not willing to take any financial risks

87. In 2020, how have the following changed?

	Significant Increase	Little/No Change	Significant Decrease
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

88. Over the next 12 months, how do you expect the following to change?

	Significant Increase	Little/No Change	Significant Decrease
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

89. How likely is it, that if needed, you would be able to…

	Very	Somewhat	Not At All
Pay your bills for the next 3 months without borrowing	☐	☐	☐
Get significant financial help from family or friends	☐	☐	☐
Borrow a significant amount from a bank or credit union	☐	☐	☐
Significantly increase your income	☐	☐	☐

90. Do you know anyone in the past year who…

	Yes	No
Is behind in making their mortgage payments	☐	☐
Stopped making monthly mortgage payments when they could afford it	☐	☐
Has gotten forbearance relief from their lender/servicer	☐	☐
Has gone through foreclosure where the lender took over the property	☐	☐

91. How well could you explain to someone the…

	Very	Somewhat	Not At All
Process of taking out a mortgage	☐	☐	☐
Difference between a fixed- and an adjustable-rate mortgage	☐	☐	☐
Difference between a prime and a subprime loan	☐	☐	☐
Difference between a mortgage's interest rate and its APR	☐	☐	☐
Amortization of a loan	☐	☐	☐
Consequences of not making required mortgage payments	☐	☐	☐
Difference between lender's and owner's title insurance	☐	☐	☐
Relationship between discount points and interest rate	☐	☐	☐
Reason payments into an escrow account can change	☐	☐	☐

92. Do you agree or disagree with the following statements?

	Agree	Disagree
Owning a home is a good financial investment	☐	☐
Most mortgage lenders generally treat borrowers well	☐	☐
Most mortgage lenders would offer me roughly the same rates and fees	☐	☐
Late payments will lower my credit rating	☐	☐
Lenders shouldn't care about any late payments, only whether loans are fully repaid	☐	☐
It is okay to stop making mortgage payments when you can afford it	☐	☐
It is okay to stop making mortgage payments to pay other bills	☐	☐
I would consider counseling or taking a course about managing my finances if I faced financial difficulties	☐	☐

The Federal Housing Finance Agency and the Consumer Financial Protection Bureau appreciate your assistance.

We have provided space below for any additional comments. If the COVID-19 pandemic affected your ability to make your mortgage payments in ways we have not covered in this survey, please tell us about it here.

Please do not put your name or address on the questionnaire.

Please use the enclosed business-reply envelope to return your completed questionnaire.

FHFA
1600 Research Blvd, RC B16
Rockville, MD 20850

For any questions about the survey or online access you can call toll free 1-855-531-0724.

[FR Doc. 2021–28052 Filed 12–27–21; 8:45 am]
BILLING CODE 8070–01–C

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 January 26, 2022.

A. *Federal Reserve Bank of Atlanta* (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Lowndes Bancshares, Inc., Valdosta, Georgia;* to become a banking holding company by acquiring The Citizens National Bank of Quitman, Quitman, Georgia. In connection with this application, Lowndes Bancshares, Inc., has applied to retain Commercial Banking Company, Valdosta, Georgia, and thereby engage in operating a savings association, pursuant to section 4 of the Bank Holding Company Act and 12 CFR 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–28194 Filed 12–27–21; 8:45 am]
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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 26, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Raymond James Financial, Inc., St. Petersburg, Florida;* to acquire Tristate Capital Holdings, Inc., and thereby indirectly acquire Tristate Capital Bank, both of Pittsburgh, Pennsylvania. In connection with this merger, Macaroon Two LLC, St. Petersburg, Florida, a subsidiary of Raymond James Financial, Inc., to become a bank holding company by merging with Tristate Capital Holdings, Inc., thereby indirectly acquiring Tristate Capital Bank.

B. 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. *Nave Holdings LLC, San Juan, Puerto Rico*; to become a bank holding company by acquiring Nave Bank, San Juan, Puerto Rico.

Board of Governors of the Federal Reserve System, December 22, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–28195 Filed 12–27–21; 8:45 am]
BILLING CODE 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 January 11, 2022.

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. *Oaktree Opportunities Fund XI Holdings (Delaware), L.P.; Oaktree Opportunities Fund Xb Holdings (Delaware), L.P.; Oaktree Fund GP, LLC; Oaktree Fund GP I, L.P.; Oaktree Capital I, L.P.; OCM Holdings I, LLC; Oaktree Holdings, LLC; Oaktree Capital Group, LLC; Oaktree Capital Group Holdings, L.P.; Oaktree Capital Group Holdings GP, LLC; Bruce Karsh; and Howard Marks, all of Los Angeles, California;* to acquire voting shares of Patriot National Bancorp, Inc., Stamford, Connecticut.

Board of Governors of the Federal Reserve System, December 21, 2021.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2021–28131 Filed 12–27–21; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-MA–2021–07; Docket No. 2021–0002; Sequence No. 32]

Federal Management Regulation (FMR); Persons Who Are Nursing in Public Buildings

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is issuing a bulletin for the FMR, titled ''Persons who are Nursing in Public Buildings.'' This bulletin supplements a previous bulletin on the subject, and clarifies space requirements and availability of lactation spaces in public buildings for both Federal employees and members of the public.

DATES: *Applicable:* December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, GSA at 202–501–2956, or email *realpropertypolicy@gsa.gov*. Please cite FMR Bulletin 2021–1.

SUPPLEMENTARY INFORMATION: This bulletin supplements FMR Bulletin 2011–B1, ''Nursing Mothers in the Federal Workplace,'' issued August 30, 2011. This bulletin clarifies the space requirements associated with the provision of lactation rooms in certain public buildings, reaffirms the availability of lactation space for Federal employees, as provided in section 4207 of subtitle C of title IV of the ''Patient Protection and Affordable Care Act'' (Pub. L. 111–148; March 23, 2010), and affirms the availability of lactation rooms for members of the public, as provided in the ''Fairness for Breastfeeding Mothers Act of 2019'' (Pub. L. 116–30; July 25, 2019). Lactation space in buildings leased by the Federal Government is not covered by the requirements of the ''Fairness for Breastfeeding Mothers Act of 2019,'' and is addressed in Federal Management Regulation (FMR) Bulletin 2011–B1 (August 30, 2011). Finally, this bulletin also reaffirms that a person may breastfeed their child on Federal Government property, if they are authorized to be present at that location (see 41 CFR 102–74.426).

In the event of a conflict between this bulletin and FMR Bulletin 2011–B1, the provisions of this bulletin will control. This bulletin will remain in effect until expressly superseded or cancelled.

For further information, please read FMR Bulletin 2021–1, Nursing in the Federal Workplace (Supplement), available at *https://www.gsa.gov/policy-regulations/regulations/federal-management-regulation/federal-management-regulation-fmr-related-files#RealPropertyManagement.*

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2021–28130 Filed 12–27–21; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–222–17]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. 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 or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 27, 2022.

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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

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. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change

of a previously approved collection; *Title of Information Collection:* Independent Rural Health Clinic Cost Report; *Use:* Under the authority of sections 1815(a) and 1833(e) of the Social Security Act (42 U.S.C. 1395g), CMS requires that providers of services participating in the Medicare program submit information to determine costs for health care services rendered to Medicare beneficiaries. CMS requires that providers follow reasonable cost principles under 1861(v)(1)(A) of the Act when completing the Medicare cost report. Regulations at 42 CFR 413.20 and 413.24 require that providers submit acceptable cost reports on an annual basis and maintain sufficient financial records and statistical data, capable of verification by qualified auditors.

CMS requires Form CMS–222–17 to determine an RHC's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from an RHC. Each RHC submits the cost report to its contractor for a reimbursement determination. Section 1874A of the Act describes the functions of the contractor.

CMS regulations at 42 CFR 413.24(f)(4)(ii) requires that each RHC submit an annual cost report to their contractor in American Standard Code for Information Interchange (ASCII) electronic cost report (ECR) format. RHCs submit the ECR file to contractors using a compact disk (CD), flash drive, or the CMS approved Medicare Cost Report E-filing (MCREF) portal, [URL: *https://mcref.cms.gov*]. *Form Number:* CMS–222–17 (OMB control number: 0938–0107); *Frequency:* Yearly; *Affected Public:* Private Sector, State, Local, or Tribal Governments, Federal Government, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 1,724; *Total Annual Responses:* 1,724; *Total Annual Hours:* 94,820. (For policy questions regarding this collection contact LuAnn Piccione at (410) 786–5423.

Dated: December 22, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–28216 Filed 12–27–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–R–194]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 28, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–194 Medicare Disproportionate Share Adjustment for Hospitals and Supporting Regulations in 42 CFR 412.106

Under the 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. The term ''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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment for Hospitals and Supporting Regulations in 42 CFR 412.106; *Use:* Section 1886(d)(5)(F) of the Social Security Act and 42 CFR 412.106. 42 CFR 412.106 allows hospitals to request that the Medicare fraction of the DSH adjustment be calculated on a cost reporting basis rather than a federal fiscal year. Once requested, the hospital must accept the result irrespective of whether it increases or decreases their DSH payment. The routine use procedure and the DUA (OMB # 0938–

0734) allows hospitals to request the detailed Medicare data so they can make an informed choice before deciding whether to request that the Medicare fraction be calculated on the basis of a cost reporting period rather than a federal fiscal year. *Form Number:* CMS–R–194 (OMB control number: 0938–0691); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 800; *Total Annual Responses:* 800; *Total Annual Hours:* 400. (For policy questions regarding this collection contact Noel Manlove at 410–786–5161).

Dated: December 22, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–28217 Filed 12–27–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; State Access and Visitation Grant Application (OMB #0970–0482)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The federal Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is requesting a 3-year extension of the State Access and Visitation Grant Application (OMB #0970–0482, expiration 5/31/2022). There are changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the ''Grants to States for Access and Visitation'' program (AV grant program). Funding for the program began in fiscal year 1997 with a capped, annual entitlement of $10 million. The statutory goal of the program is to provide funds to states that will enable them to provide services for the purpose of increasing noncustodial parent access to and visitation with their children. State governors decide which state entity will be responsible for implementing the AV grant program in addition to determining who will be served, what services will be provided, and whether the services will be statewide or in local jurisdictions. The statute specifies certain activities that may be funded, including voluntary and mandatory mediation, counseling, education, the development of parenting plans, supervised visitation, and the development of guidelines for visitation and alternative custody arrangements. Even though OCSE manages this program, funding for the AV grant is separate from funding for federal and state administration of the child support program.

Section 469B(e)(3) of the Social Security Act (Pub. L. 104–193) requires that each state receiving an AV grant award shall monitor, evaluate, and report on such programs in accordance with regulations. Additionally, the Catalog of Federal Domestic Assistance states that there is an application requirement for Grants to States for Access and Visitation Programs (93.597). The application process assists OCSE in complying with this requirement and emphasizes program efficiency, coordination of services, building support for parenting time services, and ensuring the safety of parents and children.

Specifically, the application requires states to submit a detailed program plan indicating how they anticipate spending their funds within the program statute and regulations. The applications cover 3 fiscal years and any changes made to the plan during the 3-year period will require a notification of change to OCSE.

OCSE will review the applications to ensure that planned services meet the requirements laid out in section 469B(e)(3) of the Social Security Act (Pub. L. 104–193). This review will include monitoring of program compliance and the safe delivery of services. In addition to monitoring, the report will also assist in OCSE's ability to provide technical assistance to states that request assistance.

The State Access and Visitation Grant Application is proposing changes to the application itself, including requirements for states and territories to:

—Address disparities in access;
—ensure the proactive identification of systemic barriers to AV grant services for people of color and other underserved populations;
—describe how grant activities will redress such barriers; and
—describe how outreach and recruitment efforts will promote equity in access for underserved or marginalized populations.

The grant application also expands requirements for partnerships with domestic violence service providers to address the access issues experienced by marginalized victims of domestic violence.

Respondents: Recipients of the State Access and Visitation Grant (54 states and territories).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
State Access and Visitation Grant Application	54	1	10	540	180

Estimated Total Annual Burden Hours: 180.

Comments: The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be 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 within 60 days of this publication.

Authority: Sec. 469B(e)(3), Public Law 104–193.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–28060 Filed 12–27–21; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Matching Program

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Notice of a new matching program.

SUMMARY: The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) is providing notice of a re-established matching program between HHS/ACF/OCSE and state agencies administering the Supplemental Nutrition Assistance Program (SNAP). The matching program compares state SNAP agency records with new hire, quarterly wage, and unemployment insurance information maintained in the National Directory of New Hires (NDNH). The outcomes of the comparisons help state agencies with establishing or verifying eligibility for applicants and recipients of SNAP benefits, reducing SNAP benefit errors, and maintaining program integrity.

DATES: The deadline for comments on this notice is January 27, 2022. The re-established matching program will commence no sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately February 16, 2022, through August 15, 2023), and within 3 months of expiration, may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the agreement.

ADDRESSES: Interested parties may submit written comments on this notice to Venkata Kondapolu, Acting Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *venkata.kondapolu@acf.hhs.gov,* or by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201. Comments received will be available for public inspection at this address from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: General questions about the matching program may be submitted to Venkata Kondapolu, Acting Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *venkata.kondapolu@acf.hhs.gov,* or by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201, or by telephone at 202–260–4712.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), provides certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records, which contains information about individuals that are retrieved by name or other personal identifier, are matched with records of other federal, state, or local government records. The Privacy Act requires agencies involved in a matching program to:

1. Obtain approval of a Computer Matching Agreement, prepared in accordance with the Privacy Act, by the Data Integrity Board of any federal agency participating in a matching program.

2. Enter into a written Computer Matching Agreement.

3. Provide a report of the matching program to Congress and the Office of Management and Budget (OMB), and make it available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

4. Publish a notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12) after OMB and Congress complete their review of the report, as provided by OMB Circular A–108.

5. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

6. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

This matching program complies with these requirements.

Linda Boyer,

Deputy Commissioner, OCSE.

Participating Agencies

The Office of Child Support Enforcement (OCSE) is the source agency, and state agencies administering the Supplemental Nutrition Assistance Program (SNAP) are non-federal (recipient) agencies.

Authority for Conducting the Matching Program

The authority for conducting the matching program is contained in section 453(j)(10) of the Social Security Act (42 U.S.C. 653(j)(10)). The Agriculture Act of 2014, Public Law 113–079, amended section 11(e) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(e)(24)) by adding the requirement that the state agency shall request wage data directly from the NDNH, established under section 453(i) of the Social Security Act (42 U.S.C. 653(i)), relevant to determining eligibility to receive supplemental nutrition assistance program benefits and determining the correct amount of those benefits at the time of certification.

Purpose(s)

The purpose of the matching program is to provide each participating state agency administering SNAP with new hire, quarterly wage, and unemployment insurance information from OCSE's NDNH system of records to assist them in establishing or verifying SNAP applicants' and recipients' eligibility for assistance, reducing payment errors, and maintaining program integrity, including determining whether duplicate participation exists or if the applicant or recipient resides in another state. The state SNAP agencies may also use the NDNH information for the secondary purpose of updating the recipients' reported participation in work activities and updating recipients' and their employers' contact information maintained by the state SNAP agencies.

Categories of Individuals

The categories of individuals involved in the matching program are adult members of households who have applied for or receive SNAP benefits.

Categories of Records

The categories of records involved in the matching program, which may include personal identifiers, are new hire, quarterly wage, and unemployment insurance information.

The specific data elements that will be provided to HHS/ACF/OCSE in a state agency input file are:

- Submitting state code (two-digit Federal Information Processing Standard code);
- Date stamp (input file transmission date);
- Adult SNAP caseload month and year of adult SNAP applicants and recipients;
- Adult SNAP applicant/recipient Social Security number;
- Adult SNAP applicant/recipient's first, middle, and last name; and
- Name/Social Security number verification request.

Optional:

- Passback data (state agency information used to identify individuals within the input file to be returned on the output file); and
- Same state data indicator (indicates whether the state agency requests NDNH new hire, quarterly wage, or unemployment insurance even if the information was provided by that same state).

HHS/ACF/OCSE will compare the Social Security numbers in the state agency input file to the Social Security numbers in the NDNH, and will provide the state agency with any available new hire, quarterly wage, and available unemployment insurance information in NDNH pertaining to the individuals whose records are contained in the state agency input file. The NDNH data elements that HHS/ACF/OCSE will return to the state agency are as follows:

a. New Hire File

- New hire processed date
- Employee name and address
- Employee date and state of hire
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

b. Quarterly Wage File

- Quarterly wage processed date
- Employee name
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Employee wage amount
- Quarterly wage reporting period
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

c. Unemployment Insurance File

- Unemployment insurance processed date
- Claimant name and address
- Claimant benefit amount
- Unemployment insurance reporting period
- Transmitter state code
- Transmitter state or agency name

System(s) of Records

The NDNH data used in this matching program will be disclosed from the following OCSE system of records, as authorized by routine use 15: ''*OCSE National Directory of New Hires,*'' System No. 09–80–0381; 80 FR 17906 (Apr. 2, 2015), updated at 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2021–28211 Filed 12–27–21; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–P–1189]

Canned Tuna Deviating From the Standard of Identity; Amendment of Temporary Marketing Permits

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the temporary permits issued to Bumble Bee Foods, LLC, and StarKist Seafood Co. to market test canned tuna. The Bumble Bee Foods, LLC's temporary permit is amended to add one additional manufacturing location. The StarKist Seafood Co.'s temporary permit is amended to increase the amount of test product and to add one additional manufacturing location. These amendments will allow the applicants to continue to test market the test product and collect data on consumer acceptance.

FOR FURTHER INFORMATION CONTACT: Marjan Morravej, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 2014 (79 FR 35362), we issued a notice announcing that we had issued temporary permits to Bumble Bee Foods, LLC, 9655 Granite Ridge Dr., San Diego, CA 92123; Chicken of the Sea International, 9330 Scranton Rd., Suite 500, San Diego, CA 92121; and StarKist Seafood Co., 225 North Shore Dr., Pittsburgh, PA 15212, to market test products identified as canned tuna products. We issued the permits to facilitate market testing of products that deviate from the requirements of the standard of identity for canned tuna in 21 CFR 161.190, which were issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

In the **Federal Register** of March 7, 2016 (81 FR 11813), we issued a notice announcing that we were extending the temporary market permits issued to Bumble Bee Foods, LLC; Chicken of the Sea International; and StarKist Seafood Co. The extension allows the applicants to continue to measure consumer acceptance of the products and assess the commercial feasibility of the products, in support of a petition to amend the standard of identity for canned tuna. The new expiration date of the permits will be either the effective date of a final rule amending the standard of identity for canned tuna that may result from the petition or 30 days after denial of the petition.

In the **Federal Register** of March 5, 2021 (86 FR 12954), we issued a notice announcing that we were amending the temporary permit issued to StarKist Seafood Co. to allow the test product to be manufactured at three additional plants: Tropical Canning (Thailand) Public Co., Ltd., 1/1 M.2 T. Thungyai, Hatyai, Songkhla 90110, Thailand; I.S.A. Value Co., Ltd., 44/4 Moo1, Petchkasem Road, Yaicha, Sampran, Nakornpathom 73110, Thailand; and Tri-Marine (Solomon Islands), Soltuna Ltd., 1 Tuna Dr., Noro, Western Province, Solomon Islands, and to increase the amount of test product to 213,500,000 pounds (96,841,971 kilograms).

Under our regulations at 21 CFR 130.17(f), we are amending the temporary permits issued to Bumble Bee Foods, LLC, and StarKist Seafood Co. We are amending the temporary permit issued to Bumble Bee Foods, LLC, to allow the test product to be manufactured at one additional plant: Marindustrias, S.A. de C.V. Calle Central Oriente No. 5, Parque Industrial Fondeport, Manzanillo Colima, CL 28219 Mexico. We are amending the temporary permit issued to StarKist Seafood Co. to increase the amount of test product to be market tested to 217,900,000 pounds (98,837,777 kilograms) in retail cans of various sizes and to allow the test product to be manufactured at one additional plant: Société De Conserverie en Afrique (SCA S.A.), Nouveau Quai de Peche-Mole 10–BP 782, Dakar, Senegal. All other conditions and terms of the permits remain the same.

Dated: December 21, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–28164 Filed 12–27–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://www.nigms.nih.gov/about-nigms/what-we-do/advisory-council*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 19, 2022.

Open: 9:30 a.m. to 1:30 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Erica L. Brown, Ph.D., Director, Division of Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24F, Bethesda, MD 20892, 301–594–4499, *erica.brown@nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28093 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory General Medical Sciences Council, February 03, 2022, 09:30 a.m. to February 03, 2022, 04:30 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 12, 2021, FR Doc 2020–28902, 86 FR 62835.

The meeting notice is amended to change the Contact Person title and Federal Domestic Assistance code *from:* Erica L. Brown, Ph.D. Associate Director for Extramural Activities; (Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS) to Erica L. Brown, Ph.D. Director, Division of Extramural Activities, to (Catalogue of Federal Domestic Assistance Program Nos. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS). The meeting is partially Closed to the public.

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28103 Filed 12–27–21; 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 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; NIH/NIAID 107 (Reagents for Immunologic Analysis of Non-mammalian and Underrepresented Mammalian Models) (N01).

Date: January 25–26, 2022.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

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, 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*,

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH/NIAID 107 (Reagents for Immunologic Analysis of Non-mammalian and Underrepresented Mammalian Models) (N01).

Date: January 25–26, 2022.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

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, 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: December 21, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28150 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://www.nigms.nih.gov/about-nigms/what-we-do/advisory-council*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 15, 2022.

Open: 9:30 a.m. to 1:30 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Erica L. Brown, Ph.D., Director, Division of Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24F, Bethesda, MD 20892, 301–594–4499, *erica.brown@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28096 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 7–8, 2022.

Open: September 07, 2022, 10:00 a.m. to 1:30 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Closed: September 08, 2022, 1:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: September 7–8, 2022.

Open: September 08, 2022, 10:00 a.m. to 11:30 a.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Closed: September 08, 2022, 11:45 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C-Wing 6th Floor Conference Center, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: September 7–8, 2022.

Open: September 08, 2022, 10:00 a.m. to 11:30 a.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health Building 31, C-Wing 6th Floor Conference Center, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Closed: September 08, 2022, 11:45 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757 *malikk@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: September 7–8, 2022.

Open: September 08, 2022, 10:00 a.m. to 12:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor Conference Center, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Closed: September 08, 2022, 12:15 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Rooms C, D&E, and F&G, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757 *malikk@niddk.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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28097 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Age-related metabolites, mitochondrial and synaptic degeneration & rescue in Aging and Alzheimer's disease.

Date: March 23, 2022.

Time: 11:30 a.m. to 2:30 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: Anita H. Undale, MD, 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, 301–827–7428, *anita.undale@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28091 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: ''Griffithsin Compositions for Treatment and Prevention of Anti-Viral Infections''

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI), National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive, sublicensable patent license to University of Louisville Research Foundation, (''ULRF'') in its rights to the inventions and patents listed in the Supplementary Information section of this notice. ULRF is a Kentucky 501(c)3 non-profit corporation that is the agent of the University of Louisville (''UofL'') for licensing intellectual property owned and controlled by ULRF on behalf of UofL.

DATES: Only written comments and/or applications for a license which are received by the NCI Technology Transfer Center January 12, 2022 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Taryn Dick, Ph.D., MBA, Licensing and Patenting Manager at Telephone: (301) 631–3007 or Email: *taryn.dick@nih.gov.*

SUPPLEMENTARY INFORMATION: The following and all continuing U.S. and foreign patents/patent applications thereof are the intellectual properties to be licensed under the prospective agreement to ULRF: U.S. Provisional Patent Application No. 63/026,375 entitled ''Compositions and Methods for Prevention of Coronavirus Infection,'' (HHS Ref. No. E–029–2022–0–US–01), filed 18 May 2020; PCT Application No. PCT/US2021/033009 entitled ''Compositions and Methods for Prevention of Coronavirus Infection,'' (HHS Ref. No. E–029–2022–1–PCT–02), filed May 18, 2021; U.S. Provisional Patent Application No. 62/898,383 entitled ''Anti-Viral Compositions and Methods of Making and Using,'' (HHS Ref. No. E–030–2022–0–US–01), filed September 10, 2019; and PCT Application No. PCT/US2020/050200, entitled ''Anti-Viral Compositions and Methods of Making and Using'' (HHS Ref. No. E–030–2022–0–PCT–02), filed September 10, 2020.

PCT/US2021/033009 described above claims priority to the U.S. Provisional Patent Application No. 63/026,375 described above, as well as a second U.S. Provisional Patent Application No. 63/070,375 entitled ''Q–Griffithsin Nasal Spray,'' (HHS Ref. No. E–029–2022–1–US–01), filed on August 26, 2020. The Government of the United States is not a co-owner on this second U.S. Provisional Patent Application, and it is therefore, excluded from the proposed exclusive grant from NCI to ULRF.

With respect to the inventions described and claimed in the patent applications 62/026,375 (E–029–2022–0–US–01) and PCT/US2021/033009 (E-029–2022–1–PCT–02) each of the inventors has assigned their rights to their respective employers or an entity which manages the intellectual property for their employer (The Government of the United States of America, the University of Louisville Research Foundation, Inc. or the University of Pittsburgh). With respect to the inventions described and claimed in the patent applications 62/898,383 (E–030–2022–0–US–01) and PCT/US2021/050200 (E–030–2022–0–PCT–01) each of the inventors has assigned their rights to their respective employers or an entity which manages the intellectual property for their employer (The Government of the United States or the University of Louisville Research Foundation, Inc.). The prospective

patent license will be for the purpose of consolidating the patent rights to ULRF, one of the co-owners of said rights, for commercial development and marketing. Consolidation of these co-owned rights is intended to expedite development of the inventions, consistent with the goals of the Bayh-Dole Act codified as 35 U.S.C. 200–212.

The prospective patent license will be worldwide, exclusive, and may be limited to those fields of use commensurate in scope with the patent rights. It will be sublicensable, and any sublicenses granted by ULRF will be subject to the provisions of 37 CFR part 401 and 404.

Griffithsin (GRFT) is a protein that was originally isolated from marine red algae, namely Rhodophyte (Griffithsia sp.). It binds the terminal mannose residues of N-linked glycans found on the surface of many enveloped viruses such as HIV, SARS–CoV, Ebola virus, and more. The E–029–2022 invention pertains to novel mutant Griffithsin (GRFT) formulations and methods of inhibition of viral infection. The E–030–2022 invention pertains to methods of systemically treating viral infections and additional mutant GRFT variants that are specifically mutated to introduce a lysine within a mutant GRFT sequence. These GRFT variants can be PEGylated, which significantly improves pharmacokinetics and decreases immunogenicity. Based on current available data, the intended use for the inventions is as anti-viral therapies for enveloped virus infections.

This notice is made pursuant to 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent license will include terms for the sharing of royalty income with NCI from commercial sublicenses of the patent rights and may be granted unless within fifteen (15) days from the date of this published notice the NCI receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent license. In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: December 21, 2021.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2021–28196 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel RFA DK–21–503: Limited Competition for the Continuation of EDIC Study Research Center (Collaborative U01, Clinical Trial Not Allowed.

Date: February 14, 2022.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Democracy II 6707, Democracy Blvd, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, 6707 Democracy Boulevard, ROOM 7349, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR10–202: High Impact Interdisciplinary Science in NODDK Research Areas (RC2 Clinical Trial Optional)-Kidney Diseases.

Date: February 18, 2022.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd. Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer Review Branch, DEA, NIDDK, National Institutes of Health, 6707 Democracy Boulevard, ROOM 7349, Bethesda, MD 20892–5452 (301) 594–8894, *begumn@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28101 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; SBIR Contract Review Panel.

Date: February 2, 2022.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892.

Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892, 301–594–7319, *khanr2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative

Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 21, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28088 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Data Analyses for the Better Understanding of Long-Term Osteoporosis Therapy.

Date: March 2, 2022.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28099 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Gene Delivery System for AD/ADRD Therapy Development.

Date: January 28, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

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; Mechanism-Based Adult Stem Cell Treatments to Combat Aging.

Date: February 11, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–480–1266, *neuhuber@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28100 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: January 25, 2022.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: Presentations and discussion of programs.

Place: National Institutes of Health, Rockledge II, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Telephone Access: 1–646–828–7666 (Meeting ID: 160 241 4559) Passcode: 076579.

Virtual Access: https://nih.zoomgov.com (Meeting ID: 160 241 4559) Passcode: 076579.

Contact Person: W. Keith Hoots, MD., Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892, 301–435–0080, *hootswk@nhlbi.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: December 21, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28087 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Career Development Facilitating the Transition to Independence Study Section.

Date: January 31–February 1, 2022.

Time: 10:00 a.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: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group; Career Development for Early Career Investigators Study Section.

Date: January 31–February 1, 2022.

Time: 10:00 a.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: Carmen Moten, Ph.D., MPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *cmoten@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28098 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Large Scale Mapping and/or Molecular Profiling of Ensembles and/or Cell-Types Mediating Opioid Action in the Rodent Brain (R01—Clinical Trial Not Allowed).

Date: February 17, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 Northstone Street Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 594–9460, *Soyoun.cho@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 21, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–28151 Filed 12–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Notice of the Critical Infrastructure Partnership Advisory Council

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of availability; Critical Infrastructure Partnership Advisory Council membership update.

SUMMARY: On November 30, 2021, the Department updated the Critical Infrastructure Partnership Advisory Council (CIPAC) Membership. Through this notice, the Department is making the updated CIPAC Membership Rosters publicly available on the CIPAC website.

FOR FURTHER INFORMATION CONTACT: Ginger K. Norris, 202–441–5885, *CIPAC@cisa.dhs.gov*.

SUPPLEMENTARY INFORMATION: DHS established the CIPAC on March 24, 2006. (71 FR 14930). The CIPAC facilitates interactions between government officials and representatives of owners and/or operators for each of the critical infrastructure sectors designated in Presidential Policy Directive 21 and identified in the current National Infrastructure Protection Plan. Pursuant to section V.C.5 of the CIPAC Charter, the CIPAC Executive Secretariat is required to maintain a membership list on the publicly-available CIPAC website and publish annual updates to announce changes in CIPAC membership. Please visit *https://www.cisa.gov/critical-infrastructure-partnership-advisory-council* for more information on CIPAC and to view the CIPAC Membership Rosters.

Ginger K. Norris,

Designated Federal Official, Critical Infrastructure Partnership Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2021–28177 Filed 12–27–21; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2021–0076; FF08ESMF00–FXES11140800000–212]

Permanente Site Operations and Maintenance, Santa Clara County, California; Draft Screening Form and Draft Low-Effect Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit application; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft low-effect screening form (screening form) under the National Environmental Policy Act (NEPA) for an incidental take permit (ITP) under the Endangered Species Act (ESA), supported by a draft low-effect habitat conservation plan (draft HCP). The Lehigh Southwest Cement Company (Lehigh) (applicant) has applied for an ITP under the ESA for Permanente Site Operations and Maintenance in Santa Clara County, California. The requested ITP, which would be in effect for a period of 20 years, if granted, would authorize incidental take of the federally threatened California red-legged frog. In accordance with NEPA requirements, we have determined that the proposed action qualifies for a categorical exclusion as low effect. We invite the public and local, State, Tribal, and Federal agencies to comment on the application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before January 27, 2022.

ADDRESSES: *Obtaining Documents:* The draft screening form, draft HCP, and any comments and other materials that we receive are available for public inspection at *http://www.regulations.gov* in Docket No. FWS–R8–ES–2021–0076.

Submitting Comments: To submit comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft screening form, draft HCP, or both.

- *Internet:* Submit comments at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2021–0076.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0076; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For more information, see Public Comments and Public Availability of Comments, under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joseph Terry, Senior Fish and Wildlife Biologist, or Ryan Olah, Supervisor, Coast Bay Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, by phone at 916–414–6600 or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft low-effect screening form (screening form), prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. This notice also announces the receipt of an application from the Lehigh Southwest Cement Company (Lehigh) (applicant) for a 20-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the permit requires the preparation of a habitat conservation plan (HCP) with measures to avoid, minimize, and mitigate the impacts of incidental take to the maximum extent practicable. The applicant prepared the draft Permanente Site Operations and Maintenance Low-Effect Habitat Conservation Plan (draft HCP) pursuant to section 10(a)(1)(B) of the ESA. The purpose of the screening form is to assess the effects of issuing the permit and implementing the draft HCP on the natural and human environment.

Background

Section 9 of the ESA (16 U.S.C. 1531–1544 *et seq.*) prohibits the taking of fish and wildlife species listed as endangered. Pursuant to section 4(d) of the ESA, the take prohibition was extended by regulation to certain threatened species, including the California red-legged frog with the exception of take incidental to routine ranching activities on private or tribal lands as described in 50 CFR 17.43(d). Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal HCP program, go to *http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.*

National Environmental Policy Act Compliance

The proposed ITP issuance triggers the need for NEPA compliance (42 U.S.C. 4321 *et seq.*). The draft screening form was prepared to analyze the impacts of issuing an ITP based on the draft HCP and to inform the public of the proposed action, any alternatives, and associated impacts, and to disclose any irreversible commitments of resources.

Proposed Action Alternative

Under the Proposed Action Alternative, the Service would issue an ITP to the applicant for a period of 20 years for certain covered activities (described below). The applicant has requested an ITP for one covered species (described below), which is listed as threatened under the ESA.

Habitat Conservation Plan Area

The geographic scope of the draft HCP encompasses 10.2 acres of the Lehigh property, which includes 2.52 acres subject to repeated temporary impacts and 0.10 acre permanently lost associated with ongoing operations and maintenance activities that occur near suitable habitat for the California red-legged frog, and a pond to which California red-legged frogs that require removal from maintenance areas would be relocated. The area is located west of the City of Cupertino, in an unincorporated area of Santa Clara County, California.

Covered Activities

The proposed ESA section 10 ITP would allow take of the California red-legged frog from covered activities in the proposed HCP area. The applicant is requesting incidental take authorization for covered activities, including storm water capture/sedimentation basin operation and maintenance; erosion control; material transport and storage; vehicle traffic and equipment operation; road and vegetation maintenance; water quality monitoring; and restoration if emergent cover increases or decreases enough to substantially diminish breeding habitat quality, maintenance, and monitoring of an on-site California red-legged frog breeding pond. The applicant is proposing to implement a number of best management practices, as well as general and species-specific avoidance and minimization measures to minimize the impacts of the covered activities on the listed species, California red-legged frog, and the candidate species, monarch butterfly.

Covered Species

The California red-legged frog (*Rana draytonii*), a species federally listed as threatened, is proposed to be included as a covered species in the proposed HCP.

No-Action Alternative

Under the No-Action Alternative, the Service would not issue an ITP to the applicant, and routine operations and maintenance activities and pond monitoring and maintenance would not be implemented. The No-Action Alternative is not feasible, based on the purpose and need of the operations and maintenance activities. Without the action, Lehigh would not be able to maintain compliance with applicable water quality and erosion control requirements and operational safety standards. Lehigh is mandated by the State Water Resources Control Board to comply with existing and applicable Clean Water Act permits and Water Quality Certifications; full compliance would not be possible if operations and maintenance activities are not conducted. In addition, not implementing these activities would result in erosion and sedimentation that degrade habitat for the California red-legged frog. Finally, without the Covered Activities, safety of on-site material transport and vehicle travel would be jeopardized. For these reasons, the No-Action Alternative has been rejected.

Reduced Project Alternative

Under the reduced project alternative, the Service would issue an ITP to the applicant for a period of 20 years for the same covered activities and species described for the Proposed Action Alternative, but within a reduced HCP area. The smaller HCP area would presumably result in reduced probability for take of California red-legged frog. However, the HCP area associated with the Proposed Action Alternative has been minimized to the smallest possible footprint to fulfill requirements of the existing storm water pollution prevention plan and applicable permits associated with quarry operation, and to preserve safe quarry operations. In addition, a reduced HCP area would reduce the extent and effectiveness of erosion and sedimentation control measures, potentially resulting in degradation of California red-legged frog habitat. For these reasons, the Reduced Project Alternative would not accomplish the project's goals and has been rejected.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice, the draft screening form, and the draft HCP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Any other environmental issues that should be considered with regard to the proposed development and permit action.

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might 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.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive as part of our NEPA compliance process to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action for the potential issuance of an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

Authority

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*), and its implementing regulations at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*) and its implementing regulations at 50 CFR 17.32(b)(1)(ii).

Michael Fris,

Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 2021–28124 Filed 12–27–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2021–0139; FXES11140300000–223]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Indiana Crossroads Wind Farm, White County, Indiana; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Indiana Crossroads Wind Farm LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act, for its Indiana Crossroads Wind Farm (project). If approved, the ITP would be for a 6-year period and would authorize the incidental take of an endangered species, the Indiana bat, and a threatened species, the northern long-eared bat. The applicant has prepared a habitat conservation plan that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the Indiana bat and northern long-eared bat. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also able for public review.

DATES: We will accept comments received or postmarked on or before January 27, 2022.

ADDRESSES: *Document availability:*

Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R3–ES–2021–0139 at *http://www.regulations.gov.*

Comment submission: In your comment, please specify whether your comment addresses the proposed HCP, draft environmental action statement, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online: http://www.regulations.gov*. Search for and submit comments on Docket No. FWS–R3–ES–2021–0139.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2021–0139; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Scott Pruitt, Field Supervisor, Bloomington Ecological Services Field Office, U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, IN 47403; telephone: 812–334–4261, extension 214; or Andrew Horton, Regional HCP Coordinator, U.S. Fish and Wildlife Service—Interior Region 3, 5600 American Blvd., West, Suite 990, Bloomington, MN 55437–1458; telephone: 612–713–5337.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, have received an application from Indiana Crossroads Wind Farm LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*) incidental to the operation of 72 wind turbines with a total generating capacity of 302 megawatt (MW) at the Indiana Crossroads Wind Farm in White County, Indiana. While the ITP is for 6 years, the operational life of most new wind energy facilities is thirty years and intensive monitoring conducted during this permit term will inform the need for future avoidance or a new long-term ITP for the remaining life of the project that will comply with a new NEPA analysis and habitat conservation plan (HCP). The applicant has prepared an HCP that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the covered species for the first 6 years. We request public comment on the application, which includes the applicant's proposed HCP, and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also able for public review.

Background

Section 9 of the ESA and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species,] or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The applicant requests a 6-year ITP to take the federally endangered Indiana bat (*Myotis sodalis*) and threatened northern long-eared bat (*Myotis septentrionalis*). The applicant determined that take is reasonably certain to occur incidental to operation of 72 previously constructed wind turbines in White County, Indiana, consisting of approximately 32,763 acres of private land. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to minimize potential take of Indiana bats and northern long-eared bats through on-site minimization measures and to provide habitat conservation measures for Indiana bat and northern long-eared bat to offset any impacts from operations of the project. The HCP provides on-site avoidance and minimization measures, which include turbine operational adjustments. The authorized level of take from the project is 18 Indiana bats and 18 northern long-eared bats over the 6-year permit duration. To offset the impacts of the taking of the species, the applicant will implement one or more of the following mitigation options: Purchase credits from an approved conservation bank, contribute to an in-lieu fee mitigation fund, implement permittee responsible mitigation project, or contribute to a white-nose syndrome treatment fund.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the applicant's project and the proposed mitigation measures would individually and cumulatively have a minor or negligible effect on the covered species and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion, and the HCP would be low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether the permit application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites comments and suggestions from all interested parties on the proposed HCP and screening form during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. Whether adaptive management, monitoring, and mitigation provisions in the proposed HCP are sufficient;

2. The requested 6-year ITP term;

3. Any threats to the Indiana bat and the northern long-eared bat that may influence their populations over the life of the ITP that are not addressed in the proposed HCP or screening form;

4. Any new information on white-nose syndrome effects on the Indiana bat and the northern long-eared bat;

5. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and

6. Any other information pertinent to evaluating the effects of the proposed action on the human environment, including those on the Indiana bat and the northern long-eared bat.

Availability of Public Comments

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on *http://regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1500–1508 (2020); 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2021–28223 Filed 12–27–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900253G; OMB Control Number 1076–NEW]

Agency Information Collection Activities; Tribal Colleges and Universities CARES Act and CRRSA Act Report

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 28, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference OMB Control Number 1076–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Dr. Katherine Campbell, Program Analyst, Office of Research, Policy and Post-secondary, by email at *Katherine.campbell@bie.edu* or by telephone at (703) 390–6697. 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 Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, established the Education Stabilization Fund (ESF) and allocated $30.75 billion to the U.S. Department of Education (ED). The Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, Public Law 116–260, added $81.9 billion to the ESF.

ED allocated ESF funds to the Secretary of Interior for programs operated or funded by the BIE to prevent, prepare for, and respond to the Novel Coronavirus Disease 2019 (COVID–19). Specifically, ED allocated one-half of 1 percent for the Secretary of Interior for programs operated or funded by the BIE. On June 12, 2020 ED and BIE executed a memorandum of agreement (ESF–BIE I Agreement) regarding the use of funds.

Additionally, the CRRSA Act requires ED to allocate one-half of 1 percent of

the funds under the ESF to the Secretary of Interior for programs operated or funded by the BIE under the terms and conditions established for funding provided under section 18001(a)(2) of the CARES Act, for BIE-operated and funded elementary and secondary schools and Tribal Colleges and Universities. On January 11, 2021 BIE and ED signed a memorandum of agreement regarding (ESF–BIE II Agreement) regarding the use of funds.

In recognition of the mutual interests, BIE agreed to submit reports regarding its use of funds to ED. In accordance with the ESF–BIE I Agreement and ESF–BIE II Addendum, BIE must report to ED on BIE's internal controls and plan for monitoring use of ESF funds by the Tribal Colleges and Universities.

Accordingly, Tribal Colleges and Universities must report, on an annual basis, their expenditures of the ESF, broken down by the following categories: Lost revenue, reimbursement for expenses incurred, technology costs associated with transitioning to distance education, faculty and staff training, payroll, emergency student aid—food, emergency student aid—housing, emergency student aid—course materials, emergency student aid—technology, emergency student aid—health and child care, and other expenses. This information is collected on a form and will be used to monitor TCUs' use of ESF funds.

Title of Collection: Tribal Colleges and Universities CARES Act and CRRSA Act Report.

OMB Control Number: 1076–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Tribal colleges and universities.

Total Estimated Number of Annual Respondents: 35.

Total Estimated Number of Annual Responses: 35.

Estimated Completion Time per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 70 hours.

Respondent's Obligation: Required to obtain benefits.

Frequency of Collection: Annually until December 2022.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–28113 Filed 12–27–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Seventh Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Jamestown S'Klallam Tribe (Tribe) and the State of Washington (State).

DATES: The Amendment takes effect on December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facilities, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–28214 Filed 12–27–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Memorandum of Incorporation of Most Favored Nation Amendments to the Tribal-State Compact for Class III Gaming (Amendment) between the Port Gamble S'Klallam (Tribe) and the State of Washington (State).

DATES: The Amendment takes effect on December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facilities, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–28213 Filed 12–27–21; 8:45 am]

BILLING CODE 4337–15–P

NATIONAL INDIAN GAMING COMMISION

Notice of Approved Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of Class III tribal gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Tearanie McCain, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710 (d) (2) (B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register** is sufficient to meet the requirements of 25 U.S.C. 2710 (d) (2) (B). Beginning September 30, 2021, the NIGC will publish the notice of approved gaming ordinances quarterly, by March 31, June 30, September 30, and December 31 of each year.

Every approved tribal gaming ordinance, every approved ordinance amendment, and the approval thereof, will be posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances within five (5) business days of approval. Also, the Commission will make copies of approved Class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Tearanie McCain, C/O Department of the Interior, 1849 C Street NW, MS #1621, Washington, DC 20240.

The following constitutes a consolidated list of all Tribes for which the Chairman has approved tribal gaming ordinances authorizing Class III gaming.

1. Absentee-Shawnee Tribe of Indian of Oklahoma
2. Agua Caliente Band of Cahuilla Indians
3. Ak-Chin Indian Community of the Maricopa Indian Reservation
4. Alabama-Quassarte Tribal Town
5. Alturas Indian Rancheria
6. Apache Tribe of Oklahoma
7. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation
8. Augustine Band of Cahuilla Indians
9. Bad River Band of Lake Superior Tribe of Chippewa Indians
10. Barona Group of Captain Grande Band of Mission Indians
11. Bay Mills Indian Community
12. Bear River Band of Rohnerville Rancheria
13. Berry Creek Rancheria of Tyme Maidu Indians
14. Big Lagoon Rancheria
15. Big Pine Band of Owens Valley Paiute Shoshone Indians
16. Big Sandy Rancheria Band of Western Mono Indians
17. Big Valley Band of Pomo Indians
18. Bishop Paiute Tribe
19. Blackfeet Tribe
20. Blue Lake Rancheria of California
21. Bois Forte Band of the Minnesota Chippewa Tribe
22. Buena Vista Rancheria of Me-Wuk Indians
23. Burns Paiute Tribe
24. Cabazon Band of Mission Indians
25. Cachil DeHe Band of Wintun Indians of the Colusa Indian Community
26. Caddo Nation of Oklahoma
27. Cahto Indian Tribe of the Laytonville Rancheria
28. Cahuilla Band of Mission Indians
29. California Valley Miwok Tribe
30. Campo Band of Diegueno Mission Indians
31. Catawba Indian Nation
32. Chemehuevi Indian Tribe
33. Cher-Ae Heights Indian Community of the Trinidad Rancheria
34. Cherokee Nation of Oklahoma
35. Cheyenne and Arapaho Tribes
36. Cheyenne River Sioux Tribe
37. Chickasaw Nation of Oklahoma
38. Chicken Ranch Rancheria of Me-Wuk Indians
39. Chippewa-Cree Tribe of the Rocky Boy's Reservation
40. Chitimacha Tribe of Louisiana
41. Choctaw Nation of Oklahoma
42. Citizen Potawatomi Nation
43. Cloverdale Rancheria of Pomo Indians
44. Cocopah Indian Tribe
45. Coeur d'Alene Tribe
46. Colorado River Indian Tribes
47. Comanche Nation of Oklahoma
48. Confederated Salish and Kootenai Tribes of the Flathead Reservation
49. Confederated Tribes and Bands of the Yakama Nation
50. Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon
51. Confederated Tribes of the Chehalis Reservation
52. Confederated Tribes of the Colville Reservation
53. Confederated Tribes of the Grand Ronde Community of Oregon
54. Confederated Tribes of Siletz Indians of Oregon
55. Confederated Tribes of the Umatilla Reservation
56. Confederated Tribes of the Warm Springs Reservation
57. Coquille Indian Tribe
58. Coushatta Tribe of Louisiana
59. Cow Creek Band of Umpqua Indians of Oregon
60. Cowlitz Indian Tribe
61. Coyote Valley Band of Pomo Indians of California
62. Crow Creek Sioux Tribe
63. Crow Indian Tribe of Montana
64. Delaware Tribe of Western Oklahoma
65. Delaware Tribe of Indians
66. Dry Creek Rancheria of Pomo Indians of California
67. Eastern Band of Cherokee Indians
68. Eastern Shawnee Tribe of Oklahoma
69. Eastern Shoshone Tribe of the Wind River Indian Reservation
70. Elem Indian Colony of Pomo Indians
71. Elk Valley Rancheria
72. Ely Shoshone Tribe of Nevada
73. Enterprise Rancheria of the Maidu Indians of California
74. Ewiiaapaayp Band of Kumeyaay Indians
75. Fallon Paiute-Shoshone Tribes
76. Federated Indians of Graton Rancheria
77. Flandreau Santee Sioux Tribe of South Dakota
78. Fond du Lac Band of Lake Superior Chippewa
79. Forest County Potawatomi Community
80. Fort Belknap Indian Community
81. Fort Independence Indian Community of Paiute Indians
82. Fort McDermitt Paiute -Shoshone Tribe of Nevada and Oregon
83. Fort McDowell Yavapai Nation
84. Fort Mojave Indian Tribe of Arizona, California and Nevada
85. Fort Sill Apache Tribe of Oklahoma
86. Gila River Indian Community
87. Grand Portage Band of Chippewa Indians
88. Grand Traverse Band of Ottawa and Chippewa Indians
89. Greenville Rancheria of Maidu Indians of California
90. Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
91. Guidiville Band of Pomo Indians
92. Habematolel Pomo of Upper Lake

93. Hannahville Indian Community
94. Ho-Chunk Nation of Wisconsin
95. Hoopa Valley Tribe
96. Hopland Band of Pomo Indians
97. Hualapai Indian Tribe
98. Huron Potawatomi, Inc.
99. Iipay Nation of Santa Ysabel of California
100. Ione Band of Miwok Indians
101. Iowa Tribe of Kansas and Nebraska
102. Iowa Tribe of Oklahoma
103. Jackson Rancheria Band of Miwuk Indians
104. Jamestown S'Klallam Tribe of Washington
105. Jamul Band of Mission Indians
106. Jena Band of Choctaw Indians
107. Jicarilla Apache Nation
108. Kaibab Band of Paiute Indians
109. Kalispel Tribe of Indians
110. Karuk Tribe
111. Kashia Band of Pomo Indians of the Stewarts Point Reservation
112. Kaw Nation
113. Keweenaw Bay Indian Community
114. Kialegee Tribal Town
115. Kickapoo Traditional Tribe of Texas
116. Kickapoo Tribe of Indians in Kansas
117. Kickapoo Tribe of Oklahoma
118. Kiowa Tribe of Oklahoma
119. Klamath Tribes
120. Klawock Cooperative Association
121. Kootenai Tribe of Idaho
122. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
123. Lac du Flambeau Band of Lake Superior Chippewa Indians
124. Lac Vieux Desert Band of Lake Superior Chippewa Indians
125. La Jolla Band of Luiseno Indians
126. La Posta Band of Mission Indians
127. Las Vegas Paiute Tribe
128. Leech Lake Band of Chippewa Indians
129. Little River Band of Ottawa Indians
130. Little Traverse Bay Bands of Odawa Indians
131. Lower Brule Sioux Tribe
132. Lower Elwha Klallam Tribe
133. Lower Sioux Indian Community
134. Lummi Indian Tribe
135. Lytton Rancheria of California
136. Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria
137. Manzanita Band of Mission Indians
138. Mashantucket Pequot Tribe
139. Mashpee Wampanoag Tribe
140. Match-E-Be-Nash-She-Wish Band of the Potawatomi Indians of Michigan
141. Mechoopda Indian Tribe of Chico Rancheria
142. Menominee Indian Tribe of Wisconsin
143. Mescalero Apache Tribe
144. Miami Tribe of Oklahoma
145. Middletown Rancheria of Pomo Indians
146. Mille Lacs Band of Ojibwe
147. Mississippi Band of Choctaw Indians
148. Moapa Band of Paiute Indians
149. Modoc Tribe of Oklahoma
150. Mohegan Indian Tribe of Connecticut
151. Mooretown Rancheria of Maidu Indians
152. Morongo Band of Mission Indians
153. Muckleshoot Indian Tribe
154. Muscogee (Creek) Nation
155. Narragansett Indian Tribe
156. Navajo Nation
157. Nez Perce Tribe
158. Nisqually Indian Tribe
159. Nooksack Indian Tribe
160. North Fork Rancheria of Mono Indians of California
161. Northern Arapaho Tribe of the Wind River Indians
162. Northern Cheyenne Tribe
163. Nottawaseppi Huron Band of Potawatomi
164. Oglala Sioux Tribe
165. Ohkay Owingeh Pueblo of San Juan
166. Omaha Tribe of Nebraska
167. Oneida Nation of New York
168. Oneida Tribe of Indians of Wisconsin
169. Osage Nation
170. Otoe-Missouri Tribe of Indians
171. Ottawa Tribe of Oklahoma
172. Paiute-Shoshone Indians of the Bishop Community
173. Pala Band of Luiseno Mission Indians
174. Pascua Yaqui Tribe of Arizona
175. Paskenta Band of Nomlaki Indians
176. Pauma Band of Mission Indians
177. Pawnee Nation of Oklahoma
178. Pechanga Band of Mission Indians
179. Peoria Tribe of Indians of Oklahoma
180. Picayune Rancheria of Chukchansi Indians
181. Pinoleville Band of Pomo Indians
182. Pit River Tribe
183. Poarch Band Creek Indians
184. Pokagon Band of Potawatomi Indians of Michigan
185. Ponca Tribe of Oklahoma
186. Ponca Tribe of Nebraska
187. Port Gamble S'Klallam Tribe
188. Prairie Band of Potawatomi Nation
189. Prairie Island Indian Community
190. Pueblo of Acoma
191. Pueblo of Isleta
192. Pueblo of Jemez
193. Pueblo of Laguna
194. Pueblo of Nambe
195. Pueblo of Picuris
196. Pueblo of Pojoaque
197. Pueblo of San Felipe
198. Pueblo of Sandia
199. Pueblo of Santa Ana
200. Pueblo of Santa Clara
201. Pueblo of Santo Domingo
202. Pueblo of Taos
203. Pueblo of Tesuque
204. Puyallup Tribe of Indians
205. Pyramid Lake Paiute Tribe
206. Quapaw Tribe of Indians
207. Quartz Valley Indian Community
208. Quechan Tribe of Fort Yuma Indian Reservation
209. Quileute Tribe
210. Quinault Indian Nation
211. Red Cliff Band of Lake Superior Chippewa Indians
212. Red Cliff, Sokaogon Chippewa and Lac Courte Oreilles Band
213. Red Lake Band of Chippewa Indians
214. Redding Rancheria
215. Redwood Valley Rancheria of Pomo Indians
216. Reno-Sparks Indian Colony
217. Resighini Rancheria of Coast Indian Community
218. Rincon Band of Luiseno Mission Indians
219. Robinson Rancheria of Pomo Indians
220. Rosebud Sioux Tribe
221. Round Valley Indian Tribe
222. Sac & Fox Nation of Oklahoma
223. Sac & Fox Tribe of Mississippi in Iowa
224. Sac & Fox Nation of Missouri in Kansas and Nebraska
225. Saginaw Chippewa Indian Tribe of Michigan
226. Salt River Pima-Maricopa Indian Community
227. Samish Indian Tribe
228. San Carlos Apache Tribe
229. San Manual Band of Mission Indians
230. San Pasqual Band of Diegueno Mission Indians
231. Santa Rosa Rancheria Tachi-Yokut Tribe
232. Santa Ynez Band of Chumash Mission Indians
233. Santa Ysabel Band of Diegueno Mission Indians
234. Sauk-Suiattle Indian Tribe
235. Sault Ste. Marie Tribe of Chippewa Indians
236. Scotts Valley Band of Pomo Indians
237. Seminole Nation of Oklahoma
238. Seminole Tribe of Florida
239. Seneca Nation of Indians of New York
240. Seneca-Cayuga Tribe of Oklahoma
241. Shakopee Mdewakanton Sioux Community
242. Shawnee Tribe
243. Sherwood Valley Rancheria of Pomo Indians
244. Shingle Springs Band of Miwuk Indians
245. Shinnecock Indian Nation
246. Shoalwater Bay Indian Tribe
247. Shoshone Tribe of the Wind River Reservation

248. Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho
249. Shoshone-Paiute Tribe of the Duck Valley Indian Reservation
250. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
251. Skokomish Indian Tribe
252. Smith River Rancheria
253. Snoqualmie Tribe
254. Soboba Band of Luiseno Indians
255. Sokaogon Chippewa Community
256. Southern Ute Indian Tribe
257. Sprite Lake Tribe
258. Spokane Tribe of Indians
259. Squaxin Island Tribe
260. St. Croix Chippewa Indians of Wisconsin
261. St. Regis Mohawk Tribe
262. Standing Rock Sioux Tribe
263. Stillaguamish Tribe of Indians
264. Stockbridge-Munsee Community
265. Suquamish Tribe of the Port Madison Reservation
266. Susanville Indian Rancheria
267. Swinomish Indian Tribal Community
268. Sycuan Band of Diegueno Mission Indians
269. Table Mountain Rancheria
270. Te-Moak Tribe of Western Shoshone Indians of Nevada
271. Thlopthlocco Tribal Town
272. Three Affiliated Tribes of the Fort Berthold Reservation
273. Timbisha Shoshone Tribe
274. Tohono O'odham Nation
275. Tolowa Dee-ni' Nation
276. Tonkawa Tribe of Oklahoma
277. Tonto Apache Tribe
278. Torres Martinez Desert Cahuilla Indians
279. Tulalip Tribes of Washington
280. Tule River Tribe
281. Tunica-Biloxi Indians of Louisiana
282. Tuolumne Band of Me-Wuk Indians
283. Turtle Mountain Band of Chippewa Indians
284. Twenty-Nine Palms Band of Mission Indians
285. United Auburn Indian Community
286. Upper Sioux Community
287. Upper Skagit Indian Tribe of Washington
288. Ute Mountain Ute Tribe
289. U-tu-Utu-Gwaitu Paiute Tribe of Benton Paiute Reservation
290. Viejas Band of Kumeyaay Indians
291. Wampanoag Tribe of Gay Head
292. Washoe Tribe of Nevada and California
293. White Earth Band of Chippewa Indians
294. White Mountain Apache Tribe
295. Wichita and Affiliated Tribes of Oklahoma
296. Wilton Rancheria
297. Winnebago Tribe of Nebraska
298. Wiyot Tribe of Table Bluff Reservation
299. Wyandotte Nation of Oklahoma
300. Yankton Sioux Tribe
301. Yavapai Apache Nation of the Camp Verde Indian Reservation
302. Yavapai-Prescott Indian Tribe
303. Yerington Paiute Tribe
304. Yocha-De-He Wintun Nation
305. Yurok Tribe

National Indian Gaming Commission.

Michael C. Hoenig,

General Counsel.

[FR Doc. 2021–28190 Filed 12–27–21; 8:45 am]

BILLING CODE 7565–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Automated Put Walls and Automated Storage and Retrieval Systems, Associated Vehicles, Associated Control Software, and Component Parts Thereof, DN 3587*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of OPEX Corporation on December 22, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof. The complainant names as respondents: HC Robotics (a.k.a Huicang Information Technology Co., Ltd.) of China; and Invata, LLC (d/b/a Invata Intralogistics) of Conshohocken, PA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any

written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3587'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.) [1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [3].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: December 22, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–28184 Filed 12–27–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Monomer-Dimer Hybrid Immunoconjugates, DN 3586;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Bioverativ Therapeutics Inc.; Genzyme Corporation; Genzyme Europe B.V.; Bioverativ U.S. LLC; and Bioverativ Pacific LLC on December 20, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain monomer-dimer hybrid immunoconjugates. The complainant names as respondents: Hanmi Pharmaceutical Co., Ltd. of Korea; and Spectrum Pharmaceuticals, Inc. of Henderson, Nevada. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3586'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 21, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–28114 Filed 12–27–21; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution and Clean Water Acts

On December 20, 2021, the United States' Department of Justice lodged a proposed Consent Decree with the U.S. District Court for the Eastern District of Louisiana in *United States* v. *Taylor Energy Company LLC,* Civil Case No. 20–2910 (E.D. La.).

The Complaint in this civil action, filed on October 23, 2020, seeks removal costs, civil penalties, and natural resource damages (NRD) under Section 1002 and 1004 of the Oil Pollution Act (OPA), 33 U.S.C. 2702 and 2704, and Section 311 of the Clean Water Act, 33 U.S.C. 1321. These claims arise from the discharge of oil from Taylor Energy Company LLC's (Taylor Energy's) former oil production facility on the Outer Continental Shelf in the Gulf of Mexico, which began when the facility was damaged during a hurricane in September 2004.

Under the proposed Consent Decree, Taylor Energy will pay approximately $43.5 million—all of the company's available remaining assets—allocated as $15 million to a civil penalty, $16.5 million to NRD, and over $12 million to the U.S. Coast Guard removal costs, to resolve the civil claims arising from the oil discharge. The State of Louisiana is a co-trustee for natural resources injured by the spill, and the NRD money is a joint recovery to be used for natural resource restoration projects selected by the federal and State trustees. Taylor Energy will also transfer to the U.S. Department of the Interior (DOI)'s Bureau of Ocean and Energy Management (BOEM) over $432 million currently held in a trust for plugging the seafloor oil wells and otherwise decommissioning the facility, and the company will be barred from interfering in any way with the Bureau of Safety and Environmental Enforcement's (BSEE's) decommissioning work. Likewise, Taylor Energy commits not to interfere with the Coast Guard's oil containment and removal actions and agrees to turn over to DOI and the Coast Guard documents (including data, studies, reports, etc.) relating to the site to assist in the decommissioning and response efforts. Upon liquidation, Taylor Energy will transfer the value of its remaining assets to the U.S. as its final payment.

In addition, the proposed Consent Decree requires the company to dismiss with prejudice its numerous lawsuits against the U.S., including challenges to the Coast Guard's decision to install a spill containment system and an appeal of the Coast Guard's denial of Taylor Energy's $353 million spill-cost reimbursement claim submitted to the U.S. Oil Spill Liability Trust Fund.

The United States Department of Justice filed the proposed Consent Decree on behalf of the Coast Guard, DOI, and the federal and State trustees for natural resources. The designated federal trustees for the natural resources impacted by Taylor Energy's oil spill are the U.S. Department of Commerce through the National Oceanic and Atmospheric Administration (NOAA) and DOI through the U.S. Fish and Wildlife Service. The designated State trustees are the Louisiana Oil Spill Coordinator's Office, Department of Public Safety & Corrections; Louisiana Department of Natural Resources; Louisiana Department of Environmental Quality; Louisiana Department of Wildlife and Fisheries; and the Louisiana Coastal Protection and Restoration Authority.

The publication of this notice opens a 40-day period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Taylor Energy Company LLC,* DJ# 90–5–1–1–11008/2, Civil Case No. 20–2910 (E.D. La.). All comments must be submitted no later than 40 days after the publication date of this notice.

Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and enclose a check or money order for $14.50 (25 cents per page reproduction cost) payable to the United States Treasury to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–28092 Filed 12–27–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

On December 22, 2021, the Department of Justice filed a complaint in, and simultaneously lodged a Consent Decree with, the United States District Court for the Eastern District of Pennsylvania in the matter of *United States of America, and the Commonwealth of Pennsylvania, Department of Environmental Protection* v. *Bucks County Water and Sewer Authority,* Civil Action No. 21–cv–557 (E.D. Pa.).

The Complaint alleges that the Bucks County Water and Sewer Authority (the ''Authority'') violated its National Pollutant Discharge Elimination System permits, the Clean Water Act, and the Pennsylvania Clean Streams law by failing to prohibit unpermitted discharges in the form of sanitary sewer overflows (''SSOs'') and failing to properly operate and maintain its system.

The proposed Consent Decree seeks to resolve the alleged claims in the complaint. The Parties' express purpose entering into this Consent Decree is for the Authority to take all measures necessary to comply with the Clean Water Act and the regulations promulgated thereunder, and the Clean Streams Law and the regulations promulgated thereunder, and to ensure compliance with any applicable permits issued to Defendant concerning the proper operation and maintenance of the Authority's waste water treatment plants and collection systems. The proposed Consent Decree establishes injunctive relief measures to achieve the above purposes, and secures a civil penalty in the amount of $450,000.

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, and the Commonwealth of Pennsylvania, Department of Environmental Protection* v. *Bucks County Water and Sewer Authority,* Civil Action No. 21–cv–557 (E.D. Pa.)., D.J. Ref. No. 90–5–1–1–10715. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by email or 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 amendments to the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed amendments 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 $26.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–28197 Filed 12–27–21; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Submission for OMB Emergency Review of the ''2022 Arts Supplement to the General Social Survey''

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on arts participation in the U.S.: Clearance Request for NEA 2022 Arts Supplement to the General Social Survey. Copies of this ICR (information collection request), with applicable supporting documentation, may be obtained by visiting *www.Reginfo.gov.*

DATES: The National Endowment for the Arts is requesting OMB's approval of this emergency request by January 21, 2022. Written comments must be submitted to the office listed in the address section below within 5 days from the date of this publication in the **Federal Register**.

ADDRESSES: Send written comments and recommendations for proposed information collection requests within 5 days of publication of this Notice to Sunil Iyengar at *research@arts.gov.*

SUPPLEMENTARY INFORMATION: The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: 2022 Arts Supplement to the General Social Survey.

OMB Number: 3135–0132.

Frequency: One Time.

Affected Public: American adults.

Estimated Number of Respondents: 750.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 125 hours.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: This request is for emergency clearance of the 2022 Arts Supplement to the General Social Survey (GSS) to be conducted by the National Opinion Research Center on behalf of the National Science Foundation. The Arts Supplement to the GSS will provide important data on the impact the COVID–19 pandemic has had on recent arts participation. The survey data will also complement data collected through the planned 2022 Survey of Public Participation in the Arts. The data are circulated to interested researchers, and they are the basis for a range of NEA reports and independent research publications. An arts supplement to the GSS was also conducted in 2012 and 2016. The data will be made available to the public through the agency's data archive, the National Archive of Data on Arts and Culture (NADAC). These data will also be used by the NEA as a contextual measure for one or more of its strategic goals.

Dated: December 22, 2021.

Meghan Jugder,

Support Services Specialist, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2021–28170 Filed 12–27–21; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

692nd Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on February 2–4, 2022. As the NRC staff begins physical re-entry to its facilities, the Committee will be conducting meetings that will include some Members being physically present at the NRC while other Members participate remotely. Interested members of the public are encouraged to participate remotely in any open sessions via 301–576–2978, passcode 644 029 712#. A more detailed agenda may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html.*

Wednesday, February 2, 2022

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: North Anna Subsequent License Renewal Application (Open)—The Committee will have presentations and discussion with representatives from the NRC and Dominion staff regarding the subject topic.

10:00 a.m.–11:00 a.m.: Committee Deliberation on North Anna Subsequent License Renewal Application (Open)—The Committee will deliberate regarding the subject topic.

1:00 p.m.–2:30 p.m.: NuScale Topical Report, ''Building Design and Analysis Methodology for Safety-Related Structures'' (Open/Closed)—The Committee will have presentations and discussion with representatives from the NRC and NuScale staff regarding the subject topic. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

2:30 p.m.–3:30 p.m.: Committee Deliberation on NuScale Topical Report, ''Building Design and Analysis Methodology for Safety-Related Structures'' (Open/Closed)—The Committee will deliberate regarding the subject topic. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

3:45 p.m.–5:15 p.m.: Review Proposed Rule Language for 10 CFR part 53 re: subpart F—Staffing, Personnel Qualifications, Training, and Human Factors (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

5:15 p.m.–6:00 p.m.: Committee Deliberation on Proposed Rule Language for 10 CFR part 53 re: subpart F—Staffing, Personnel Qualifications, Training, and Human Factors (Open)—The Committee will deliberate regarding the subject topic.

Thursday, February 3, 2022

8:30 a.m.–10:00 a.m.: Holtec Spent Fuel Pool Heat Up Calculation Methodology Topical Report (Open/Closed)—The Committee will have presentations and discussion with representatives from the NRC and Holtec staff regarding the subject topic. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

10:00 a.m.–11:00 a.m.: Committee Deliberation on Holtec Spent Fuel Pool Heat Up Calculation Methodology Topical Report (Open/Closed)—The Committee will deliberate regarding the subject topic. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

1:00 p.m.–6:00 p.m.: Preparation of Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Friday, February 4, 2022

8:30 a.m.–11:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]. [*Note:* Pursuant to 5 U.S.C. 552b(c)(2)and (6), a portion of this meeting may be closed to discuss organizational and personnel matters

that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.].

1:00 p.m.–5:00 p.m.: Preparation of Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS), which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Dated: December 22, 2021 .

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2021–28188 Filed 12–27–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0215]

Information Collection: NRC Form 798, Request for a Medical Exception to the COVID–19 Vaccination Requirement

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 798, ''Request for a Medical Exception to the COVID–19 Vaccination Requirement.''

DATES: Submit comments by February 28, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0215. 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(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0215 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0215. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2021–0215 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML21340A125. The supporting statement is available by accessing ADAMS Accession ML21340A121.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include

Docket ID NRC–2021–0215 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 798, ''Request for a Medical Exception to the COVID–19 Vaccination Requirement''.

2. *OMB approval number:* 3150–0249.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 798.

5. *How often the collection is required or requested:* Once.

6. *Who will be required or asked to respond:* Medical providers will complete section B of the form for NRC employees seeking a medical exemption to the Federal employee vaccine mandate.

7. *The estimated number of annual responses:* 10.

8. *The estimated number of annual respondents:* 10.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 5.

10. *Abstract:* Executive Order (E.O.) 14043, titled, ''Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,'' requires all Federal employees, as defined in 5 U.S.C. 2105, to be vaccinated against COVID–19, with exceptions only as required by law. Requests for ''medical accommodation'' or ''medical exceptions'' will be treated as requests for a disability accommodation and evaluated and decided under applicable Rehabilitation Act standards for reasonable accommodation absent undue hardship to the agency. An employee may also request a delay for complying with the vaccination requirement based on certain medical considerations that may not justify an exception under the Rehabilitation Act. The agency will be required to keep confidential any medical information provided, subject to the applicable Rehabilitation Act standards. Employees who receive an exception or a delay from the vaccination requirement would instead comply with alternative health and safety protocols. NRC Form 798, ''Request for a Medical Exception to the COVID–19 Vaccine Requirement'' will be completed by employees who seek a medical exception and by their personal medical providers.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: December 22, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–28145 Filed 12–27–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) is issuing an exemption from the Commission's regulations in response to a November 5, 2021, request, as supplemented by letter dated November 12, 2021, from Southern Nuclear Operating Company, Inc. (SNC), as applicable to Vogtle Electric Generating Plant (VEGP) Units 3 and 4. Specifically, SNC requested a schedular exemption from NRC requirements, which require, in part, a holder of a combined license (COL) after the Commission finds that the acceptance criteria in the COL are met for the unit to implement all fitness for duty (FFD) requirements, except for certain FFD requirements for construction, before the receipt of special nuclear material in the form of fuel assemblies. Approval of this exemption would allow VEGP Units 3 and 4 to delay implementation of the requirements of an FFD program that meets all FFD requirements, except for certain FFD requirements for construction, until a point before each unit's initial fuel load into the reactor.

DATES: The exemption was issued on December 21, 2021.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. 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.* 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. The request for the exemption was submitted by letters dated November 5 and 12, 2021, and are available in ADAMS under Package Accession Nos. ML21309A545 and ML21316A254, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North,

11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *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: Billy Gleaves, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

SNC, Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia are the holders of facility COL Nos. NFP–91 and NPF–92, which authorize the construction and operation of VEGP Units 3 and 4. The facilities consist of two Westinghouse Electric Company (Westinghouse) AP1000 pressurized-water reactors located in Burke County, Georgia. The licenses are subject to the rules, regulations, and orders of the NRC.

Title 10 of the *Code of Federal Regulations* (10 CFR) paragraph 52.79(a)(44) requires a COL applicant, including for VEGP Units 3 and 4, to include in its final safety analysis report a description of its FFD program required by 10 CFR part 26 and its implementation. For VEGP Units 3 and 4, the NRC approved SNC's description of the FFD program and its implementation when it issued the COLs.

As discussed in more detail later, 10 CFR part 26 establishes FFD requirements for construction that are less rigorous than the FFD requirements for operation. Section 26.3(a) specifies when a licensee is subject to the more rigorous operational FFD requirements, while 10 CFR 26.3(c) specifies when a licensee is subject to the less rigorous construction FFD requirements. SNC's requested exemption from certain milestones in 10 CFR 26.3(a) and (c) seeks to extend the applicability of the construction FFD requirements and to delay implementation of the operational FFD requirements until a point before initial fuel load. Initial fuel load is the first step in licensed operational activities for VEGP Units 3 and 4; initial fuel load is also the point at which radiological consequences can increase.

Sections 26.3(a) and (c) broadly address the applicability of FFD requirements to COL holders. Section 26.4 builds on this by specifying particular FFD requirements for categories of individuals based on their roles (*e.g.,* performing security duties) or the presence of specified conditions (*e.g.,* a nuclear power reactor protected area has been established). In doing this, 10 CFR 26.4 also references the licensees and other entities in 10 CFR 26.3. For example, 10 CFR 26.4(a) applies to ''licensees in § 26.3(a) and, as applicable, (c).''

SNC is not seeking an exemption from any part of 10 CFR 26.4. SNC's requested exemption is limited to certain milestones in 10 CFR 26.3(a) and (c). Because the requirements of 10 CFR 26.4(a), (b), (c), and (g) can apply to licensees identified in § 26.3(a) or 26.3(c), SNC's exemption request does not affect how 10 CFR 26.4(a), (b), (c), and (g) would apply to VEGP Units 3 and 4. However, 10 CFR 26.4(e) applies only to licensees and other entities identified in 10 CFR 26.3(c). Also, as discussed later in this notice, 10 CFR 26.4(f) allows a licensee or other entity to implement the construction FFD provisions in 10 CFR part 26, subpart K, and these provisions are applicable only to a COL holder subject to 10 CFR 26.3(c), not 10 CFR 26.3(a). Thus, SNC's exemption request would extend the FFD requirements applicable to the categories of individuals specified in 10 CFR 26.4(e) and (f) to before initial fuel load, and the staff's evaluation focuses on these regulatory provisions.

For COL holders under 10 CFR part 52, their FFD program implemented during construction must either: (1) Implement all requirements in 10 CFR part 26, except for the requirements in subparts I, ''Managing Fatigue,'' and K, ''FFD Program for Construction,'' for those individuals identified in 10 CFR 26.4(e) and (f); or (2) implement two FFD programs, one that implements all 10 CFR part 26 requirements, except for those requirements in subparts I and K, for those individuals identified in 10 CFR 26.4(e), and a second program that implements the requirements in 10 CFR part 26, subpart K, for those individuals identified in 10 CFR 26.4(f). SNC has elected to implement the latter approach—implementation of two FFD programs.

As required by 10 CFR part 26, SNC implemented its construction FFD programs prior to commencing construction activities. ''Construction activities'' is defined in 10 CFR 26.5, ''Definitions,'' as ''the tasks involved in building a nuclear power plant that are performed at the location where the nuclear power plant will be constructed and operated. These tasks include fabricating, erecting, integrating, and testing safety- and security-related SSCs [structures, systems, or components], and the installation of their foundations, including the placement of concrete.'' The construction FFD program requirements apply to the construction of the VEGP Units 3 and 4 facility as detailed in 10 CFR 26.3, ''Scope.'' Section 26.3(c) states that ''[b]efore the receipt of special nuclear material in the form of fuel assemblies, the following licensees and other entities shall comply with the requirements of this part, except for subpart I of this part; and, no later than the receipt of special nuclear material in the form of fuel assemblies, the following licensees and other entities shall comply with the requirements in this part . . .'' Paragraph (c)(2) of this section lists ''[c]ombined license holders (under Part 52 of this chapter) before the Commission has made the finding under § 52.103(g).'' The 10 CFR 52.103(g) finding is a finding by the Commission that all the acceptance criteria in the COL are met, except for those acceptance criteria that the Commission found were met under 10 CFR 52.97(a)(2).[1] After the 10 CFR 52.103(g) finding the licensee may begin operation, including loading fuel, in accordance with the conditions of the license. The NRC has not yet made the 10 CFR 52.103(g) finding for VEGP Units 3 and 4, so the 10 CFR part 26 requirements specified in 10 CFR 26.3(c) currently apply to VEGP Units 3 and 4.

During construction, the FFD programs at VEGP Units 3 and 4 must apply to individuals who have certain roles and responsibilities (*i.e.,* perform or direct certain activities) that have been determined to be important to the construction of an NRC-licensed nuclear power facility. Section 26.4 lists those categories of individuals subject to an FFD program. For example, 10 CFR 26.4(e) states that ''[w]hen construction activities begin, any individual whose duties for the licensees and other entities in § 26.3(c) require him or her to have the following types of access or perform the following activities at the location where the nuclear power plant will be constructed and operated shall be subject to an FFD program that meets all of the requirements of this part, except subparts I and K of this part.'' Paragraph (e) includes, as relevant to this exemption for VEGP Units 3 and 4, those individuals who: (1) ''serve as security personnel required by the NRC, until the licensees or other entities

[1] These acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) in the COL.

receive special nuclear material in the form of fuel assemblies, at which time individuals who serve as security personnel required by the NRC must meet the requirements applicable to security personnel in paragraph (a)(5) of this section;'' (2) perform quality assurance (QA), quality control (QC), or quality verification (QV) activities related to safety- or security-related construction activities; (3) witnesses or determines inspections, tests, and analyses certification required under 10 CFR part 52; or (4) supervises or manages the construction of safety- or security-related SSCs. Also, 10 CFR 26.4(f) states that ''[a]ny individual who is constructing or directing the construction of safety- or security-related SSCs shall be subject to an FFD program that meets the requirements of subpart K of this part, unless the licensee or other entity subjects these individuals to an FFD program that meets all of the requirements of this part, except for subparts I and K of this part.''

With respect to operation, a more robust set of 10 CFR part 26 requirements must be implemented for all site workers who are granted unescorted access to the protected area because the radiological risk consequences associated with irradiated nuclear fuel are significantly greater than unirradiated fuel. The regulatory milestones defining this transition are provided in 10 CFR 26.3(a). This paragraph states, in pertinent part, that ''holders of a COL under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g) shall comply with the requirements of this part, except for subpart K of this part'' and ''holders of a COL under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g) shall implement the FFD program before the receipt of special nuclear material in the form of fuel assemblies.''

As of the dates of its request for exemption, SNC is completing construction activities and readying the VEGP Units 3 and 4 facilities for operation. The principal near-term milestone SNC intends to achieve is completing all activities necessary to enable the Commission to make a finding under 10 CFR 52.103(g) after which the licensee is authorized to operate the facility, including loading fuel, in accordance with the terms and conditions of the license.

II. Request/Action

Pursuant to 10 CFR 26.9, ''Specific exemptions,'' by letter dated November 5, 2021 (ADAMS Package Accession No. ML21309A545), as supplemented by letter dated November 12, 2021 (ADAMS Package Accession No. ML21316A254), SNC requested a schedular exemption from the requirements of 10 CFR 26.3(a) to allow SNC to begin implementing an FFD program that meets all 10 CFR part 26 requirements, except for those requirements in subpart K, for each unit, at a point after the Commission makes its finding under 10 CFR 52.103(g) and prior to the start of that unit's initial fuel load into the reactor, and a schedular exemption from 10 CFR 26.3(c)(2) to allow SNC to implement the construction FFD program after the 10 CFR 52.103(g) finding for each unit and before the start of that unit's initial fuel load into the reactor.

Paragraph 26.3(a) states, in part, that holders of a COL under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g) shall comply with the requirements of 10 CFR part 26, except for subpart K. Paragraph 26.3(a) also states that COL holders after the 10 CFR 52.103(g) finding shall implement the FFD program before the receipt of special nuclear material (SNM) in the form of fuel assemblies. In the section-by-section analysis for the 2008 final rule establishing the 10 CFR 26.3(a) requirements (73 FR 16997; March 31, 2008), the NRC clarified that subpart K does not apply to the licensees and other entities specified in 10 CFR 26.3(a) because only entities specified in 10 CFR 26.3(c) are permitted to implement an FFD program under the more flexible requirements in subpart K. The NRC analysis for the 2008 final rule explained the implementation requirement in 10 CFR 26.3(a) by stating that ''once fuel assemblies have arrived on site, the full range of potential risks to public health and safety and the common defense and security that Part 26 is designed to avert are possible. Therefore, the NRC believes that a more rigorous FFD program must be in place at this time.''

This statement associating the ''full range of potential risks'' with the arrival of fuel assemblies onsite was made in the context of explaining the implementation provision in 10 CFR 26.3(a), which applies to a COL holder only after the 10 CFR 52.103(g) finding has been made. The FFD regulations also address receipt of fuel assemblies onsite before the 10 CFR 52.103(g) finding. Specifically, 10 CFR 26.3(c) allows the more flexible subpart K requirements to apply to COL holders before the 10 CFR 52.103(g) finding, even when fuel assemblies have been received onsite. Thus, it is not the receipt of fuel assemblies in isolation that subjects a COL holder to the more rigorous FFD requirements. Rather, it is the presence of fuel assemblies onsite after the 10 CFR 52.103(g) finding is made that subjects a COL holder to the more rigorous FFD requirements. Because the 10 CFR 52.103(g) finding has the effect of allowing a COL holder to load fuel in accordance with the conditions of the license, it is apparent that the Commission's purpose was to ensure that the more rigorous FFD requirements were implemented before initial fuel load. This makes sense because the radiological risk associated with irradiated nuclear fuel is significantly greater than that associated with unirradiated fuel. The Commission accomplished its purpose by tying the implementation of the more rigorous FFD requirements to an NRC finding having the effect of allowing fuel load in coincidence with the presence onsite of unirradiated fuel that could then be loaded into the reactor. However, while a COL holder might immediately load unirradiated fuel into the reactor upon receipt of the 10 CFR 52.103(g) finding, SNC has submitted its exemption request to address an anticipated period of time between the 10 CFR 52.103(g) finding and initial fuel load for VEGP Units 3 and 4.

III. Discussion

Pursuant to 10 CFR 26.9, ''Specific exemptions,'' ''[u]pon application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.''

A. The Exemption Is Authorized by Law

A proposed exemption under 10 CFR 26.9 is authorized by law if it will not endanger life or property or the common defense and security and is otherwise in the public interest, and no other provisions in law prohibit, or otherwise restrict, its application. The NRC has reviewed the exemption request and finds that granting the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. As discussed later, the NRC also finds that the other requirements for an exemption under 10 CFR 26.9 are met. Accordingly, the NRC finds that the exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property

The exemption from the 10 CFR 26.3(a) and (c)(2) requirements would allow SNC to continue to be subject to

10 CFR 26.3(c), and not be subject to 10 CFR 26.3(a), until a point prior to initial fuel load into the reactor. SNC stated that the ''proposed exemption does not introduce any new industrial, chemical, or radiological hazards that would present a public health or safety risk, nor does it modify or remove any design or operational controls, or safeguards intended to mitigate any existing on-site hazards.'' Furthermore, the licensee stated that the ''proposed exemption would not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in fuel cladding failures. Accordingly, this proposed exemption does not present an undue risk from any existing or proposed equipment or systems.''

The schedular exemption does not request any relaxation in the FFD program requirements in 10 CFR part 26, subpart K, as applied to those categories of individuals described in 10 CFR 26.4(f), nor does it request relaxation of those 10 CFR part 26 requirements applicable to the categories of individuals identified in 10 CFR 26.4(e). The exemption has the effect of extending the applicability of 10 CFR 26.4(e) and (f) for a period during the interval between the 10 CFR 52.103(g) finding and initial fuel load for each unit. Based on the explanation earlier in this document, the staff concludes that delaying implementation of the more rigorous FFD requirements to a point before initial fuel load is consistent with the underlying purpose of the rule. Therefore, the licensee's FFD program will continue to provide reasonable assurance that individuals under 10 CFR 26.4(e) and (f) are trustworthy and reliable as demonstrated by the avoidance of substance abuse and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties. Also, the FFD program will continue to provide reasonable assurance that measures are implemented for the early detection of individuals who are not fit to perform the duties that require them to be subject to the FFD program and that the workplaces subject to 10 CFR part 26 are free from the presence and effects of illegal drugs and alcohol. Accordingly, the NRC finds that the exemption will not endanger life or property.

C. The Exemption Will Not Endanger the Common Defense and Security

The schedular exemption from the 10 CFR 26.3(a) and (c)(2) requirements would allow SNC to continue to be subject to 10 CFR 26.3(c), and not be subject to 10 CFR 26.3(a), until a point prior to initial fuel load into the reactor. The licensee stated that ''during the window between the 10 CFR 52.103(g) finding and initial fuel loading into the reactor safety and security risks, as well as radiological consequences, associated with unirradiated nuclear fuel have not increased since the fuel assemblies on-site continue to remain outside the reactor vessel.'' SNC also stated that ''[d]uring the period between the 10 CFR 52.103(g) finding milestone and the milestone of commencing fuel loading into the reactor vessel, portions of SNC's NRC-approved Physical Security Plan are implemented as required to provide the necessary protection for the common defense and security.''

The unirradiated nuclear fuel to be used at VEGP Units 3 and 4 is a Category III quantity of SNM. Because of the low enrichment of this type of SNM, the unirradiated reactor fuel poses no significant risk to public health and safety and would not be inimical to the common defense and security—this remains true both in dry storage and during movement to a different dry location on-site (*e.g.,* an unirradiated ''new'' fuel assembly inspection stand). Without irradiated fuel there can be no significant risk to the public health and safety due to core damage or spent fuel sabotage.

Safety and security risks begin to increase when unirradiated nuclear fuel is placed in a configuration and environment that enables reactor operation. There is also some operational risk if unirradiated nuclear fuel is moved from dry storage to wet storage, but this risk is mitigated by physical protection, security, operator training and qualification, and the safety-related and security-related SSCs designed to provide for safe wet storage of unirradiated fuel. The licensee is prohibited from loading fuel in the reactor to commence operation until after the Commission's finding under 10 CFR 52.103(g), and this finding is dependent on licensee completion of ITAAC for safety- and security-related SSCs.

As discussed in an NRC exemption issued for VEGP Units 3 and 4, dated November 29, 2021, and published at 86 FR 67734, after the 10 CFR 52.103(g) finding and before initial loading of fuel into the reactor, SNM in the form of nuclear fuel assemblies will continue to be stored in a controlled access area and protected in accordance with the requirements of SNC's NRC-approved 10 CFR 73.67 special nuclear material physical protection program. Prior to moving fuel outside the controlled access area (*i.e.,* from the auxiliary building to containment in support of fuel load), the requirements of 10 CFR 73.55 physical protection and 10 CFR 73.56 access authorization programs will be implemented.

The exemption does not remove or relax any requirement for the design, construction, inspection, test, acceptance, maintenance, or operation of a physical protection system which will have capabilities for the protection of SNM at this fixed site and in transit or any safeguards system designed to protect against acts of radiological sabotage. Specifically, the exemption does not change the physical protection systems designed to detect, delay, and mitigate the threat or protect sensitive information or safety- or security-related SSCs, nor will the exemption relax the safeguarding of sensitive information. The exemption also does not alter the design, function, or operation of any safety-related SSC that is necessary to maintain a safe and secure status of the plant. Further, the exemption does not alter or otherwise invalidate any ITAAC closure notifications, which would have been submitted to, and accepted by, the NRC staff in advance of the Commission's 10 CFR 52.103(g) finding.

Changing the 10 CFR 26.3(a) and (c)(2) FFD program implementation milestones to before initial fuel load into the reactor would not endanger the common defense and security principally because SNC's proposal does not result in a change that diminishes the physical protection plans, policies, procedures, or security-related SSCs or programs at the site. Accordingly, the NRC finds that the exemption will not endanger the common defense and security.

D. The Exemption Is Otherwise in the Public Interest

In its letters dated November 5 and 12, 2021, SNC stated, in part, that the public has an interest in the efficient execution of regulatory activities. Specifically, the licensee stated that ''[r]equiring construction workers under subpart K to meet alternate and additional 10 CFR part 26 requirements to continue working after the 10 CFR 52.103(g) finding would impose an unnecessary burden on both the construction workers and the administrative staff due to the additional work needed to meet the appropriate elements of 10 CFR part 26

subpart B (*i.e.,* beyond the portions addressed in subpart K) and subpart C. This would ultimately result in additional cost and loss of efficiency.'' Further, SNC stated that ''during the window between the 10 CFR 52.103(g) finding and initial fuel loading into the reactor vessel[,] safety and security risks, as well as radiological consequences, associated with unirradiated nuclear fuel have not increased since the fuel assemblies on-site continue to remain outside the reactor vessel. There is also a significant reduction in the number, type, and complexity of construction activities being performed since the 10 CFR 52.103(g) finding reflects completion of all ITAAC.''

The NRC has established a risk-informed FFD regulatory framework. Its requirements are applied to licensees and other entities commensurate with the safety or security significance of the construction, operation, maintenance, surveillance, or QA activities being conducted at any NRC-licensed facility that is subject to 10 CFR part 26. This is demonstrated by the FFD requirements in subpart K that are applicable to those categories of individuals in 10 CFR 26.4(f) who construct or direct the construction of safety- or security-related SSCs, and the FFD requirements in subparts A–H, N, and O that are applicable to those categories of individuals in 10 CFR 26.4(e). Also, as explained previously, the Commission's apparent purpose in establishing the implementation milestone in 10 CFR 26.3(a) was to ensure that the more rigorous FFD requirements for operation would be implemented after the Commission's 10 CFR 52.103(g) finding and before initial fuel load. While a licensee may load fuel upon receipt of the 10 CFR 52.103(g) finding, SNC anticipates that there will be a period of time between the 10 CFR 52.103(g) finding and initial fuel load for VEGP Units 3 and 4. Thus, delaying implementation of the more rigorous FFD requirements for operation for each unit to a point before initial fuel load for that unit addresses the specific circumstances of VEGP Units 3 and 4 and is consistent with the underlying purpose of the rule.

Further, based on operating experience and associated insights learned from the construction of VEGP Units 3 and 4 and Virgil C. Summer Units 2 and 3, the NRC staff reassessed the risks presented during the construction of nuclear power reactors and determined that the radiological consequences associated with unirradiated nuclear fuel have not increased during the period between the 10 CFR 52.103(g) finding and initial fuel load since the fuel assemblies stored on-site continue to remain outside the reactor. This NRC staff determination is in the NRC staff's regulatory basis for public comment titled, ''Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing,'' dated January 15, 2021 (ADAMS Accession No. ML20149K680). Although the NRC has not yet changed its regulations based on this regulatory basis for public comment, the determination therein is consistent with the conclusions stated previously.

The NRC has determined that approval of the exemption would contribute to regulatory efficiency in that the licensee's construction workforce would not be unnecessarily subject to an FFD program that meets all 10 CFR part 26 requirements, except for those requirements in subpart K, until initial fuel load into the reactor. In accordance with the discussion of ''Efficiency'' in the NRC's Principles of Good Regulation, ''[r]egulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted.'' Granting the requested exemption is in the public interest, in part, because it will result in FFD requirements that are consistent with the degree of risk reduction achieved and it avoids the use of licensee resources, in comparison with the FFD requirements that would apply if the exemption were not granted, in an instance where the additional use of resources would not result in an additional benefit to safety. Granting the exemption helps reduce licensee and NRC costs and focuses licensee effort on activities that contribute to safely completing construction and transitioning to reactor operation.

Currently, the licensee is, in part, manufacturing, fabricating, placing, erecting, installing, and modifying SSCs needed for power reactor operation. These SSCs may either be safety- or security-related or not. The SNC-proposed exemption would apply to these types of construction activities and apply to those individuals identified in 10 CFR 26.4(f), who are subject to an FFD program that meets the requirements of 10 CFR part 26, subpart K. With approval of this exemption, the licensee may maintain this subpart K FFD program until a point before initial fuel load into the reactor. Based on operating experience and NRC oversight, there is no change in the conduct of construction activities being performed by those individuals identified in 10 CFR 26.4(f) that would warrant the implementation of an FFD program that meets all 10 CFR part 26 requirements, except for those in subpart K. This conclusion aligns with SNC statements that construction activities being performed after the Commission's 10 CFR 52.103(g) finding are expected to include construction activities, ''such as finalizing non-ITAAC related portions of the plant, paving of roads, moving trailers and temporary structures, etc.''

Currently, SNC is also implementing QA, QC, QV, and ITAAC closure activities to provide assurance that SSCs can meet their intended design and safety and security functions to support reactor operation. These activities are subject to 10 CFR 26.4(e) and separate from the construction activities subject to 10 CFR 26.4(f) that are described in the preceding paragraph. These QA, QC, QV, and ITAAC closure activities are of a higher importance because they provide defense-in-depth in assuring that the SSCs will perform their intended function(s). For example, prior to declaring that safety-related systems (such as the shield building and passive residual heat removal heat exchanger) are ready to support reactor operation, SNC will implement and complete, in part, applicable tests as identified in its initial test program and assigned ITAAC. A similar defense-in-depth strategy is provided for security-related systems, such as the protected area boundary and intrusion detection system, required by 10 CFR 73.55. These individuals and others described in 10 CFR 26.4(e) are subject to all 10 CFR part 26 requirements, except those in subparts I and K.[2] With the approval of this exemption, the licensee will maintain this FFD program until initial fuel load into the reactor. Based on operating experience and continuous NRC oversight, there is no change in the conduct of activities being performed by the individuals in 10 CFR 26.4(e) that would warrant the implementation of an FFD program that meets all part 26 requirements, except for those in subpart K. In summary, until a point before the initial loading of fuel into the reactor for each unit, the licensee will continue to implement its FFD programs as required by the regulations, construction activities will not significantly change in a manner that warrants a more robust FFD program,

[2] Except that, once the licensee receives fuel assemblies, 10 CFR 26.4(e)(1) provides that security personnel required by the NRC must meet the requirements applicable to security personnel identified in 10 CFR 26.4(a)(5).

and the radiological risk profile at the site will not change.

If the NRC were to disapprove the requested exemption, SNC would be required to transition their construction site workforce described in 10 CFR 26.4(f) into an FFD program that would include the requirements in 10 CFR part 26, subpart B, ''Program Elements;'' subpart C, ''Granting and Maintaining Authorization;'' and subpart I, ''Managing Fatigue.'' Additionally, the individuals described in 10 CFR 26.4(e), who are already subject to subparts B and C, would be subject to subpart I. Implementation of these subparts would not be based on the current risk profile presented at VEGP Units 3 and 4. Furthermore, the implementation of these requirements would be costly and burdensome on the licensee. This cost and burden would occur because the licensee would be required, in part, to: Develop and maintain a prescriptive FFD policy, procedure, and training and auditing program; collect and evaluate an individual's employment history and self-disclosure of potentially disqualifying information; and implement a prescriptive fatigue management program.

Therefore, the cost and burden to implement an FFD program that meets all 10 CFR part 26 requirements, except those requirements in subpart K, is not justified, and granting the exemption is consistent with the NRC's Principles of Good Regulation.

Based on the foregoing, the NRC finds that the exemption is otherwise in the public interest.

E. Environmental Considerations

As discussed later, the NRC has determined that granting this exemption from the requirements of 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) meets the criteria for a categorical exclusion in 10 CFR 51.22(c)(25) because (i) there is no significant hazards consideration, (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure, (iv) there is no significant construction impact, (v) there is no significant increase in the potential for or consequences from radiological accidents, and (vi) the exemption is from scheduling requirements.

The granting of this exemption involves no significant hazards consideration (as defined by 10 CFR 50.92(c)) because:

- The exemption does not alter the design, function, or operation of any plant equipment; therefore, granting the exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated.
- The exemption does not alter the design, function, or operation of any plant equipment or create any new failure mechanisms, malfunctions, or accident initiators. Therefore, granting the exemption would not create the possibility of a new or different kind of accident from any accident previously evaluated.
- The exemption does not adversely affect any SSC, SSC design function, or method of performing or controlling a design function. The exemption does not affect safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the exemption. Therefore, granting the exemption would not involve a significant reduction in a margin of safety.
- The requested exemption does not alter the design, function, or operation of any plant equipment, and there are no changes to effluent types, plant radiological or non-radiological effluent release quantities, any effluent release path, or the functionality of any design or operational features credited with controlling the release of effluents during plant operation or construction. Therefore, the proposed exemption does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.
- There are no changes to plant radiation zones, nor any change to controls required under 10 CFR part 20 that preclude a significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the proposed exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.
- The requested exemption does not alter the materials or methods for constructing or testing of any SSCs, and there is no change to the design or construction of the facility that is being made as a result of this exemption. Therefore, the proposed exemption does not involve a significant construction impact.

Finally, the NRC determined, per 10 CFR 51.22(c)(25)(vi)(G), that the requirements from which the exemption is sought involve scheduling requirements because 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) govern when the requirements of 10 CFR part 26 must be implemented. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with granting the requested exemption.

F. Granting of Exemption

For the reasons stated previously, the Commission is granting the following exemption for VEGP Units 3 and 4 because it has determined that, pursuant to 10 CFR 26.9, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest:

- Effective immediately, the Commission hereby grants SNC an exemption for VEGP Unit 3 from the schedule requirements of 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) to allow SNC to begin implementing an FFD program that meets all requirements in 10 CFR part 26, except those requirements in subpart K, at a point after the Commission makes its finding under 10 CFR 52.103(g) for Unit 3 and prior to the start of Unit 3's initial fuel load into the reactor. This would allow SNC to continue implementation of its construction FFD program for those individuals in 10 CFR 26.4(e) and (f) after the Commission makes its finding under 10 CFR 52.103(g) and prior to the start of Unit 3's initial fuel load into the reactor. The exemption for VEGP Unit 3 expires when SNC begins implementing the requirements of 10 CFR part 26 for VEGP Unit 3, except for the requirements in subpart K, which must occur before initial fuel load for VEGP Unit 3.
- Effective immediately, the Commission hereby grants SNC an exemption for VEGP Unit 4 from the schedule requirements of 10 CFR 26.3(a) and 10 CFR 26.3(c)(2) to allow SNC to begin implementing an FFD program that meets all requirements in 10 CFR part 26, except for the requirements in subpart K, at a point after the Commission makes its finding under 10 CFR 52.103(g) for Unit 4 and prior to the start of Unit 4's initial fuel load into the reactor. This would allow SNC to continue implementation of its construction FFD program for those individuals in 10 CFR 26.4(e) and (f) after the Commission makes its finding under 10 CFR 52.103(g) and prior to the start of Unit 4's initial fuel load into the reactor. The exemption for VEGP Unit 4 expires when SNC begins implementing the requirements of 10 CFR part 26 for VEGP Unit 4, except for the requirements in subpart K, which must

occur before initial fuel load for VEGP Unit 4.

Dated: December 21, 2021.

For the Nuclear Regulatory Commission.

Gregory T. Bowman,

Director, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–28129 Filed 12–27–21; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2021–0225]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954 as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This monthly notice includes all amendments issued, or proposed to be issued, from November 11, 2021, to December 9, 2021. The last monthly notice was published on November 30, 2021.

DATES: Comments must be filed by January 27, 2022. A request for a hearing or petitions for leave to intervene must be filed by February 28, 2022.

ADDRESSES: You may submit comments by any of the following; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0225. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1365, email: *Susan.Lent@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0225, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0225.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0225, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this document, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR), ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of

the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC

(ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at H*earing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Units 1, 2 and 3; New London County, CT; Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Units 1 and 2; Louisa County, VA; Virginia Electric and Power Company; Surry Power Station, Units 1 and 2; Surry County, VA

Docket No(s)	50–245, 50–336, 50–423, 50–338, 50–339, 50–280, 50–281.
Application date	October 21, 2021.
ADAMS Accession No	ML21294A338.
Location in Application of NSHC	Millstone: Enclosure 1, Attachment H; North Anna: Enclosure 2, Attachment D; Surry: Enclosure 3, Attachment D.
Brief Description of Amendment(s)	The proposed amendments would modify Millstone 1 Technical Specification (TS) 5.3.1, Millstone 2 and 3 TS 6.3.1, North Anna TS 5.3.1, and Surry TS 6.1.3 to relocate requirements related to ''Facility Staff Qualifications'' and ''Unit Staff Qualifications'' to the Dominion Energy Nuclear Facility Quality Assurance Program.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W. S. Blair, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	G. Ed Miller, 301–415–2481.

LICENSE AMENDMENT REQUEST(S)—Continued

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC	
Docket No(s)	50–413, 50–414, 50–369, 50–370, 50–400.
Application date	September 16, 2021.
ADAMS Accession No	ML21259A093.
Location in Application of NSHC	Pages 2–3 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments request adoption of the approved Technical Specifications Task Force (TSTF)-577, ''Revised Frequencies for Steam Generator Tube Inspections'' for the five units' technical specifications.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Andrew Hon, 301–415–8480.
Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC	
Docket No(s)	50–400.
Application date	September 23, 2021.
ADAMS Accession No.	ML21266A396.
Location in Application of NSHC	Pages 9–10 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would revise certain technical specification surveillance requirements to eliminate the condition that testing be conducted ''during shutdown.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202; Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202; Michelle Spak, General Counsel, Duke Energy Corporation, 550 South Tryon St.—DEC45A, Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Andrew Hon, 301–415–8480.
Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Unit Nos. 1 and 2; Beaver County, PA; Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Davis-Besse Nuclear Power Station, Unit No. 1; Ottawa County, OH; Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit No. 1; Lake County, OH	
Docket No(s)	50–334, 50–346, 50–412, 50–440.
Application date	October 19, 2021.
ADAMS Accession No	ML21292A274.
Location in Application of NSHC	Enclosure Pages 4, 5 and 6.
Brief Description of Amendment(s)	The proposed amendments, with some variants, request adoption of Technical Specifications Task Force (TSTF)-554, ''Revise Reactor Coolant Leakage Requirements,'' which is an approved change to the Standard Technical Specifications, into the BVPS, DBNPS, and PNPP Technical Specifications (TSs). The proposed amendments would revise the TS definition of ''Leakage,'' clarifies the requirements when pressure boundary leakage is detected, and adds a Required Action when pressure boundary leakage is identified.
Proposed Determination.	NSHC
Name of Attorney for Licensee, Mailing Address	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp., Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.
NRC Project Manager, Telephone Number	Bhalchandra Vaidya, 301–415–3308.
Exelon FitzPatrick, LLC and Exelon Generation Company, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY	
Docket No(s)	50–333.
Application date	October 18, 2021.
ADAMS Accession No.	ML21291A110.
Location in Application of NSHC	Pages 16–18 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would modify the technical specifications (TS) to eliminate the response time testing requirements for TS Section 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' Reactor Pressure—High function, Reactor Vessel Water Level—Low (Level 3) function and TS Section 3.3.6.1, ''Primary Containment Isolation Instrumentation'' Reactor Vessel Water Level—Low Low Low (Level 1) function, Main Steam Line Pressure—Low function and Main Steam Line Flow—High function. The proposed changes are consistent with the Boiling-Water Reactor Owner's Group Licensing Topical report as approved by the NRC. The proposed amendment also deletes surveillance requirement 3.3.6.1.8.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Donald P. Ferraro, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Suite 305, Kennett Square, PA 19348.
NRC Project Manager, Telephone Number	Justin Poole, 301–415–2048.

LICENSE AMENDMENT REQUEST(S)—Continued

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit 1 and Unit 2; Berrien County, MI	
Docket No(s)	50–315, 50–316.
Application date	November 8, 2021.
ADAMS Accession No.	ML21312A518.
Location in Application of NSHC	Pages 2–3 of Enclosure 2.
Brief Description of Amendment(s)	The proposed amendments requested adoption of Technical Specifications Task Force (TSTF) Traveler, TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.
Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; San Luis Obispo County, CA	
Docket No(s)	50–275, 50–323.
Application date	October 8, 2021.
ADAMS Accession No	ML21284A003.
Location in Application of NSHC	Pages 52–54 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendments would revise the Diablo Canyon Nuclear Power Plant, Units 1 and 2, Emergency Plan for the post-shutdown and permanently defueled condition to support decommissioning.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jennifer Post, Esq., Pacific Gas and Electric Co., 77 Beale Street, Room 3065, Mail Code B30A, San Francisco, CA 94105.
NRC Project Manager, Telephone Number	Samson Lee, 301–415–3168.
PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ	
Docket No(s)	50–354.
Application date	November 3, 2021.
ADAMS Accession No	ML21307A405.
Location in Application of NSHC	Pages 8–9 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would revise Technical Specifications (TS) Surveillance Requirement (SR) 4.8.4.4.a and SR 4.8.4.6.a for performance of a CHANNEL FUNCTIONAL TEST for the Reactor Protection System and Power Range Neutron Monitoring System Electric Power Monitoring Channels respectively to relocate the mode requirements for performance of the SR to a separate note in TS and relocate the surveillance frequency to the licensee control. The proposed change controls the frequency of performance of the SR via the Surveillance Frequency Control Program.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jodi Varon, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.
NRC Project Manager, Telephone Number	James Kim, 301–415–4125.
Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA	
Docket No(s)	50–321, 50–366.
Application date	October 26, 2021.
ADAMS Accession No	ML21300A153.
Location in Application of NSHC	Pages A1–6 through A1–7 of Attachment.
Brief Description of Amendment(s)	The proposed amendments would revise the technical specifications (TS) for Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch) renewed facility operating licenses DPR–57 and NPF–5, respectively. The proposed amendment would modify Hatch TS requirements to permit the use of Risk Informed Completion Times in accordance with Technical Specifications Task Force (TSTF)-505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b'' (ADAMS Accession No. ML18183A493). A model safety evaluation was provided by the NRC to the TSTF on November 21, 2018 (ADAMS Package Accession No. ML18269A041).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.
Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA	
Docket No(s)	50–424, 50–425.
Application date	September 30, 2021.
ADAMS Accession No	ML21274A073.
Location in Application of NSHC	Pages E–27 through E–29 of Enclosure.

LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendment(s)	The proposed amendments would revise the Vogtle Technical Specification (TS) 3.7.2, ''Main Steam Isolation Valves (MSIVs).'' The TS Limiting Condition for Operation (LCO) currently requires two MSIV systems per main steam line be Operable in Mode 1, and Modes 2 and 3 with exceptions. The amendment proposes to change TS 3.7.2, LCO, to require four MSIVs and their associated actuators and associated bypass valves be Operable in Mode 1, and Modes 2 and 3 with exceptions. The proposed Conditions and Required Actions are to be changed and added to incorporate the change in the LCO scope. The existing Surveillance Requirement (SR) is proposed to be updated and a new SR is proposed to be added to reflect the change in the LCO requirements.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL

Docket No(s)	50–259, 50–260, 50–296.
Application date	November 19, 2021.
ADAMS Accession No	ML21323A125.
Location in Application of NSHC	Pages E2–E4 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specifications (TS) 3.6.2.6 (correlates to boiling water reactor (BWR)/4 TS 3.6.2.5), ''Drywell-to-Suppression Chamber Differential Pressure,'' and TS 3.6.3.2, ''Primary Containment Oxygen Concentration,'' based on TS Task Force (TSTF) Traveler TSTF–568–A, Revision 2, ''Revise Applicability of BWR/4 TS 3.6.2.5 and TS 3.6.3.2,'' (ADAMS Accession No. ML19141A122), and the associated NRC safety evaluation for TSTF–568–A (ADAMS Accession No. ML19325C434).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Luke Haeg, 301–415–0272.

Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 1; Hamilton County, TN; Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 2; Hamilton County, TN

Docket No(s)	50–327, 50–328.
Application date	October 29, 2021.
ADAMS Accession No	ML21302A238.
Location in Application of NSHC	Pages E7, E8 and E9 of the Enclosure.
Brief Description of Amendment(s)	This proposed license amendments will revise the technical specifications by deleting the requirement for the power range neutron flux rate—high negative rate trip function.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Perry Buckberg, 301–415–1383.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket No(s)	50–390, 50–391.
Application date	September 29, 2021.
ADAMS Accession No	ML21273A046.
Location in Application of NSHC	Pages E31–E33 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Watts Bar, Units 1 and 2, Technical Specification (TS) 3.7.8, ''Essential Raw Cooling Water (ERCW) System,'' by adding a new Condition A to Watts Bar, Unit 1, TS 3.7.8 to extend the allowed Completion Time to restore one ERCW system train to operable status from 72 hours to 7 days, to support maintenance on the Watts Bar, Unit 2, 6.9 kV shutdown boards. The proposed amendments would also revise the bounding temperature for the ultimate heat sink in Condition A to less than or equal to 78 degrees Fahrenheit. Additionally, the proposed amendments would: Add and/or revise a Note for Condition A to specify when the Condition applies; renumber existing Conditions A and B as Conditions B and C and revise the wording accordingly for Unit 1; and revise the wording for Condition C for Unit 2 to reflect that Condition C applies to both Required Actions A.1 and A.2.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO

Docket No(s)	50–483.

LICENSE AMENDMENT REQUEST(S)—Continued

Application date	March 31, 2021, as supplemented by letter(s) dated May 27, 2021, July 22, 2021, August 23, 2021, and October 7, 2021.
ADAMS Accession No	ML21090A184 (Package), ML21147A222, ML21203A192 (Package), ML21237A135 (Package), ML21280A378 (Package).
Location in Application of NSHC	Pages 32–35 of Enclosure 2 of the supplement dated October 7, 2021.
Brief Description of Amendment(s)	The proposed amendment would revise the licensing basis as described in the Callaway Plant, Unit No. 1 Final Safety Analysis Report to allow the use of a risk-informed approach to address safety issues discussed in Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors.'' In addition, the proposed amendment would: (1) Revise the technical specifications (TSs) for the emergency core cooling system (ECCS) by deleting Surveillance Requirement (SR) 3.5.2.8 in TS 3.5.2, ''ECCS—Operating,'' and deleting its mention from SR 3.5.3.1 in TS 3.5.3, ''ECCS—Shutdown''; (2) add new TS 3.6.8, ''Containment Sumps,'' with appropriate conditions, required actions and completion times, including new SR 3.6.8.1 for visual inspection of the containment sumps; and (3) revise TS 5.5.15, ''Safety Function Determination Program,'' to clarify the application of TS Limiting Condition for Operation 3.0.6 to the containment sumps.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jay E. Silberg, Pillsbury Winthrop Shaw Pittman LLP, 1200 17th St. NW, Washington, DC 20036.
NRC Project Manager, Telephone Number	Mahesh Chawla, 301–415–8371.

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; Coffey County, KS

Docket No(s)	50–482.
Application date	September 29, 2021.
ADAMS Accession No	ML21272A369.
Location in Application of NSHC	Pages 27–30 of Attachment I.
Brief Description of Amendment(s)	The proposed amendment would extend the diesel generator completion time in Technical Specification 3.8.1, ''AC [Alternating Current] Sources—Operating,'' for one inoperable diesel generator to 14 days and remove the requirements associated with the Sharpe Station gensets based on the availability of a supplemental power source (i.e., Station Blackout Diesel Generator System) for the Wolf Creek Generating Station, Unit 1.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Thomas C. Poindexter, Morgan, Lewis and Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004–2541.
NRC Project Manager, Telephone Number	Samson Lee, 301–415–3168.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 3; New London County, CT	
Docket No(s).	50–423
Amendment Date	November 9, 2021
ADAMS Accession No.	ML21262A001
Amendment No(s).	280
Brief Description of Amendment(s)	The amendment increased the authorized reactor core power level by approximately 1.6 percent rated thermal power (RTP) from 3,650 megawatts thermal (MWt) to 3,709 MWt, based on the use of the existing Cameron Technology US LLC (currently known as Sensia, formerly known as Caldon) Leading Edge Flow Meter CheckPlus system. The amendment also revised operating license paragraph 2.C.(1) and Technical Specification (TS) 1.27, to reflect the increase in RTP. Additionally, TS 3.7.1.1, Action Statement ''a'' and TS Table 3.7–1, ''Operable MSSVs Versus Maximum Allowable Power'' was updated to revise the maximum allowable power levels corresponding to the number of operable main steam safety valves per steam generator, and TS 2.1.1.1 was revised to make an editorial correction.
Public Comments Received as to Proposed NSHC (Yes/No).	No

Duke Energy Florida, LLC; Crystal River Unit 3 Nuclear Generating Station; Citrus County, FL	
Docket No(s).	50–302
Amendment Date	October 13, 2021
ADAMS Accession No.	ML21238A095
Amendment No(s).	259
Brief Description of Amendment(s)	This amendment revised the Independent Spent Fuel Storage Installation-Only Emergency Plan.
Public Comments Received as to Proposed NSHC (Yes/No).	No

Duke Energy Florida, LLC; Crystal River Unit 3 Nuclear Generating Station; Citrus County, FL	
Docket No(s).	50–302
Amendment Date	October 18, 2021
ADAMS Accession No.	ML21288A409 (Package)
Amendment No(s).	259
Brief Description of Amendment(s)	This is a correction to the safety evaluation for the issuance of Amendment No. 259 which approved the Independent Spent Fuel Storage Installation-Only Emergency Plan
Public Comments Received as to Proposed NSHC (Yes/No).	No

Energy Northwest; Columbia Generating Station; Benton County, WA	
Docket No(s).	50–397
Amendment Date	November 22, 2021
ADAMS Accession No.	ML21273A167
Amendment No(s).	265
Brief Description of Amendment(s)	The amendment revised the Columbia Generating Station Technical Specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF 439, Revision 2, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [Limiting Condition for Operation],'' dated June 20, 2005, as described in the safety evaluation enclosed with the amendment.
Public Comments Received as to Proposed NSHC (Yes/No).	No

Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Pope County, AR; Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; St. Charles Parish, LA	
Docket No(s).	50–313, 50–368, 50–382
Amendment Date	December 8, 2021
ADAMS Accession No.	ML21313A008
Amendment No(s).	Arkansas, Unit 1–273; Arkansas, Unit 2–326; and Waterford–262
Brief Description of Amendment(s)	The amendments revised the technical specifications (TSs) by adopting Technical Specifications Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections,'' dated March 1, 2021 (ADAMS Accession No. ML21060B434), and the associated NRC staff safety evaluation of TSTF 577, dated April 14, 2021 (ADAMS Accession No. ML21098A188). The changes revised the ''Steam Generator (SG) Program'' and the ''Steam Generator Tube Inspection Report'' TSs.
Public Comments Received as to Proposed NSHC (Yes/No).	No

LICENSE AMENDMENT ISSUANCE(S)—Continued

Exelon Generation Company, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL; Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL; Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL; Exelon Generation Company, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL	
Docket No(s).	50–461, 50–237, 50–249, 50–373, 50–374, 50–254, 50–265
Amendment Date	December 7, 2021
ADAMS Accession No.	ML21307A342
Amendment No(s).	Clinton 240; Dresden 275 (Unit 2) and 268 (Unit 3); LaSalle 252 (Unit 1) and 238 (Unit 2); Quad Cities 287 (Unit 1) and 283 (Unit 2)
Brief Description of Amendment(s)	The amendments revised the technical specifications related to the reactor pressure vessel (RPV) water inventory control (WIC) for each facility based on Technical Specifications Task Force (TSTF) Traveler TSTF–582, Revision 0, ''RPV WIC Enhancements'' (ADAMS Accession No. ML19240A260) with variations.
Public Comments Received as to Proposed NSHC (Yes/No).	No
Nine Mile Point Nuclear Station, LLC and Exelon Generation Company, LLC; Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY	
Docket No(s).	50–410
Amendment Date	November 15, 2021
ADAMS Accession No.	ML21295A734
Amendment No(s).	187
Brief Description of Amendment(s)	The amendment revised Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' by relocating the current stored diesel fuel oil and lube oil numerical volume requirements from the TS to a licensee-controlled document. The TS are modified so that the stored diesel fuel oil and lube oil inventory will require that a 7-day supply be available for each diesel generator. Condition A and Condition B in the Action table for TS 3.8.3 and Surveillance Requirements 3.8.3.1 and 3.8.3.2 are revised to reflect the change noted.
Public Comments Received as to Proposed NSHC (Yes/No).	No
Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Goodhue County, MN	
Docket No(s).	50–282, 50–306
Amendment Date	November 23, 2021
ADAMS Accession No.	ML21312A021
Amendment No(s).	Unit 1—237, Unit 2—225
Brief Description of Amendment(s)	The amendments modified the TSs to include a note to TS 3.7.8 ''Cooling Water (CL) System,'' Condition B, one CL supply header inoperable, Required Action B.1, verify vertical motor-driven CL pump operable, completion time of 4 hours, to allow a completion time of up to 36 hours to support blind flange installation and to allow the removal of the blind flange during the time frame of November 28, 2021, to December 28, 2021.
Public Comments Received as to Proposed NSHC (Yes/No).	No
Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN	
Docket No(s).	50–263
Amendment Date	October 15, 2021
ADAMS Accession No.	ML21223A280
Amendment No(s).	207
Brief Description of Amendment(s)	The amendment revised Technical Specification Safety Limit 2.1.1.3, the reactor core safety limit for the minimum critical power ratio (MCPR). The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–564, Revision 2, ''Safety Limit MCPR,'' dated October 24, 2018.
Public Comments Received as to Proposed NSHC (Yes/No).	No
PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Salem County, NJ	
Docket No(s).	50–272, 50–311
Amendment Date	November 15, 2021
ADAMS Accession No.	ML21295A229
Amendment No(s).	340 (Unit 1) and 321 (Unit 2)
Brief Description of Amendment(s)	The amendments adopted Technical Specifications Task Force (TSTF) Traveler TSTF–569, ''Revise Response Time Testing Definition,'' to revise the technical specification definitions for the engineered safety feature response time and reactor trip system response time.
Public Comments Received as to Proposed NSHC (Yes/No).	No
SHINE Medical Technologies, LLC; SHINE Medical Isotope Production Facility; Janesville, WI	
Docket No(s).	50–608

LICENSE AMENDMENT ISSUANCE(S)—Continued

Amendment Date	December 2, 2021
ADAMS Accession No.	ML21320A225 (Package)
Amendment No(s).	2
Brief Description of Amendment(s)	The amendment added two new conditions, 3.E and 3.F, and a new finding related to these conditions to the construction permit in response to the application dated April 29, 2021 (ADAMS Package Accession No. ML21119A165), as supplemented on August 20, 2021, and December 2, 2021 (ADAMS Package Accession No. ML21242A028 and ADAMS Accession No. ML21336A193, respectively). The amendment allows the receipt and possession of certain radioactive materials to be installed during the construction of the SHINE Medical Isotope Production Facility.
Public Comments Received as to Proposed NSHC (Yes/No).	No

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2; Appling County, GA; Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s).	50–321, 50–366, 50–348, 50–364, 50–424, 50–425
Amendment Date	November 18, 2021
ADAMS Accession No.	ML21270A086
Amendment No(s).	237, 234, 313, 258, 209, and 192
Brief Description of Amendment(s)	The amendments revised technical specification (TS) 5.0, ''Administrative Controls,'' specifically, TS 5.7, ''High Radiation Area,'' to align with the Standard Technical Specifications in NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' Revision 4.0, and NUREG–1433, ''Standard Technical Specifications General Electric BWR [boiling water reactor]/4 Plants,'' Revision 4.0, as applicable.
Public Comments Received as to Proposed NSHC (Yes/No).	No

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s).	50–424, 50–425
Amendment Date	December 7, 2021
ADAMS Accession No.	ML21314A150
Amendment No(s).	210, 193
Brief Description of Amendment(s)	The amendments revised the Allowable Values for the Loss of Voltage and Degraded Voltage relay voltage settings in Technical Specification 3.3.5, ''4.16 kV [kilovolt] ESF [Engineered Safety Feature] Loss of Power (LOP) Instrumentation,'' Surveillance Requirement 3.3.5.2 for Vogtle, Units 1 and 2.
Public Comments Received as to Proposed NSHC (Yes/No).	No

STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX

Docket No(s).	50–498, 50–499
Amendment Date	December 8, 2021
ADAMS Accession No.	ML21320A002
Amendment No(s).	223 (Unit 1) and 208 (Unit 2)
Brief Description of Amendment(s)	The amendments revised the technical specifications by adding a note to Limiting Condition for Operation 3.6.3 allowing for penetration flow paths to be unisolated intermittently under administrative controls. The amendments also removed the Index from the technical specifications and placed them under licensee control.
Public Comments Received as to Proposed NSHC (Yes/No).	No

STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX

Docket No(s).	50–498, 50–499
Amendment Date	December 9, 2021
ADAMS Accession No.	ML21319A355
Amendment No(s).	224 (Unit 1) and 209 (Unit 2)
Brief Description of Amendment(s)	The amendments adopted Technical Specifications Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections.'' The amendments modified the technical specification requirements related to steam generator tube inspections and reporting based on operating history.
Public Comments Received as to Proposed NSHC (Yes/No).	No

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 2; Rhea County, TN

Docket No(s).	50–391
Amendment Date	November 22, 2021
ADAMS Accession No.	ML21260A210
Amendment No(s).	57

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The amendment revised Watts Bar, Unit 2, technical specification (TS) to change the steam generator water level requirement in the Watts Bar, Unit 2 TS Limiting Condition for Operation 3.4.7.b, ''RCS Loops—MODE 5, Loops Filled,'' and Watts Bar, Unit 2 Surveillance Requirements (SR) 3.4.5.2, ''RCS Loops—MODE 3,'' SR 3.4.6.3, ''RCS Loops—MODE 4,'' and SR 3.4.7.2 from greater than or equal to 6 percent to greater than or equal to 32 percent. The change is needed to support the Watts Bar, Unit 2 Replacement project scheduled for the Watts Bar, Unit 2 Cycle 4 Refueling Outage (U2R4), which is scheduled to commence in spring 2022.
Public Comments Received as to Proposed NSHC (Yes/No).	No

Virginia Electric and Power Company; Surry Power Station, Units 1 and 2; Surry County, VA

Docket No(s).	50–280, 50–281
Amendment Date	November 19, 2021
ADAMS Accession No.	ML21253A063
Amendment No(s).	306 (Unit 1) and 306 (Unit 2)
Brief Description of Amendment(s)	The amendments updated the Alternative Source Term analysis for the Surry Power Station, Units 1 and 2 following a Loss of Coolant Accident.
Public Comments Received as to Proposed NSHC (Yes/No).	No

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Circumstances or Emergency Situation)

Since publication of the last monthly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent circumstances or emergency situation associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed NSHC determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of NSHC. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its NSHC determination. In such case, the license amendment has been issued without opportunity for comment prior to issuance. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve NSHC. The basis for this determination is contained in the documents related to each action. Accordingly, the amendment has been issued and made effective as indicated. For those amendments that have not been previously noticed in the **Federal Register**, within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the guidance concerning the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2 as discussed in section II.A of this document.

Unless otherwise indicated, the Commission has determined that the amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to these actions, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession number(s) for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)—EXIGENT/EMERGENCY CIRCUMSTANCES

Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 2; Hamilton County, TN

Docket No(s).	50–328.
Amendment Date	October 27, 2021.
ADAMS Accession No	ML21298A031.
Amendment No(s)	350 (Unit 2).
Brief Description of Amendment(s)	The amendment revised Technical Specification 3.4.12, ''Low Temperature Overpressure Protection (LTOP) System,'' to add a one-time note to allow operation of one safety injection pump and one charging pump capable of injecting into the reactor coolant system during MODE 5 or MODE 6 with the pressurizer manway cover removed.
Local Media Notice (Yes/No)	Yes.
Public Comments Requested as to Proposed NSHC (Yes/No).	Yes.

Dated: December 14, 2021.

For the Nuclear Regulatory Commission.

Brian D. Wittick,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–27415 Filed 12–27–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93840; File No. SR–NYSEArca–2021–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201–E

December 21, 2021.

On September 20, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the One River Carbon Neutral Bitcoin Trust (''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 5, 2021.[3]

On November 10, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is to track the performance of bitcoin, as measured by the performance of the MVIS One River Carbon Neutral Bitcoin Index (''Index''), adjusted for the Trust's expenses and other liabilities.[8] As discussed further below, the Index is designed to reflect the performance of bitcoin in U.S. dollars on a carbon neutral basis. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value its Shares based on the same methodology used to calculate the Index, as adjusted to reflect the expenses associated with offsetting carbon credits.[9] The Trust will not purchase or sell bitcoin directly, although the Trust may direct the Custodian to sell or transfer bitcoin to pay certain expenses.[10] The Trust will not hold cash or cash equivalents; however, there may be situations where the Trust will hold cash on a temporary basis.[11] The Fund will not hold futures, options, or options on futures.[12]

The Trust intends to offset the carbon footprint associated with bitcoin once a quarter by paying for the instantaneous retirement of voluntary carbon credits equal to the daily estimated carbon emissions associated with the bitcoins held by the Trust.[13] According to the Exchange, voluntary carbon credits are certified and standardized under the Verra Verified Carbon Standard (''Verra''), an organization that establishes and manages standards and programs in connection with voluntary carbon credits, and the Trust will only utilize carbon credits that meet the Verra standards.[14] The Trust has entered into an agreement with LIRDES S.A., d/b/a Moss Earth (''Moss''), a company located in Uruguay, to pay for carbon credit tokens created by Moss (''MCO2 Tokens'') representing certified reductions in greenhouse gas emissions.[15] The MCO2 Tokens issued by Moss are carbon offsets encrypted and tokenized utilizing blockchain technology and are stored on a registry managed by Verra.[16] The Trust will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93171 (Sept. 29, 2021), 86 FR 55073 (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2021-67/srnysearca202167.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93553, 86 FR 64276 (Nov. 17, 2021). The Commission designated January 3, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 55073. The sponsor of the Trust is One River Digital Asset Management, LLC (''Sponsor''), a Delaware limited liability company and a wholly-owned subsidiary of One River Asset Management, LLC. The trustee for the Trust is Delaware Trust Company. The marketing agent for the Trust is Foreside Global Services, LLC. The Bank of New York Mellon (''BNY Mellon'') will act as the Trust's administrator and transfer agent. The custodian for the Trust, Coinbase Custody Trust Company, LLC (''Custodian''), will hold all of the Trust's bitcoin on the Trust's behalf and will retain custody of the Trust's bitcoin in an account for the Trust (''Bitcoin Account''). *See id.*

[9] *See id.* at 55074.

[10] *See id.*

[11] *See id.* The Trust has entered into a cash custody agreement with BNY Mellon under which BNY Mellon will act as custodian of the Trust's cash and cash equivalents. *See id.*

[12] *See id.*

[13] *See id.* at 55073, 55074.

[14] *See id.* at 55074–75.

[15] *See id.* at 55075. Upon expiration of its agreement with Moss in April 2031, the Trust will either enter into a replacement agreement, or alternatively pay for the retirement of MCO2 Tokens or similar carbon credits at then current spot prices for such instruments. *See id.*

[16] *See id.* According to the Exchange, the MCO2 Token is a digital representation of a carbon credit that is stored on a registry by Verra and can be acquired in over-the-counter or publicly-traded

purchase MCO2 Tokens from Moss at the end of March, June, September, and December at pre-negotiated prices, and Moss will instantaneously retire the tokens to the Ethereum blockchain.[17] The number of MCO2 Tokens paid for by the Trust will equal the aggregated sum of offsets implied by the daily carbon emissions for a single bitcoin over the preceding quarter multiplied by the average number of bitcoins held in the Trust's portfolio during the quarter, with a view towards tracking the carbon footprint offset estimate calculated by the Index.[18] The Trust does not hold the carbon offset MCO2 Tokens as an asset. Instead, the Trust pays for the MCO2 Tokens carbon offsets from Moss, who then instantaneously retires the tokens to the Ethereum blockchain, to reduce global carbon emissions by the carbon dioxide tonnage (or tonnage of other similar greenhouse gases) corresponding to such tokens.[19]

The Index value is the benchmark value of the bitcoin less the estimated daily cost of offsetting the carbon emissions of a single bitcoin.[20] The Index is constructed using bitcoin price feeds from eligible bitcoin spot markets and volume weighted median price average, calculated over 20 intervals in rolling three-minute increments, less the estimated cost of offsetting the daily carbon emissions attributable to each bitcoin in the network.[21]

The cost of the carbon offset used in the Index is calculated in the following steps. First, electricity consumption for the bitcoin mining network is recorded daily. Second, geolocation of bitcoin miners identifies the location of electricity usage. Third, for each location, the average production of electricity by its source of production (*e.g.,* solar, coal) is recorded. This estimates the carbon emission intensity of electricity consumption in the bitcoin network. Fourth, total electricity consumption is multiplied by the carbon intensity of the bitcoin network to estimate total carbon emissions. These steps allow MVIS to obtain a daily estimate of the carbon emissions necessary to run the bitcoin network. The total carbon emissions of the bitcoin network are divided by the total number of bitcoins in circulation to estimate the carbon emissions attributable to each bitcoin on each day. Finally, the carbon emission attributable to each bitcoin is multiplied by the MCO2 Token market price of a carbon offset.[22] The daily accumulation of the carbon offset component of the Index measures the totality of the cost of the carbon offset required for holding a single bitcoin over the accumulation period.[23]

BNY Mellon will calculate the net asset value (''NAV'') of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after 4:00 p.m. E.T. (often by 5:30 p.m. E.T. and almost always by 8:00 p.m. E.T.).[24] The NAV per Share of the Trust will be equal to the median price of the bitcoin used in the calculation of the Index less the Trust's liabilities, including the cost of carbon measured in the Index, divided by the total number of outstanding Shares. The accumulation of the daily carbon offset costs calculated in the Index act as an expense to the Trust. The payment for the retirement of carbon offsets by the Trust will occur once per quarter of the calendar year, and the number of MCO2 Tokens retired will equal the aggregated sum of offsets implied by the daily carbon footprint for each bitcoin held by the Trust during the quarter. The NAV will accrue the estimated carbon cost daily.[25]

The Trust will provide website disclosure of its bitcoin holdings daily.[26] The Intraday Indicative Value (''IIV'') per Share will be widely disseminated every 15 seconds during the NYSE Arca Core Trading Session (normally 9:30 a.m. E.T. to 4:00 p.m. E.T.) by the Trust and by one or more major market data vendors, and will be available through on-line information services. The IIV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the Index as reported by Bloomberg, L.P. or another reporting service.[27]

The Trust will process all creations and redemptions in-kind and only in one or more blocks of 50,000 Shares (''Baskets'').[28] When creating Shares, authorized participants will deliver, or facilitate the delivery of, bitcoin to the Bitcoin Account in exchange for Shares, and when redeeming Shares, the Trust, through the Custodian, will deliver bitcoin to authorized participants. Although the Trust will create Baskets only upon the receipt of bitcoins, and will redeem Baskets only by distributing bitcoins, a separate cash exchange process will be made available to authorized participants. Under the cash exchange process, an authorized participant may deposit cash with BNY Mellon, which will facilitate the purchase or sale of bitcoins through a liquidity provider (''Liquidity Provider'') on behalf of an authorized participant. The bitcoin purchased (or sold) by the Liquidity Provider in connection with the cash exchange process will, in turn, be delivered to (or from, as appropriate) the Custodian, on behalf of the Trust, in exchange for Baskets.[29]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2021–67 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[30] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[31] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires,

markets. Moss purchases carbon credits from projects that are certified under Verra's Verified Carbon Standard. Each circulating MCO2 Token is intended to represent a claim on a certified carbon credit held in an aggregated pool of carbon credits within the Moss account on the Verra registry. Tokenized carbon credits are fungible and do not represent a claim on a specific underlying carbon credit issued to a specific carbon reduction project. *See id.*

[17] *See id.* at 55075 & n.10.

[18] *See id.* at 55075.

[19] *See id.* at 55075 & n.10.

[20] *See id.* at 55075. The Index methodology was developed by MV Index Solutions GmbH (''MVIS'') and is monitored by the One River Index Committee, an independent, third-party calculation agent for the Index. MVIS, with the assistance of its affiliates, is also the calculation agent for the Index and for the MVIS® CryptoCompare Bitcoin Benchmark Rate (''BBR''), which measures the value of the underlying bitcoin represented by, and is the bitcoin benchmark component for, the Index. The current constituent bitcoin platforms of the BBR are Coinbase, Gemini, Bitstamp, Kraken, and itBit. *See id.* at 55074–75.

[21] *See id.*

[22] *See id.* at 55074.

[23] *See id.* at 55075.

[24] *See id.* at 55076–77.

[25] *See id.* at 55076.

[26] *See id.* at 55082.

[27] *See id.* at 55077.

[28] *See id.* at 55074; 55077

[29] *See id.* at 55074.

[30] 15 U.S.C. 78s(b)(2)(B).

[31] *Id.*

among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [32]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[33] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?

2. The Exchange asserts that ''[a]longside the growth in users, active wallets and market capitalization, institutional ratings of various [digital assets] have increased substantially'' and ''[b]itcoin ranks as one of the most widely used, if not the most widely used, [digital asset] in the global [digital asset] market.'' [34] According to the Exchange, the bitcoin ''marketplace is maturing with increased institutional participation'' and the ''rise in the digital economy has led to an increase in activity within the regulated banking system, reflecting increased institutional demand.'' [35] The Exchange also asserts that ''licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services.'' The Exchange concludes that ''[t]hese are substantial developments since the Commission last reviewed a bitcoin [exchange-traded product] proposal.'' [36] Do commenters agree or disagree with these assertions? Are the changes that the Exchange identifies sufficient to support the determination that the proposal to list and trade the Shares is designed to protect investors and the public interest and is consistent with the other applicable requirements of Section 6(b)(5) of the Act?

3. The Exchange states certain ''regulatory and enforcement actions acknowledge the increasing use of bitcoin and other [digital assets] within the broader global financial sector generally, and represent ongoing efforts to regularize the use of such [digital assets] within existing regulatory frameworks.'' [37] The Exchange also asserts that ''[t]echnological advancements on the bitcoin protocol are also progressing and will broaden institutional adoption of the bitcoin protocol as a technology'' and that there ''have also been advancements in regulatory frameworks, both on a global and national scale, on [digital asset] exposures.'' [38] The Exchange concludes that its proposal is ''aimed at financial stability, protecting consumers, and promoting innovation in the payments system.'' [39] What are commenters' views regarding the Exchange's assertions?

4. The Exchange asserts that the use of the Index ''eliminates those bitcoin spot markets with indicia of suspicious, fake, or non-economic volume from the NAV calculation methodology'' and the Index's use of multiple bitcoin spot markets mitigates ''the potential for idiosyncratic market risk, as the failure of any individual bitcoin spot market should not materially impact pricing for the Trust.'' [40] In addition, the Exchange states that the Index's use of median prices ''limits the ability of outlier prices, which may have been caused by attempts to manipulate the price on a particular market, to impact the NAV and that ''[a]ny attempt to manipulate the NAV would require a substantial amount of capital distributed across a majority of the eligible spot markets, and potentially coordinated activity across those markets, making it more difficult to conduct, profit from, or avoid the detection of market manipulation.'' [41] What are commenters' views regarding these assertions?

5. The Exchange argues that because the Trust will process all creations and redemptions in in-kind transactions with authorized participants, the ''Trust is uniquely protected against potential attempts by bad actors to manipulate the price of bitcoin on sport markets contributing to the Index and thereby the Trust's NAV calculation.'' [42] Do commenters agree with the Exchange's analysis and conclusion?

6. What are commenters' views generally with respect to the Trust's investment objectives? What are commenter's view regarding how the Trust intends to meet its investment objectives? Specifically, the Exchange states that ''[i]n establishing the Index, MVIS and the Sponsor created a robust, transparent process for quantifying the carbon footprint of bitcoin in a clear, repeatable manner.'' [43] The Exchange also states that ''the creation of the Index and tokenization of the carbon offsets will provide additional transparency to investors with respect to the NAV of the Trust vis-à-vis the estimated carbon footprint of the bitcoin retired by the Trust, and will thus give investors an opportunity to independently monitor the Trust's efforts to offset the carbon emissions associated with its bitcoin holdings.'' [44] What are commenters' views about the Exchange's assertions?

7. Has the Exchange described the Trust in sufficient detail to support the finding that the proposal is consistent with the Exchange Act, including the requirement that it be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest? For example, according to the Exchange, the investment objective of the Trust is to track the performance of bitcoin, as measured by the Index, which represents the *daily* value of bitcoin less the estimated *daily* cost of offsetting carbon emission of a single bitcoin based on the MCO2 Token *market price.* The Exchange, however, also states that the Trust will purchase MCO2 Tokens on a *quarterly* basis at *pre-negotiated prices.*[45] Given that the Trust will purchase and retire MCO2 Tokens on a quarterly basis, has the Exchange provided sufficient information regarding how the Trust will calculate its NAV daily, how its daily NAV calculations will relate to the Trust's quarterly settlements, or how the Share prices may be impacted by either the daily or quarterly accounting and any MCO2 Token price differentials between them? Moreover, according to the Exchange, the Trust will purchase the MCO2 Tokens at pre-negotiated prices but provides no further information regarding the price of MCO2 Tokens or carbon credits generally. The Exchange also contemplates that MCO2 Tokens may not be available in some circumstances and that the agreement

[32] 15 U.S.C. 78f(b)(5).

[33] *See* Notice, *supra* note 3.

[34] *See id.* at 55078.

[35] *See id.*

[36] *See id.*

[37] *See id.* at 55079.

[38] *See id.*

[39] *See id.* at 55080.

[40] *See id.* at 55080.

[41] *See id.*

[42] *See id.*

[43] *See id. at* 55074.

[44] *See id. at* 55076.

[45] *See id. at* 55075.

with Moss will expire in 2023. Given that carbon mitigation is a key characteristic of the Trust and that both the Trust's daily NAV calculations and quarterly settlements incorporate costs of MCO2 Tokens, is the information the Exchange provides sufficient to support the finding that the proposal is consistent with the Exchange Act?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[46]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 18, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 1, 2022.

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–2021–67 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–2021–67. 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–2021–67 and should be submitted by January 18, 2022. Rebuttal comments should be submitted by February 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28112 Filed 12–27–21; 8:45 am]

BILLING CODE 8011–01–P

[46] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[47] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93767A; File No. SR–NYSE–2021–52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 902.03 of the NYSE Listed Company Manual To Modify Listing and Annual Fees Applicable to Certain Warrants Listed by Foreign Companies; Correction

December 14, 2021.

AGENCY: Securities and Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** on December 20, 2021, concerning a Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.03 of the NYSE Listed Company Manual to Modify Listing and Annual Fees Applicable to Certain Warrants Listed by Foreign Companies. The document contained a typographical error in the release number.

FOR FURTHER INFORMATION CONTACT: Naomi P. Lewis, Office of the Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, (202) 551–5400.

Correction

In the **Federal Register** of December 20, 2021 in FR Doc. 2021–27417, on page 72016, in the first and second line in the subheading under the heading ''SECURITIES AND EXCHANGE COMMISSION'' in the third column, correct the reference to ''Release No. 34–NYSE–2021–52; File No. SR–NYSE–2021–52'' instead to ''Release No. 34–93767; File No. SR–NYSE–2021–52.''

Dated: December 21, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28127 Filed 12–27–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93841; File No. SR–IEX–2021–18]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the FINRA Registration Fees on the Fee Schedule

December 21, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 20, 2021, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act, and Rule 19b–4 thereunder, IEX is filing with the Commission a proposed rule change pursuant to IEX Rule 15.110(a) to amend its Fee Schedule to reflect adjustments to FINRA's Registration Fees related to the Central Registration Depository (''CRD system''), which will be collected by the Financial Industry Regulatory Authority, Inc. (''FINRA'') pursuant to IEX Rule 15.110(a). The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing, pursuant to Section 19(b)(3(A)(ii) of the Act.[4]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX is proposing, pursuant to IEX Rule 15.110(a), to amend its Fee Schedule [5] to reflect adjustments to FINRA's Registration Fees related to the CRD system.[6] FINRA charges a single fee to register any representative or principal of a member firm in the CRD system irrespective of if the member firm is also a member of FINRA. Because FINRA separately collects the CRD system fee for any IEX Member [7] that is also a FINRA member,[8] this fee filing only applies to IEX Members who are not FINRA members.

Effective January 3, 2022, FINRA is increasing the fee it charges for each initial Form U4 filed for the registration of a representative or principal of any firm registered in the CRD system from $100 to $125.[9] Accordingly, IEX is proposing to update its Fee Schedule to reflect the new $125 CRD system fee that will take effect starting January 3, 2022. Because these costs are borne by FINRA when a non-FINRA member uses the CRD system, FINRA will continue to collect and retain these fees for the registration of associated persons of IEX Members that are not also FINRA members.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[10] of the Act in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable fees and other charges among its members, and does not unfairly discriminate between customers, issuers, brokers and dealers. All similarly situated Members are subject to the same fee structure, and every Member firm must use the CRD system for registration and disclosure.

The proposed fee is reasonable because it is identical to the fee adopted by FINRA for use of the CRD system for disclosure and the registration of associated persons of FINRA members.[12] Thus, the Exchange's Fee Schedule will reflect the current registration rate that will be assessed by FINRA as of January 3, 2022 for any IEX Members that are not also FINRA members. IEX also believes the proposed fee change is reasonable, because, as noted in the FINRA Fee Filing, FINRA is increasing the CRD system fees to provide enough revenue to support its regulatory mission.[13] Notably, FINRA has not increased CRD system fees since 2012.[14]

The Exchange believes that its proposal to increase the $100 fee for each initial Form U4 filed for the registration of a representative or principal to $125 is equitable and not unfairly discriminatory because the equivalent fees will be charged by FINRA of all users of the CRD system, whether or not they are FINRA members. Therefore, all users of the CRD system will equally bear the cost of maintaining the system.[15]

FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.[16]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See https://exchange.iex.io/resources/trading/fee-schedule/.*

[6] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[7] *See* IEX Rule 1.160(s).

[8] IEX Members that are also FINRA members are charged CRD system fees according to Section (4) of Schedule A to the FINRA By-Laws.

[9] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032) (''FINRA Fee Filing'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *See supra* note 9.

[13] *See supra* note 9.

[14] *See supra* note 9.

[15] *See supra* note 9.

[16] *See supra* note 9.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that the proposed fees will result in the same regulatory fees being charged to all Members required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such Members are FINRA members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [17] of the Act.

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 under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2021–18 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–IEX–2021–18. 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 will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* 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–IEX–2021–18 and should be submitted on or before January 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28109 Filed 12–27–21; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93848; File Nos. SR–BX–2021–050; SR–BX–2021–051]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Order Approving Proposed Rule Changes Regarding the Transfer of Ownership of Nasdaq BX Equities LLC and the Merger of Nasdaq BX Equities LLC With and Into the Exchange

December 21, 2021.

I. Introduction

On October 22, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the transfer of Nasdaq, Inc.'s (''Nasdaq HoldCo'') entire ownership interest in Nasdaq BX Equities LLC (''BX Equities'') to the Exchange (''Transfer Proposal''). The Transfer Proposal was published for comment in the **Federal Register** on November 9, 2021.[3] Also on October 22, 2021, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Act [4] and Rule 19b–4 thereunder,[5] a proposed rule change regarding the merger of BX Equities with and into the Exchange (''Merger Proposal''). The Merger Proposal was published for comment in the **Federal Register** on November 9, 2021.[6] The Commission received no comment letters on the proposed rule changes. This order approves the proposed rule changes.

II. Description of the Proposals

The Exchange proposes, through the Transfer Proposal and the Merger Proposal, a two-step process that will first allow the Exchange to become the 100% direct owner and sole LLC member of BX Equities, and subsequently allow the merger of BX Equities with and into the Exchange (''Transactions'').

A. Transfer Proposal

BX Equities was acquired by Nasdaq HoldCo in 2008, and was established as a facility of and controlled subsidiary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93514 (November 3, 2021), 86 FR 62229 (''Transfer Notice'').

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 93513 (November 3, 2021), 86 FR 62222 (''Merger Notice'').

owned and operated by the Exchange for the listing and trading of cash equity securities.[7] Currently, Nasdaq HoldCo [8] directly owns 100% of the Exchange, and the Exchange and Nasdaq HoldCo are the only owners and LLC members of BX Equities—the Exchange directly owns 53.21% of BX Equities and Nasdaq HoldCo directly owns the remaining 46.79% of BX Equities.[9] BX Equities is currently governed by, among other things, the Nasdaq BX Equities LLC Fifth Amended and Restated Operating Agreement (''Operating Agreement''), which provides that management of BX Equities is vested in the Exchange.[10] Nasdaq HoldCo has no direct management role in the operation of BX Equities, with the exception of its limited role as tax matters member [11] and its limited rights with regard to capital contributions in and dissolution of BX Equities.[12]

As proposed, Nasdaq HoldCo will transfer its entire ownership interest in BX Equities to the Exchange, which will result in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities.[13] The Exchange represents that the Transfer Proposal merely seeks to simplify the corporate structure of BX Equities, that the Exchange will operate in a substantially similar manner following the transfer as it currently operates (with the addition of the Exchange's role as the tax matters member of BX Equities), and that the transfer will have no impact on how the Exchange operates its equities market.[14]

The Exchange proposes to amend the Operating Agreement to reflect the transfer. In particular, the Exchange proposes to add a description of the Contribution Agreement,[15] remove references to Nasdaq HoldCo as an LLC member of BX Equities,[16] replace references to Nasdaq HoldCo with references to the Exchange to reflect that Nasdaq HoldCo will no longer be the tax matters member of BX Equities; [17] provide that Nasdaq HoldCo will no longer have limited rights with respect to capital contributions in BX Equities [18] and the dissolution of BX Equities; [19] and delete a provision relating to the books, records, premises, officers, directors, agents, and employees of Nasdaq HoldCo.[20]

B. Merger Proposal

Following the transfer of ownership interest in BX Equities as described above, the Exchange proposes to merge BX Equities with and into the Exchange.[21] As a result, BX Equities will be eliminated, the Exchange will be the surviving entity, and the Exchange will directly operate its equities market.[22]

Currently, the Exchange has delegated certain responsibilities to BX Equities to operate the Exchange's equities market under a Delegation Agreement.[23] The delegation is limited to the Exchange's equities market functions and does not include other functions not specifically mentioned in the limited delegation.[24] Pursuant to the Delegation Agreement, the Exchange retains ultimate responsibility for its equities market, including the responsibility to ensure the fulfillment of statutory and self-regulatory obligations under the Act.[25] In connection with the proposed merger, the Exchange proposes to terminate the delegation of functions to BX Equities and delete the Delegation Agreement from its rules. With the termination of the Delegation Agreement, all of the functions previously delegated to BX Equities will be performed by the Exchange, and the Exchange will directly operate its equities market.[26] The Exchange will continue to bear responsibility over its equities market of ensuring the fulfillment of its statutory and self-regulatory obligations.[27]

As described above, BX Equities is also currently governed by the Operating Agreement, which provides that management of BX Equities is vested in the Exchange.[28] In connection with the proposed merger and the proposed termination of the Delegation Agreement, BX Equities will no longer be operating the Exchange's equities market and the Operating Agreement will become obsolete.[29] Accordingly, the Exchange proposes to delete the Operating Agreement from its rules.

Finally, the Exchange proposes to make conforming changes to its rules to reflect the proposed merger and the proposed deletion of the Delegation Agreement and Operating Agreement. In particular, the Exchange proposes to delete General 2, Section 8, which relates to the Delegation Agreement and the staff, books, records, premises, officers, employees, and agents of BX Equities. The Exchange also proposes to amend Equity 1, Section 1 to remove references to the Operating Agreement, Delegation Agreement, and BX Equities.

III. Discussion and Commission Findings

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[30] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,[31] which requires that a national securities exchange be so organized and have the capacity to be able to carry out the purposes of the Act

[7] *See* Transfer Notice, *supra* note 3, at 62229.

[8] Nasdaq HoldCo was formerly known as NASDAQ OMX Group, Inc. *See id.* at 62229 n.5. The Transactions will have no effect on Nasdaq HoldCo's direct ownership of the Exchange. *See id.* at 62229; Merger Notice, *supra* note 6, at 62222.

[9] *See* Transfer Notice, *supra* note 3, at 62229–30. Nasdaq HoldCo previously remained an LLC member of BX Equities to avoid certain adverse tax consequences that would be associated with contributing its ownership interest to the Exchange, but according to the Exchange, these tax considerations have since expired. *See id.* at 62230 n.7. *See also* Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468, 80469–70 n.20 (December 31, 2008).

[10] *See* Transfer Notice, *supra* note 3, at 62230.

[11] *See* definitions of ''Capital Account'' and ''Tax Amount'' in Section 1.1, and Sections 10.9 and 12.6 of the Operating Agreement.

[12] *See* Sections 7.4 and 11.1 of the Operating Agreement. *See also* Transfer Notice, *supra* note 3, at 62230.

[13] Section 8.1 of the Operating Agreement states that the Exchange must obtain Commission approval for transfers of ownership interest in BX Equities. According to the Exchange, upon Commission approval of the Transfer Proposal, the Exchange and Nasdaq HoldCo will enter into a contribution and assignment agreement (''Contribution Agreement'') pursuant to which Nasdaq HoldCo will transfer its entire 46.79% ownership interest in BX Equities, and all of its other rights and obligations arising thereunder, to the Exchange, resulting in the Exchange directly owning 100% of BX Equities. *See* Transfer Notice, *supra* note 3, at 62230.

[14] *See id.*

[15] *See* proposed changes to the Recitals section of the Operating Agreement.

[16] *See* proposed changes to the introductory paragraphs, Sections 1.1 and 7.2, and Schedules 1 and 2 of the Operating Agreement.

[17] *See* proposed changes to the definitions of ''Capital Account'' and ''Tax Amount'' in Section 1.1, and Sections 10.9 and 12.6 of the Operating Agreement.

[18] *See* proposed changes to Section 7.4 of the Operating Agreement.

[19] *See* proposed changes to Section 11.1 of the Operating Agreement.

[20] *See* proposed changes to Section 18.6 of the Operating Agreement.

[21] *See* Merger Notice, *supra* note 6, at 62222–23. The Exchange anticipates that the merger will occur immediately after the transfer. *See id.* at 62223.

[22] *See id.* at 62222–23.

[23] *See id.* at 62222.

[24] *See id.* at 62223.

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] The Exchange also states that BX Equities can only act through the action of the Exchange and the Exchange's officers and directors, because there is no separate BX Equities board of directors and all BX Equities officers are officers of the Exchange. *See id.*

[29] *See id.*

[30] In approving the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(1).

and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[32] which requires, among other things, that the rules of a national securities exchange be 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.

As described above, the proposed rule changes will allow (i) the transfer of Nasdaq HoldCo's ownership interest in BX Equities to the Exchange, and (ii) the merger of BX Equities with and into the Exchange. The proposed transfer will have no impact on how the Exchange operates its equities market and, as described above, the Exchange anticipates that the merger will occur immediately after the transfer. Following the merger, the Exchange will directly operate its equities market and perform the functions that were previously delegated to BX Equities. Moreover, the Exchange will continue to have ultimate responsibility over its equities market, including the responsibility to ensure the fulfillment of its statutory and self-regulatory obligations under the Act.[33] Because the proposed rule changes will allow the Exchange to directly operate its equities market (rather than through a subsidiary) and the Exchange will continue to have ultimate regulatory responsibility over its equities market, the Commission believes that the proposed rule changes are consistent with the Act and will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act. The Commission also believes that the Exchange's proposals to amend the Operating Agreement in connection with the transfer, and to subsequently remove the Delegation Agreement and the amended Operating Agreement and make conforming changes to its rules in connection with the merger, are consistent with the Act and will allow the Exchange's rulebook to reflect the Transactions.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule changes (SR–BX–2021–050; SR–BX–2021–051) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28108 Filed 12–27–21; 8:45 am]

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[32] 15 U.S.C. 78f(b)(5).

[33] The Exchange states that its independent regulatory oversight committee (''ROC'') will continue to oversee the Exchange's regulatory and self-regulatory organization responsibilities with regard to both its equities and options markets, and the Exchange's regulatory department will continue to carry out its regulatory functions with respect to both markets under the oversight of the ROC. *See* Merger Notice, *supra* note 6, at 62224.

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93845; File No. SR–ICEEU–2021–020]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Liquidity Management Procedures and Investment Management Procedures

December 21, 2021.

I. Introduction

On October 22, 2021, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4,[2] a proposed rule change to amend its Liquidity Management Procedures and Investment Management Procedures. The proposed rule change was published for comment in the **Federal Register** on November 10, 2021.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Liquidity Management Procedures

The proposed rule change would make three changes to the Liquidity Management Procedures, as described below.[4] In addition, the proposed rule change would correct typographical errors in Section 2.4.1 and Section 2.7.2.

First, Section 2.1.1 of the Liquidity Management Procedures provides an overview of ICE Clear Europe's payment obligations and liquidity needs. Currently, this section describes three sources of payment obligations relevant to liquidity management: (i) Paying variation margin; (ii) paying delivery or settlement monies when trades deliver or settle; and (iii) returning surplus Initial Margin or other margin to Clearing Members. The proposed rule change would add to this, as a fourth payment obligation, cash substitution requests by Clearing Members. ICE Clear Europe is making this change to make the list more comprehensive, by expressly taking into account cash substitution, which, as a current practice, ICE Clear Europe allows Clearing Members to request.[5]

Second, the proposed rule change would add a new section relating to special considerations for account opening. This section would provide that when ICE Clear Europe is adding new accounts or amending existing accounts with counterparties, the Treasury Department would advise the Legal and Compliance Departments in accordance with relevant departmental procedures to ensure that relevant banking agreements are modified, any side or acknowledgement letters are obtained, and any required regulatory submissions are timely made, as appropriate. This section would provide that this process would include, for example, the opening of new accounts for futures customer funds in accordance with CFTC Rule 1.20(g).[6]

Finally, the proposed rule change would amend provisions relating to haircutting (*i.e.,* risk-based discounting) of non-cash collateral and cash collateral in currencies other than the required currency. Section 2.3.1 currently provides that the Clearing Risk Team monitors the price of non-cash collateral and cash that is in currencies other than the required currency during the day and calls for additional Initial Margin if there is a shortfall in the value of the collateral held. The proposed rule change would amend this provision so that it is the Credit Risk Team, not the Clearing Risk Team, which monitors the price of such assets. This change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Liquidity Management Procedures and Investment Management Procedures, Exchange Act Release No. 93523 (Nov. 4, 2021); 86 FR 62588 (Nov. 10, 2021) (SR–ICEEU–2021–020) (''Notice'').

[4] Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICE Clear Europe Rules, Liquidity Management Procedures, or Investment Management Procedures, as applicable.

[5] Notice, 86 FR at 62588.

[6] 17 CFR 1.20(g).

intended to correct the reference to the responsible internal team, as this monitoring practice is currently performed by the Credit Risk Team. The proposed rule change would also add that the price of such assets would be monitored during the day against the applied haircuts, as a clarification that reflects current practice. Finally, the proposed rule change would remove the statement about calling for additional Initial Margin in the event of a shortfall in the value of the collateral held. ICE Clear Europe represents that this statement would be unnecessary as it is addressed in the ICE Clear Europe Collateral and Haircut Procedures.[7]

B. Investment Management Procedures

The Investment Management Procedures set out the permitted investments and related concentration limits for ICE Clear Europe when investing or securing cash received from Clearing Members, ICE Clear Europe's contributions to the Guaranty Fund, or ICE Clear Europe's own regulatory capital. As such, the Investment Management Procedures contain a table listing investments authorized for cash from Clearing Members and ICE Clear Europe's contributions to the Guaranty Fund. This table provides, among other things, the instrument for investment and maximum issuer/counterparty concentration limits.

The proposed rule change would amend this table with respect to the maximum issuer/counterparty concentration limits for reverse repurchase agreements. Currently, the limits apply per counterparty family. Under the proposed rule change, the limits would apply per counterparty group. The proposed rule change also would add a footnote to explain that breaches of those issuer limits for reverse repurchase agreements solely due to valuation differences or operational failure/error will not be considered as a breach of policy. ICE Clear Europe represents that these updates provide additional detail about existing practices but do not reflect any change to such practices.[8]

The proposed rule change would add another table to the Investment Management Procedures that would specify the additional concentration limits for reverse repurchase agreements involving funds from customers of Futures Commission Merchants (''FCM''). For those investments, the Maximum Issuer/Counterparty Concentration Limits would be 25% of total FCM customer cash balance per counterparty group. ICE Clear Europe represents this amendment would document an existing limitation based on CFTC Rule 1.25.[9]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[10] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[11] and Rules 17Ad–22(e)(2)(v), (e)(7), and (e)(16) thereunder.[12]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.[13] Overall, the Commission believes that the changes to the Liquidity Management Procedures discussed above would help improve ICE Clear Europe's management of liquidity. Specifically, the Commission believes that listing cash substitution as a liquidity need, adding procedures for opening new accounts, and clarifying how the Credit Risk team monitors the price of cash denominated in other currencies and the price of non-cash assets, would help to ensure that ICE Clear Europe calculates its liquidity needs, establishes new accounts, and values the price of cash in other currencies and non-cash assets in a consistent, predictable manner. Moreover, the Commission believes correcting typographical errors would help to ensure that ICE Clear Europe personnel apply the Liquidity Management Procedures in an accurate and consistent manner.

The Commission similarly believes that the proposed changes to the Investment Management Procedures discussed above, taken together, would help improve ICE Clear Europe's management of its investments. For example, the Commission believes that clarifying that the numerical concentration limits are based on total cash balance per counterparty group would help to ensure that ICE Clear Europe calculates the limits consistently on the basis of counterparty groups. Moreover, adding a specific concentration limit of 25% of total FCM customer cash balance per counterparty group for reverse repurchase agreements involving funds from customers of FCMs should help to ensure that ICE Clear Europe does not concentrate FCM customer cash in a single reverse repurchase counterparty.[14] Finally, clarifying that breaches of issuer limits for reverse repurchase agreements solely due to valuation differences or operational failure/error would not be a breach of the policy would help ICE Clear Europe accommodate different valuation methodologies from a variety of repo market participants by not considering breaches resulting only from valuation differences or time delays in obtaining valuations resulting from operational errors.

In making these improvements, the Commission believes the changes discussed above would help ICE Clear Europe to better manage its liquidity and investments and thereby avoid losses related to its liquidity and investments. Because such losses, if realized, could impede ICE Clear Europe's operations and therefore its ability to clear and settle transactions and safeguard securities and funds, the Commission believes the proposed rule change would help to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. Moreover, the Commission believes that better of ICEEU's liquidity and investments, and avoiding losses related to such investments, could reduce the likelihood that ICE Clear Europe would need to access liquid resources provided or backed by a surviving clearing member's collateral in case of a default, and therefore would help to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.

[7] Notice, 86 FR at 62588.

[8] Notice, 86 FR at 62588.

[9] 17 CFR 1.25. Notice, 86 FR at 62588.

[10] 15 U.S.C. 78s(b)(2)(C).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(2)(v), (e)(7), and (e)(16).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] The Commission notes that ICE Clear Europe represents that this change would document an existing limitation based on CFTC Rule 1.25. *See* 17 CFR 1.25; Notice, 86 FR at 62588

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[15]

B. Consistency With Rule 17Ad–22(e)(2)(v) Under the Act

Rule 17Ad–22(e)(2)(v) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[16] As discussed above under Section II.A, the proposed rule change would describe certain responsibilities of the ICE Clear Europe Treasury Department when adding new accounts or amending existing accounts with counterparties. The Commission believes this change would specify a clear and direct line of responsibility for the Treasury Department. Similarly, the proposed rule change would clarify the direct line of responsibility of the Credit Risk Team, not the Clearing Risk Team, to monitor the intraday price of non-cash collateral and cash that is in currencies other than the required currency. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(v).[17]

C. Consistency With Rule 17Ad–22(e)(7) Under the Act

Rule 17Ad–22(e)(7) generally requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by ICE Clear Europe, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[18] As discussed above, the proposed rule change would add to the Liquidity Management Procedures a fourth payment obligation, cash substitution requests by Clearing Members, which would be another liquidity need for ICE Clear Europe. The Commission believes that this additional description would help to clarify the potential liquidity needs that ICE Clear Europe would need to satisfy. Moreover, as described in the Liquidity Management Procedures, ICE Clear Europe treats non-cash collateral and cash that is in currencies other than the requirement as two sources of available liquidity, among other sources. Accordingly, the Commission believes that the changes described above, which would clarify that the Credit Risk team monitors the price of these assets during the day against the applied haircuts, would help to clarify the value of these potential sources of liquidity. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(7).[19]

D. Consistency With Rule 17Ad–22(e)(16) Under the Act

Rule 17Ad–22(e)(16) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.[20] The Commission believes that the changes to the Investment Management Procedures described above, in clarifying that the numerical concentration limits are based on total cash balance per counterparty group, rather than per counterparty family, would help to ensure that ICE Clear Europe consistently applies its concentration limits to groups of counterparties, in line with related ICE Clear Europe procedures. The Commission believes that this change would therefore help to ensure that ICE Clear Europe considers the risks of concentrating investments of cash in one counterparty group, and thereby would help to safeguard the investment of ICE Clear Europe's and its Clearing Members' assets. Similarly, the Commission believes that the additional concentration limit for reverse repurchase agreements involving funds from customers of FCMs would help to safeguard the assets of those customers by helping to ensure that ICE Clear Europe not concentrate FCM customer cash in a single reverse repurchase investment counterparty.[21] Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(16).[22]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act,[23] and Rules 17Ad–22(e)(2)(v), (e)(7), and (e)(16).[24]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[25] that the proposed rule change (SR–ICEEU–2021–020) be, and hereby is, approved.[26]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28111 Filed 12–27–21; 8:45 am]

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[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(2)(v).

[17] 17 CFR 240.17Ad–22(e)(2)(v).

[18] 17 CFR 240.17Ad–22(e)(7).

[19] 17 CFR 240.17Ad–22(e)(7).

[20] 17 CFR 240.17Ad–22(e)(16).

[21] The Commission notes that ICE Clear Europe represents that this change would document an existing limitation based on CFTC Rule 1.25. *See* 17 CFR 1.25; Notice, 86 FR at 62588.

[22] 17 CFR 240.17Ad–22(e)(16).

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] 17 CFR 240.17Ad–22(e)(2)(v), (e)(7), and (e)(16).

[25] 15 U.S.C. 78s(b)(2).

[26] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93839; File No. SR–ICEEU–2021–024]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

December 21, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2021, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4)(ii) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Delivery Procedures (''Delivery Procedures'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

''Procedures'') to amend Part CC thereof (''Part CC'') to revise the delivery specifications applicable to Midland West Texas Intermediate American Gulf Coast Crude Oil Futures (formerly Permian West Texas Intermediate Crude Oil Futures), consistent with changes to the contract terms being made by ICE Futures Europe, and to make certain conforming changes elsewhere in the Delivery Procedures.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend Part CC of the Delivery Procedures to revise delivery specifications to reflect amendments being made to the relevant futures contract by ICE Futures Europe, the exchange on which it is traded. As ICE Futures Europe has announced, it is changing the name of its existing ICE Futures Europe Permian West Texas Intermediate Crude Oil Futures (''Permian WTI Contracts'') to ICE Futures Europe Midland West Texas Intermediate American Gulf Coast Crude Oil Futures (''Midland WTI Contracts''), adding the Enterprise ECHO Terminal as a delivery point for the contract and changing the crude oil quality specification to a Permian Basin originated WTI crude oil that aligns with the current quality of light sweet crude oil originating from the Permian Basin, among other changes. To maintain consistency of the Delivery Procedures with the amended contract specifications for the Midland WTI Contracts, ICE Clear Europe is proposing to amend Part CC of the Delivery Procedures to references to ''ICE Futures Europe Permian West Texas Intermediate Crude Oil Futures'' with ''ICE Futures Europe Midland West Texas Intermediate American Gulf Coast Crude Oil Futures'', and make conforming changes in Part CC and elsewhere in the Delivery Procedures. The amendments would also provide that delivery of Midland WTI Contracts may be made out of and into the Enterprise ECHO Terminal (a crude oil storage terminal owned and operated by Enterprise) in addition to the Magellan MEH Terminal (formerly defined as ''MEH''), and conforming changes would be made throughout Part CC to refer to either or both terminals where applicable, as well as to refer to Enterprise as well as Magellan where applicable.

The amendments to Section 1 of Part CC would replace all references to Permian WTI Contracts with Midland WTI Contracts. Conforming changes would be made to all such references elsewhere in the Delivery Procedures. Section 1 would also be updated to add new definitions used in Part CC, including definitions for ''Enterprise'' and ''Enterprise Echo Terminal'', a new definition of ''Specified Terminal'' (which is used to reference the relevant delivery terminal under the Contract), as well as an updated definition for the Magellan MEH Terminal. Certain definitions such as ''CT'' and ''LPT'' would also be clarified.

The amendments to Section 2.1 of Part CC would remove as inapplicable the reference to in-line transfer as a means for effecting delivery under Midland WTI Contracts, consistent with the revised contract specifications. The provision relating to tolerance of delivery into and out of the terminal would be revised to reflect relevant terminal operation by Enterprise as well as Magellan. Amendments would further provide that delivery under Contracts would be made at Enterprise ECHO Terminal and/or the Magellan MEH Terminal. Each of the Enterprise ECHO Terminal and the Magellan MEH Terminal would be a Delivery Facility for purposes of Midland WTI Contracts.

The updates to Section 2.1 would also make clear that in order to make and take delivery, the Seller and Buyer must be approved customers and have executed documentation governing such delivery process at the applicable Specified Terminal (instead of referring to Magellan-specific documentation). Conforming changes would be made throughout Part CC. The amendments would further provide that in accordance with the Contract Terms, the Seller would be obliged to have all the required permits, licenses and authorizations to operate as a customer at the applicable Specified Terminal, and that the Buyer would be obliged to have all the required permits, licenses and authorizations to operate as a customer at both Enterprise ECHO Terminal and Magellan MEH Terminal.

Section 2.2 would be revised to describe the origin and quality of Midland WTI as Permian Basin originated West Texas Intermediate crude oil conforming to the Specifications, as described in the Contract Terms and the ICE Futures Europe Rules.

An update would be made to Section 3.1 to correct a reference to the ''Rules'' with ''ICE Futures Europe Rules''. Similar updates would be made elsewhere in Part CC where ''Rules'' is used. Section 3.2 would be amended to provide that neither the Clearing House nor ICE Futures Europe would be responsible for performance of Enterprise or any person who operates the Enterprise ECHO Terminal (in addition to the existing provisions relating to Magellan or person who operates the Magellan MEH Terminal).

An update would be made to Section 3.3 to replace a reference to the ''Procedures'' with ''Delivery Procedures'', for clarity.

In Section 4.1 an errant reference to ''Buyer Contract Security'' would be removed.

In Section 5, the Delivery timetable would be updated to reflect changes in the delivery process that relate to the option of delivery through the Enterprise ECHO Terminal. No changes would be made to the delivery timeline itself. The amendments would provide that on the Notice Day, Buyers would be able to elect a preference for delivery at a Specified Terminal (or split deliveries at both Specified Terminals), however such preference would only become effective once confirmed by the Clearing House, which confirmation would be final and binding on the Buyer. The amendments would further clarify the formula for undelivered volume which factors into the Clearing House's calculation of Delivery Margin. The amendments also provide that Nominations to be submitted on Nomination Day may be submitted to Enterprise via Enterprise's ESTREAM System in addition to Magellan via Magellan's COBALT system (as applicable).

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act[6] and the regulations thereunder applicable to it. In particular, Section

[5] Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

[6] 15 U.S.C. 78q–1.

17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Delivery Procedures are designed to clarify the delivery procedures to conform to changes made to the renamed Midland WTI Contracts under ICE Futures Europe rules, principally to allow delivery to be made through the Enterprise ECHO Terminal as well as the Magellan MEH Terminal. Changes also clarify the quality specifications for the product, consistent with the exchange rules. In all other respects, the Midland WTI Contracts will be cleared by the Clearing House in the same manner as the prior Permian WTI Contracts, and will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements continue to be sufficient to support clearing of such contracts as amended and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.[8] (In ICE Clear Europe's view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).[9])

In addition, Rule 17Ad–22(e)(10)[10] provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.'' As discussed above, the amendments would amend the Delivery Procedures applicable to the settlement of Midland WTI Contracts in light of the addition of the Enterprise ECHO Terminal as a Delivery Facility. The procedures would revise, among other matters, quality specifications, limitation of liability for the Clearing House and ICE Futures Europe in respect of the delivery under such contracts at the relevant terminals, and documentation requirements regarding the election of the relevant terminal, consistent with the requirements of the Clearing House. Clearance of the Midland WTI Contracts would continue to be supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad–22(e)(10).[11]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments to the Delivery Procedures are intended to update the existing procedures applicable to the delivery of Midland WTI Contracts to be consistent with changes in exchange rules, principally to add an additional delivery terminal option. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2021–024 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–ICEEU–2021–024. 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

[7] 15 U.S.C. 78q–1(b)(3)(F).
[8] 15 U.S.C. 78q–1(b)(3)(F).
[9] 15 U.S.C. 78q–1(b)(3)(F).
[10] 17 CFR 240.17Ad–22(e)(10).
[11] 17 CFR 240.17Ad–22(e)(10).
[12] 15 U.S.C. 78s(b)(3)(A).
[13] 17 CFR 240.19b–4(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2021–024 and should be submitted on or before January 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28110 Filed 12–27–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17286 and #17287; KENTUCKY Disaster Number KY–00087]

Presidential Declaration Amendment of a Major Disaster for the State of Kentucky

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Kentucky (FEMA–4630–DR), dated 12/12/2021.

Incident: Severe Storms, Straight-line Winds, Flooding, and Tornadoes.

Incident Period: 12/10/2021 and continuing.

DATES: Issued on 12/16/2021.

Physical Loan Application Deadline Date: 02/10/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/12/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Kentucky, dated 12/12/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Christian, Hart, Hickman, Logan, Lyon, Ohio

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Breckinridge, Daviess, Grayson, Hancock, Hardin, Metcalfe

Tennessee: Montgomery, Robertson, Stewart

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–28090 Filed 12–27–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0420]

BCA Mezzanine Fund II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/01–0420 issued to BCA Mezzanine Fund II, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–28102 Filed 12–27–21; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0627]

Accretive Investors SBIC, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/72–0627 issued to Accretive Investors SBIC, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–28094 Filed 12–27–21; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0596]

Edison Venture Fund IV SBIC, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under section 309 of the Act and section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/72–0596 issued to Edison Venture Fund IV SBIC, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–28095 Filed 12–27–21; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice; request for comments.

SUMMARY: The Small Business Administration will submit the information collection described below to the Office of Management and Budget (OMB) for review and approval on or after the date of publication of this notice. SBA is publishing this notice in accordance with the Paperwork Reduction Act of 1995 to allow all interested member of the public an additional 30 days to provide comments on the collection of information.

DATES: Submit comments on or before January 27, 2022.

[14] 17 CFR 200.30–3(a)(12).

ADDRESSES: Written comments on this information collection request should be submitted through ''*www.reginfo.gov/public/do/PRAMain.*'' Find this information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then selecting ''Only Show ICR for Public Comment.'' This information collection can be identified by the title and/or OMB Control Number identified below.

FOR FURTHER INFORMATION CONTACT: Terrence Sutherland, Office of Entrepreneurial Education, SBA, *terrence.sutherland@sba.gov* (202) 205–6919 or Curtis B. Rich, Management Analyst, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 5004 of the American Rescue Plan Act of 2021, Public Law 117–2 (3/11/2021) authorized SBA to establish a Community Navigator Pilot Program. Under this authority, SBA may make grants to private nonprofit organizations, resource partners, States, Tribes, and units of local government to ensure the delivery of free community navigator services to current or prospective owners of small businesses in order to improve access to COVID-related assistance programs and resources.

To facilitate expeditious implementation of the program, on June 8, 2021, SBA obtained emergency approval from OMB, including waiver of the public comment notice required by 5 CFR 1320.8(d). That authority expires on December 31, 2021. On October 14, 2021, SBA published the waived 60-day notice in the **Federal Register** at 86 FR 27243. The Agency received four comments in response to the notice and will address disposition of those comments when it submits the information collection to OMB for standard processing.

Summary of Information Collection

This information collection consists of (SBA Form 3516, *Community Navigators Pilot Program Client and Program Information Form,* and quarterly reporting requirements. The form collects information from applicants to the Community Navigator Program to determine their eligibility for an award. At this time the application period is no longer open; however, SBA is extending this portion of the information collection in the event an additional funding opportunity becomes available. Form 3516 also collects data on the clients served by the awardees of the Community Navigator Pilot Program, to help track grantee performance and evaluate program success. This information collection also includes a requirement for grantees to report quarterly on program performance. The information will help SBA to assess program activity and the extent to which grantees are achieving desired program results and appropriately utilizing grant funds in support of the Community Navigator Program.

OMB Control Number: 3245–0423.

Title: Community Navigators Pilot Program.

Description of Respondents: Entrepreneurs receiving technical assistance and Community Navigators grantees providing technical assistance services.

Form Number: SBA 3516.

Total Estimated Annual Respondents: 202,7960.

Total Estimated Annual Responses: 500,000.

Total Estimated Annual Hour Burden: 137,657.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–28081 Filed 12–27–21; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2021–0050]

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: Social Security Administration.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2022.

SUMMARY: The Social Security Administration is giving notice of its updated maximum civil monetary penalties. These amounts are effective from January 15, 2022 through January 14, 2023. These figures represent an annual adjustment for inflation. The updated figures and notification are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

FOR FURTHER INFORMATION CONTACT: Jessica Stubbs, Deputy Counsel to the Inspector General, Room 3–ME–1, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 816–4054. For information on eligibility or filing for benefits, call the Social Security Administration's national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit the Social Security Administration's internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On June 27, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act),[1] we published an interim final rule to adjust the level of civil monetary penalties (CMPs) under Sections 1129 and 1140 of the Social Security Act, 42 U.S.C. 1320a–8 and 1320b–10, respectively, with an initial ''catch-up'' adjustment effective August 1, 2016.[2] We announced in the interim final rule that for any future adjustments, we would publish a notice in the **Federal Register** to announce the new amounts. The annual inflation adjustment in subsequent years must be a cost-of-living adjustment based on any increases in the October Consumer Price Index for All Urban Consumers (CPI–U) (not seasonally adjusted) each year.[3] Inflation adjustment increases must be rounded to the nearest multiple of $1.[4] We last updated the maximum penalty amounts effective January 15, 2021.[5] Based on Office of Management and Budget (OMB) guidance,[6] the

[1] *See https://www.congress.gov/bill/114th-congress/house-bill/1314/text. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[2] *See* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[3] *See* OMB Memorandum, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–16–06, p. 1 (February 24, 2016), *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2016/m-16-06.pdf. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[4] OMB Memorandum, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–16–06, p. 3 (February 24, 2016), *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2016/m-16-06.pdf. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[5] *See* 86 FR 1123, *https://www.federalregister.gov/documents/2021/01/07/2021-00007/notice-on-penalty-inflation-adjustments-for-civil-monetary-penalties.*

[6] *See https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf.*

information below serves as public notice of the new maximum penalty amounts for 2022. The adjustment results in the following new maximum penalties, which will be effective as of January 15, 2022.

Section 1129 CMPs (42 U.S.C. 1320a–8):

$8,212.00 (current maximum per violation for fraud facilitators in a position of trust) × 1.06222 (OMB-issued inflationary adjustment multiplier) = $8,722.95. When rounded to the nearest dollar, the new maximum penalty is $8,723.00.

$8,708.00 (current maximum per violation for all other violators) × 1.06222 (OMB-issued inflationary adjustment multiplier) = $9,249.81. When rounded to the nearest dollar, the new maximum penalty is $9,250.00.

Section 1140 CMPs (42 U.S.C. 1320b–10):

$10,832.00 (current maximum per violation for all violations other than broadcast or telecasts) × 1.06222 (OMB-issued inflationary adjustment multiplier) = $11,505.97. When rounded to the nearest dollar, the new maximum penalty is $11,506.00.

$54,157.00 (current maximum per violative broadcast or telecast) × 1.06222 (OMB-issued inflationary adjustment multiplier) = $57,526.65. When rounded to the nearest dollar, the new maximum penalty is $57,527.00.

Michelle Murray,

Chief Counsel, Office of the Inspector General, Social Security Administration.

[FR Doc. 2021–28144 Filed 12–27–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11602]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition or Display—Determinations: ''Poussin and the Dance'' Exhibition

AGENCY: Department of State.

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Poussin and the Dance'' at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, and the Delegation of Functions and Authorities signed by the Assistant Secretary for Educational and Cultural Affairs on December 16, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–28182 Filed 12–27–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11603]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Jacques Louis David: Radical Draftsman'' Exhibition

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Jacques Louis David: Radical Draftsman'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, and the Delegation of Functions and Authorities signed by the Assistant Secretary for Educational and Cultural Affairs on December 16, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges,Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–28176 Filed 12–27–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11615]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: Exhibition of ''A Marble Portrait of the Youthful Marcus Aurelius''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the Greek and Roman Art galleries of The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 stat. 985; 22 U.S.C. 2459), E.O. 12047 of

March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and the Delegation of Functions and Authorities signed by the Assistant Secretary for Educational and Cultural Affairs on December 16, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–28186 Filed 12–27–21; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 730 (Sub-No. 1)]

Roster of Arbitrators—Annual Update

Pursuant to 49 U.S.C. 11708, the Board's regulations establish a voluntary and binding arbitration process to resolve rail rate and practice complaints that are subject to the Board's jurisdiction. Section 11708(f) provides that, unless parties otherwise agree, an arbitrator or panel of arbitrators shall be selected from a roster maintained by the Board. Accordingly, the Board's rules establish a process for creating and maintaining a roster of arbitrators. 49 CFR 1108.6(b).

The Board most recently updated its roster of arbitrators by decision served February 23, 2021. The roster is published on the Board's website at *www.stb.gov* (click the ''Resources'' tab, select ''Litigation Alternatives'' from the dropdown menu, and then click on the ''Arbitration'' link).

As provided under 49 CFR 1108.6(b), the Board updates the roster of arbitrators annually. Accordingly, the Board is now requesting the names and qualifications of new arbitrators who wish to be placed on the roster. Current arbitrators who wish to remain on the roster must notify the Board of their continued availability and confirm that the biographical information on file with the Board remains accurate and, if not, provide any necessary updates. Arbitrators who do not confirm their continued availability will be removed from the roster. This decision will be served on all current arbitrators.

Any person who wishes to be added to the roster should file an application that describes the applicant's experience with rail transportation and economic regulation, as well as professional or business experience, including agriculture, in the private sector. The submission should also describe the applicant's training in dispute resolution and/or experience in arbitration or other forms of dispute resolution, including the number of years of experience. Lastly, the submission should provide the applicant's contact information and information on fees.

All comments—including filings from new applicants, updates to existing arbitrator information, and confirmations of continued availability—should be submitted via e-filing on the Board's website by January 21, 2022. The Board will assess each new applicant's qualifications to determine which individuals can ably serve as arbitrators based on the criteria established under 49 CFR 1108.6(b). The Board will then establish an updated roster of arbitrators by no-objection vote. The roster will include a brief biographical sketch of each arbitrator, including information such as background, area(s) of expertise, arbitration experience, and geographical location, as well as contact information and fees. The roster will be published on the Board's website.

It is ordered:

1. Applications from persons interested in being added to the Board's roster of arbitrators, and confirmations of continued availability (with updates, if any, to existing arbitrator information) from persons currently on the arbitration roster, are due by January 21, 2022.

2. This decision will be served on all current arbitrators and published in the **Federal Register**.

3. This decision is effective on the date of service.

Decided: December 21, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2021–28153 Filed 12–27–21; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2021–0017]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before January 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 22, 2021 FTA published a 60-day notice (86 FR 58723) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: 49 U.S.C. 5320 Paul S. Sarbanes Transit in Parks Program.

OMB Control Number: 2132–0574.

Type of Request: Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), as amended, established the Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program—49 U.S.C. 5320). The program was administered by FTA in partnership with the Department of the Interior (DOI) and the U.S. Department of Agriculture's Forest Service. The program provided grants to Federal land management agencies that manage an eligible area, including but not limited to the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, the Bureau of Reclamation; and State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non- governmental participant. The purpose of the program was to provide for the planning and capital costs of alternative transportation systems that will enhance the protection of national parks and Federal lands; increase the enjoyment of visitors' experience by conserving natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities. The Paul S. Sarbanes Transit in the Parks program was repealed under the Moving Ahead for Progress in the 21st Century Act (MAP–21). However, funding previously authorized for programs repealed by MAP–21 remain available for their originally authorized purposes until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated.

Respondents: Transit agencies, States, and Metropolitan Planning Organizations.

Estimated Annual Burden on Respondents: Approximately 2 hours for each of the 2 remaining respondents.

Estimated Total Annual Burden: 4 hours.

Estimated Total Burden Cost: $255.32.

Frequency: Annually.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2021–28068 Filed 12–27–21; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person whose property and interests in property have been unblocked pursuant to Executive Order 13726 of April 19, 2016, ''Blocking Property and Suspending Entry Into the United States of Persons Contributing to the Situation in Libya'' (''E.O. 13726''). Additionally, OFAC is publishing an update to the identifying information of persons currently included on the Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 21, 2021, OFAC removed from the SDN List the person listed below, whose property and interests in property were blocked pursuant to E.O. 13726. On December 21, 2021, OFAC determined that circumstances no longer warrant the inclusion of the following person on the SDN List under this authority. This person is no longer subject to the blocking provisions of Section 1(a) of E.O. 13726.

Individual

1. GRECH, Rodrick (a.k.a. GRECH, Roderick), Semper Grove, F1 3A, Triq il-Qala, Qala-Gozo, Malta; DOB 12 Aug 1981; nationality Malta; citizen Malta; Gender Male; Passport 1172183 (Malta); National ID No. 0476781M (Malta) (individual) [LIBYA3].

Dated: December 21, 2021.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–28104 Filed 12–27–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Non-SDN Chinese Military-Industrial Complex Companies List (NS–CMIC List). Any purchase or sale of any publicly traded securities, or any publicly traded securities that are derivative of such securities or are designed to provide investment exposure to such securities, of any of these persons, by any United States person is prohibited in violation of U.S. sanctions.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The NS–CMIC List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 10, 2021, OFAC determined that the following person is subject to the prohibitions set forth in Executive Order 13959 of November 12, 2020, ''Addressing the Threat From Securities Investments That Finance Communist Chinese Military Companies,'' 85 FR 73185, 3 CFR, 2020 Comp., p. 475 (''E.O. 13959''), as amended by Executive Order 14032 of June 3, 2021, ''Addressing the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China,'' 86 FR 30145 (''E.O. 14032'').

Entity

1. SENSETIME GROUP LIMITED (Chinese Traditional: 商湯集團有限公司) (a.k.a. SENSETIME GROUP LTD), Block 1, 1F & 2F Harbour View, 12 Science Park, West Avenue, Hong Kong New Territories, Hong Kong SAR, China; Effective Date (CMIC) 08 Feb 2022; Purchase/Sales For Divestment Date (CMIC) 10 Dec 2022; Listing Date (CMIC) 10 Dec 2021; C.R. No. 2162198 (Hong Kong) [CMIC-EO13959].

   Identified pursuant to section 1(a)(ii) of E.O. 13959, as amended by E.O. 14032, for owning or controlling, directly or indirectly, a person who operates or has operated in the surveillance technology sector of the economy of the People's Republic of China.

Authority: E.O. 13959, 85 FR 73185, 3 CFR, 2020 Comp., p. 475; E.O. 14032, 86 FR 30145.

Dated: December 22, 2021.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–28179 Filed 12–27–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons based on OFAC's action to impose sanctions on persons identified by the Secretary of State pursuant to the Countering America's Adversaries Through Sanctions Act (Pub. L. 115–44). All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The List of Specially Designated Nationals and Blocked Persons and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

Background: Section 106(a) of the Countering America's Adversaries Through Sanctions Act (CAATSA) requires the Secretary of State to submit to the appropriate congressional committees, no later than 90 days after August 2, 2017, the date of enactment of CAATSA, and annually thereafter, a list of each person the Secretary determines, based on credible evidence, on or after August 2, 2017: (1) Is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in Iran who seek (A) to expose illegal activity carried out by officials of the Government of Iran; or (B) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections; or (2) acts as an agent of or on behalf of a foreign person in a matter relating to an activity described in paragraph (1) above. Section 106(b) of CAATSA authorizes the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to authority delegated by the President, to block all transactions in all property and interests in property of a person on the list required by section 106(a) of CAATSA in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

The Secretary of State has identified the following persons in a list submitted to the appropriate congressional committees pursuant to section 106(a) of CAATSA. Accordingly, on December 7, 2021, the Director of OFAC, acting pursuant to delegated authority, has taken the actions described below to impose the sanctions set forth in Section 106(b)(1) of CAATSA with respect to the persons listed below.

Individuals

1. KARAMI, Mohammad (Arabic: محمد کرمی), Sistan and Baluchistan, Iran; DOB 27 Jan 1966; POB Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport K50849392 (Iran) expires 23 Sep 2024 (individual) [CAATSA - IRAN].

2. KHODADADI, Soghra (Arabic: صغری خدادادی) (a.k.a. TAGHANAKE, Soghra Khodadadi; a.k.a. TAGHANAKI, Soghra Khodadadi), Varamin, Tehran, Iran; DOB 27 Mar 1971; POB Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Female; Passport B50799950 (Iran) (individual) [CAATSA - IRAN].

Entities

1. ISFAHAN CENTRAL PRISON (Arabic: زندان مرکزی اصفهان) (a.k.a. DASTGERD PRISON; a.k.a. ESFAHAN PRISON), Isfahan City, Isfahan Province, Iran; Additional Sanctions Information - Subject to Secondary Sanctions [CAATSA - IRAN].

2. ZAHEDAN PRISON (Arabic: زندان زاهدان), Zahedan – the end of Moallem Boulevard, in front of Moallem 33, Sistan and Baluchistan, Iran; Zahedan, Daneshjoo Blvd, Iran; Additional Sanctions Information - Subject to Secondary Sanctions [CAATSA - IRAN].

The Director of OFAC has blocked all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, and which may not be transferred, paid, exported, withdrawn, or otherwise dealt in, of the above persons. These persons have been added to OFAC's List of Specially Designated Nationals and Blocked Persons and include the identifying tag ''CAATSA—IRAN.''

Dated: December 22, 2021.

Andrea M. Gacki

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–28180 Filed 12–27–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 10, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. TUNIYAZ, Erken (Chinese Simplified: 艾尔肯吐尼亚孜) (a.k.a. TUNIAZ, Alken; a.k.a. TUNIYAZ, Erkin; a.k.a. TUNIYAZI, Aierken; a.k.a. TUNIYAZI, Arkin), Xinjiang, China; DOB Dec 1961; POB Aksu, Xinjiang, China; nationality China; Gender Male (individual) [GLOMAG] (Linked To: XINJIANG PUBLIC SECURITY BUREAU).

   Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

2. ZAKIR, Shohrat (Arabic: شۆهرەت زاكىر; Chinese Simplified: 雪克来提扎克尔) (a.k.a. SHOHRAT, Zakir; a.k.a. ZAKIR, Shohret; a.k.a. ZHAKER, Xuekelaiti), Xinjiang, China; DOB Aug 1953; POB Yining City, Xinjiang, China; nationality China; Gender Male (individual) [GLOMAG] (Linked To: XINJIANG PUBLIC SECURITY BUREAU).

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

3. AHMED, Benazir, Bangladesh; DOB 01 Oct 1963; POB Gopalganj, Bangladesh; nationality Bangladesh; Gender Male; Passport B00002095 (Bangladesh) issued 04 Mar 2020 expires 03 Mar 2030; National ID No. 5051953882 (Bangladesh) (individual) [GLOMAG] (Linked To: RAPID ACTION BATTALION).

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

4. ALAM, Mohammad Jahangir, Bangladesh; DOB 19 Oct 1973; POB Dinajpur, Bangladesh; nationality Bangladesh; Gender Male; Passport BG0011847 (Bangladesh)

issued 25 Aug 2019 expires 24 Aug 2024 (individual) [GLOMAG] (Linked To: RAPID ACTION BATTALION).

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

5. AL-MAMUN, Chowdhury Abdullah (a.k.a. ABDULLAH AL MAMUN, Chowdhury), Bangladesh; DOB 12 Jan 1964; POB Sunamganj, Bangladesh; nationality Bangladesh; Gender Male; National ID No. 8224061617 (Bangladesh) (individual) [GLOMAG] (Linked To: RAPID ACTION BATTALION).

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

6. AZAD, Khan Mohammad (a.k.a. "AZAD, K M"), Bangladesh; DOB 15 Oct 1974; POB Barisal, Bangladesh; nationality Bangladesh; Gender Male; National ID No. 2650898262191 (Bangladesh) (individual) [GLOMAG] (Linked To: RAPID ACTION BATTALION).

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

7. KHAN, Mohammad Anwar Latif (a.k.a. KHAN, Anwar Latif), Bangladesh; DOB 01 Dec 1971; POB Bogra, Bangladesh; nationality Bangladesh; Gender Male; National ID No. 1590698127721 (Bangladesh) (individual) [GLOMAG] (Linked To: RAPID ACTION BATTALION).

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

8. SORWAR, Tofayel Mustafa (a.k.a. SAROWAR, Tofael Mostafa; a.k.a. SARWAR, Tofail Mostafa), Bangladesh; DOB 07 Dec 1973; POB Sunamganj, Bangladesh; nationality Bangladesh; Gender Male; National ID No. 19739116242567589 (Bangladesh) (individual) [GLOMAG] (Linked To: RAPID ACTION BATTALION).

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

9. SOIN, Dmitriy Yurevich (Cyrillic: СОИН, Дмитрий Юрьевич) (a.k.a. SOIN, Dmitry Yuryevich; a.k.a. SOYIN, Dmitriy Yuryevich), Moscow, Russia; DOB 07 Aug 1969; nationality Russia; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK3] (Linked To: EUROPEAN INSTITUTE JUSTO).

   Designated pursuant to Section 2(a)(viii) of Executive Order 13722 of March 15, 2016, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea" (E.O. 13722) for having acted or purported to act for or on behalf of, directly or indirectly, EUROPEAN INSTITUTE JUSTO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

10. LU, Hezheng, Room 810, No. 760, Qinzhou Road, Xuhui District, Shanghai, China; Guangzhou, Guangdong, China; DOB 06 Apr 1974; POB Shanghai, China; nationality China; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; National ID No. 310106197404062 83X (China) (individual) [DPRK3] (Linked To: SEK STUDIO).

    Designated pursuant to Section 2(a)(vii) of E.O. 13722 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

11. RI, Yong Gil (a.k.a. RI, Yo'ng-kil; a.k.a. RI, Yong Gi; a.k.a. YI, Yo'ng-kil), Korea, North; DOB 01 Jan 1955 to 31 Dec 1955; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK2].

    Designated pursuant to Section 1(a)(ii) of Executive Order 13687 of January 2, 2015, "Imposing Additional Sanctions With Respect to North Korea" (E.O. 13687) for being an official of the Government of North Korea.

12. KO, Maung (a.k.a. KO, U Maung), Burma; DOB 17 Jun 1950; nationality Burma; citizen Burma; Gender Male; National ID No. 1MAKATANAING033491 (Burma); Mandalay Region Chief Minister (individual) [BURMA-EO14014].

    Designated pursuant to section 1(a)(iii)(B) of Executive Order 14014 of February 10, 2021, "Blocking Property With Respect To The Situation In Burma" ("E.O. 14014") for

being a foreign person who is or has been a leader or official of the Government of Burma on or after February 2, 2021.

13. NAN, Khat Htein (a.k.a. NAN, Khet Htein; a.k.a. NAN, U Khet Htein), Burma; DOB 01 Apr 1959; POB Mogaung, Burma; nationality Burma; citizen Burma; Gender Male; National ID No. 1MAKANAN069429 (Burma); Kachin State Chief Minister (individual) [BURMA-EO14014].

    Designated pursuant to section 1(a)(iii)(B) of E.O. 14014 for being a foreign person who is or has been a leader or official of the Government of Burma on or after February 2, 2021.

14. OO, Saw Myint (a.k.a. KYAING, Pauk; a.k.a. OO, U Saw Myint), Burma; DOB 02 Feb 1965; POB Hpapun, Burma; nationality Burma; Gender Male; National ID No. 3KAKAYAN164612 (Burma); Chief Minister of Kayin State (individual) [BURMA-EO14014].

    Designated pursuant to section 1(a)(iii)(B) of E.O. 14014 for being a foreign person who is or has been a leader or official of the Government of Burma on or after February 2, 2021.

15. WIN, Myo Swe (a.k.a. WIN, U Myo Swe), Thandar Hnisi, Rangoon, Burma; DOB 21 Jan 1961; POB Natalin, Burma; nationality Burma; citizen Burma; Gender Male; Passport DM005096 (Burma) issued 05 Feb 2019 expires 04 Feb 2029; National ID No. 7PAKHANAN008087 (Burma); Bago Region Chief Minister (individual) [BURMA-EO14014].

    Designated pursuant to section 1(a)(iii)(B) of E.O. 14014 for being a foreign person who is or has been a leader or official of the Government of Burma on or after February 2, 2021.

Entity

1. RAPID ACTION BATTALION (a.k.a. RAB FORCES), RAB Forces Headquarters, Cargo Admin Building, Shahjalal International Airport, Kurmitola, Dhaka 1229, Bangladesh; Organization Established Date 26 Mar 2004; Target Type Government Entity [GLOMAG].

    Designated pursuant to section 1(a)(ii)(A) of E.O. 13818 for being a foreign person who is responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse.

2. EUROPEAN INSTITUTE JUSTO (Cyrillic: ЕВРОПЕЙСКИЙ ИНСТИТУТ ЮСТО) (a.k.a. EUROPEAN INSTITUTE JUSTO JUSTICE (Cyrillic: ЕВРОПЕЙСКИЙ

ИНСТИТУТ ЮСТО СПРАВЕДЛИВОСТЬ); a.k.a. EUROPEAN INSTITUTE YUSTO; a.k.a. EUROPEAN INSTITUTE YUSTO JUSTICE), Block 6, 6th Novopodmoskovnyy Lane, Moscow 125130, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Tax ID No. 7706101758 (Russia); Registration Number 1027739267819 (Russia) [DPRK3].

Designated pursuant to Section 2(a)(iv) of E.O. 13722 for having engaged in, facilitated, or been responsible for the exportation of workers from North Korea, including exportation to generate revenue for the Government of North Korea or the Workers' Party of Korea.

3. NINGS CARTOON STUDIO (a.k.a. CHONGQING CITY NINGSE ANIMATION DEVELOPMENT CO., LTD. (Chinese Simplified: 重庆市柠色动漫发展有限公司); a.k.a. CHONGQING NINGSE CARTOON & ANIMATION DEVELOPMENT CO., LTD.; a.k.a. CHONGQING NINGSE CARTOON AND ANIMATION DEVELOPMENT CO., LTD.), No. 19, E. First Road, Huilong Boulevard, Yongchuan District, Chongqing, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Registration Number 500383000029284 (China); Unified Social Credit Code (USCC) 91500118582829838H (China) [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

4. SEK STUDIO (a.k.a. APRIL 26 CHILDREN'S ANIMATION FILM STUDIO; a.k.a. SCIENTIFIC EDUCATION KOREA STUDIO), Pyongyang, Korea, North; China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Type: Motion picture, video and television programme production activities; Target Type State-Owned Enterprise [DPRK3].

   Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the GOVERNMENT OF NORTH KOREA, a person whose property and interests in property are blocked pursuant to E.O. 13722.

5. SHANGHAI HONGMAN CARTOON AND ANIMATION DESIGN STUDIO (a.k.a. SHANGHAI HONGMAN ANIMATION DESIGN STUDIO (Chinese Simplified: 上海弘漫动漫设计工作室)), Room 705, Floor 7, Building 1, No. 1919 Zhongshan West Road, Xuhui District, Shanghai, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Registration Number 310104000570122 (China); Unified Social Credit Code (USCC) 91310104093794515H (China) [DPRK3] (Linked To: LU, Hezheng).

Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, LU HEZHENG, a person whose property and interests in property are blocked pursuant to E.O. 13722.

6. MOXING CARTOON (a.k.a. SHANGHAI MOXING CULTURAL MEDIA CO LTD (Chinese Simplified: 上海墨星文化传播有限公司)), 901-7, No. 439 Yishan Road, Xuhui District, Shanghai, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Registration Number 310104000572013 (China); Unified Social Credit Code (USCC) 91310104093693514 (China) [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(ix) of E.O. 13722 for having attempted to have acted or purported to act for or on behalf of, directly or indirectly, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

7. CENTRAL PUBLIC PROSECUTORS OFFICE, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Type: Public order and safety activities; Target Type Government Entity [DPRK2].

   Designated pursuant to Section 1(a)(i) of E.O. 13687 for being an agency, instrumentality, or controlled entity of the Government of North Korea or the Workers' Party of Korea.

8. DIRECTORATE OF DEFENSE INDUSTRIES (a.k.a. MINISTRY OF DEFENSE DIRECTORATE OF DEFENSE INDUSTRIES; a.k.a. MYANMA DEFENSE PRODUCTS INDUSTRY; a.k.a. MYANMAR DEFENSE PRODUCTS INDUSTRY; a.k.a. "DEFENSE PRODUCTS INDUSTRIES"; a.k.a. "KA PA SA"), Ministry of Defense, Shwedagon Pagoda Road, Rangoon, Burma; Target Type Government Entity [BURMA-EO14014].

   Designated pursuant to section 1(a)(i) of E.O. 14014 for operating in the defense sector of the Burmese economy.

9. MYANMAR WAR VETERANS ORGANIZATION (a.k.a. MYANMAR WAR VETERAN ORGANIZATION; a.k.a. MYANMAR WAR VETERAN'S ORGANIZATION), Thukhuma Road, Datkhina Thiri Tsp, Naypyitaw Division, Burma [BURMA-EO14014].

   Designated pursuant to section 1(a)(i) of E.O. 14014 for operating in the defense sector of the Burmese economy.

10. QUARTERMASTER GENERAL OFFICE (a.k.a. OFFICE OF THE QUARTERMASTER GENERAL; a.k.a. QUARTERMASTER GENERAL'S OFFICE),

Burma; Target Type Government Entity [BURMA-EO14014].

Designated pursuant to section 1(a)(i) of E.O. 14014 for operating in the defense sector of the Burmese economy.

Authority: E.O. 13818, 82 FR 60839, 3 CFR, 2018 Comp., p. 399; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446; E.O. 13687, 80 FR 819, 3 CFR, 2015 Comp., p. 259; E.O. 14014, 86 FR 9429; E.O. 13959, 85 FR 73185, 3 CFR, 2020 Comp., p. 475; E.O. 14032, 86 FR 30145.

Dated: December 22, 2021.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–28178 Filed 12–27–21; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Solicitation of Proposal Information for Award of Public Contracts

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Solicitation of Proposal Information for Award of Public Contracts.

OMB Control Number: 1505–0081.

Type of Review: Extension of a currently approved collection.

Description: Treasury Bureaus and the Office of the Procurement Executive collect information when inviting firms to submit proposals for public contracts for supplies and services. The information collection is necessary for compliance with the Federal Property and Administrative Services Act (41 U.S.C. 251 *et seq.*), the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and applicable acquisition regulations. Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired.

Forms: None.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 20,946.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 20,946.

Estimated Time per Response: 10.48 hours.

Estimated Total Annual Burden Hours: 217,812.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 22, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–28221 Filed 12–27–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Return by a U.S. Transferor of Property to a Foreign Corporation.

OMB Control Number: 1545–0026.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code (IRC) 6038B, Notice of certain transfers to foreign persons; state a foreign corporation, or a foreign partnership in a contribution, or makes a distribution to a person who is not a United States person, shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulations prescribed.

Form 926 is filed by any U.S. person who transfers certain tangible or intangible property to a foreign corporation to report information required by section 6038B.

Form Number: IRS Form 926.

Affected Public: Individuals or Households; Businesses and other for-profit organizations.

Estimated Number of Respondents: 667.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 667.

Estimated Time per Response: 42 hours 53 minutes.

Estimated Total Annual Burden Hours: 28,608.

2. Title: Annual Summary and Transmittal of U.S. Information Returns.

OMB Control Number: 1545–0108.

Type of Review: Extension of a currently approved collection.

Description: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W–2G) to the IRS service centers. Under Internal Revenue

Code Section 6041 and related regulations, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize, categorize, and process the forms being filed.

Form Number: IRS Form 1096.

Affected Public: Businesses and other for-profit organizations; individuals or households; Not-for-profit institutions; State, Local or Tribal governments.

Estimated Number of Respondents: 5,640,300.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 5,640,300.

Estimated Time per Response: 13.8 minutes.

Estimated Total Annual Burden Hours: 1,297,269.

3. Title: Distributions From Pensions, Annuities, Retirement or Profit-sharing Plans, IRAs, Insurance Contracts.

OMB Control Number: 1545–0119.

Type of Review: Revision of a currently approved collection.

Description: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by the Internal Revenue Service (IRS) to verify that income has been properly reported by the recipient.

Current Actions: There are changes to the existing collection: (1) The existing FATCA and Date of payment boxes were given line numbers, and (2) the age for IRA required minimum distributions was changed to age 72 beginning in 2020 per the SECURE Act.

Form Number: IRS Form 1099–R.

Affected Public: Businesses and other for-profit organizations; Not-for-profit institutions; and State, Local, or Tribal governments.

Estimated Number of Respondents: 105,974,100.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 105,974,100.

Estimated Time per Response: 26 minutes.

Estimated Total Annual Burden Hours: 46,628,604.

4. Title: Causalities and Thefts.

OMB Control Number: 1545–0177.

Type of Review: Extension of a currently approved collection.

Description: Form 4684, is used by taxpayers to report gains and losses form casualties and thefts. Form 4684 includes four sections to address the various losses or gains: Section A is used to report casualties and thefts of property not used in a trade or business or for income-producing purposes (personal property); Section B is used for casualty or theft involving property used in a trade or business or for income producing purposes; Section C is used to claim a theft or loss deduction for a Ponzi-type investment scheme (each taxpayer must meet the claim conditions within Revenue Procedures 2009–20 and 2011–58); Section D is used to deduct a loss attributable to a federally declared disaster and that occurred in a federally declared disaster area in the tax year immediately preceding the tax year the loss was sustained. The data collected is used to verify that the correct gain or loss has been computed.

Form Number: IRS Form 4684.

Affected Public: Individuals or households; and Businesses or other for-profit organizations.

Estimated Number of Respondents: 213,867.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 213,867.

Estimated Time per Response: 6 hours 3 minutes.

Estimated Total Annual Burden Hours: 1,293,895.

5. Title: International Boycott Report.

OMB Control Number: 1545–0216.

Type of Review: Extension of a currently approved collection.

Description: Persons having operations in or related to countries which require participation in or cooperation with an international boycott may be required to report these operations on Form 5713. Persons use Schedule A with Form 5713 to figure the international boycott factor to use in figuring the loss of tax benefits. Persons use Schedule B with Form 5713 to specifically attribute taxes and income to figure the loss of tax benefits. Filers of Schedule A or B (Form 5713) use Schedule C to compute the loss of tax benefits from participation in or cooperation with an international boycott.

Form Number: IRS Form 5713 and Schedules A, B, & C.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 5,632.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 5,632.

Estimated Time per Response: 25 hours 28 minutes.

Estimated Total Annual Burden Hours: 143,498.

6. Title: Underpayment of Estimated Tax by Individuals, Estate, and Trusts (Form 2210), and Underpayment of Estimated Tax by Farmers and Fishermen (Form 2210–F).

OMB Control Number: 1545–0140.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. Form 2210 is used by individuals, estates, and trusts. Form 2210–F is used by farmers and fisherman to determine whether they are subject to the penalty and to compute the penalty if it applies. The Internal Revenue Service (IRS) uses this information to determine whether taxpayers are subject to the penalty, and to verify the penalty amount.

Form Number: IRS Form 2210 and IRS Form 2210–F.

Affected Public: Individuals or households; businesses or other for-profit organizations.

Estimated Number of Respondents: 80,150.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 4 hours.

Estimated Time per Response: 80,150.

Estimated Total Annual Burden Hours: 109,857.

7. Title: Request for Copy of Tax Return.

OMB Control Number: 1545–0429.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related documents. Form 4506 is used for this purpose. The information provided will be used for research to locate the tax form and to ensure that the requestor is the taxpayer, or someone authorized by the taxpayer to obtain the documents requested.

Form Number: IRS Form 4506.

Affected Public: Businesses or other for-profit organizations; individuals or households; and State, Local or Tribal governments.

Estimated Number of Respondents: 325,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 325,000.

Estimated Time per Response: 48 minutes.

Estimated Total Annual Burden Hours: 260,000.

8. Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

OMB Control Number: 1545–0430.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code (IRC), Section 6501(d); Request For Prompt Assessment; any tax for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax

shall be begun, within 18 months after written request therefor by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. Fiduciaries representing a dissolving corporation or a decedent's estate may request a prompt assessment of tax under Internal Revenue Code section 6501(d). Form 4810 is used to help locate the return and expedite the processing of the taxpayer's request.

Form Number: IRS Form 4810.

Affected Public: Individuals or households; Businesses or other for-profit organizations.

Estimated Number of Respondents: 4,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 4,000.

Estimated Time per Response: 6 hours 12 minutes.

Estimated Total Annual Burden Hours: 24,800.

9. Title: IRA Contribution Information.

OMB Control Number: 1545–0747.

Type of Review: Extension of a currently approved collection.

Description: Form 5498 is used by trustees and issuers to report contributions to, and the fair market value of, an individual retirement arrangement (IRA). The information on the form will be used by IRS to verify compliance with the reporting rules under regulation section 1.408–5 and to verify that the participant in the IRA has made the contribution that supports the deduction taken.

Form Number: IRS Form 5498.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 118,858,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 118,858,000.

Estimated Time per Response: 24 minutes.

Estimated Total Annual Burden Hours: 48,731,780.

10. Title: Application for Special Enrollment Examination.

OMB Control Number: 1545–0949.

Type of Review: Extension of a currently approved collection.

Description: Individuals use this form to apply to take the Special Enrollment Examination to establish eligibility for enrollment to practice before the Internal Revenue Service.

Form Number: IRS Form 2587.

Affected Public: Individuals or households.

Estimated Number of Respondents: 15,643.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 15,643.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 1,564.

11. Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

OMB Control Number: 1545–1002.

Type of Review: Extension of a currently approved collection.

Description: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Form Number: IRS Form 8621.

Affected Public: Businesses or other for-profit organizations; and Individuals or households.

Estimated Number of Respondents: 1,333.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,333.

Estimated Time per Response: 48 hours 44 minutes.

Estimated Total Annual Burden Hours: 65,304.

12. Title: Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.

OMB Control Number: 1545–1073.

Type of Review: Extension of a currently approved collection.

Description: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

Form Number: IRS Form 8801.

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,914.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 12,914.

Estimated Time per Response: 7 hours 4 minutes.

Estimated Total Annual Burden Hours: 91,173.

13. Title: Like-Kind Exchanges.

OMB Control Number: 1545–1190.

Type of Review: Extension of a currently approved collection.

Description: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under Internal Revenue Code section 1031. It is also used to report the deferral of gain under Code section 1043 from conflict-of-interest sales by certain members of the executive branch of the Federal government.

Form Number: IRS Form 8824.

Affected Public: Individuals or households; and Businesses or other for-profit organizations.

Estimated Number of Respondents: 137,547.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 137,547.

Estimated Time per Response: 4 hours 50 minutes.

Estimated Total Annual Burden Hours: 665,269.

14. Title: Special Valuation Rules.

OMB Control Number: 1545–1241.

Type of Review: Extension of a currently approved collection.

Description: Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interest. This regulation provides guidance on how taxpayers make these elections, what information is required, and how the transfer is to be disclosed on the gift tax return (Form 709).

Regulation Project Number: TD 8395.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,200.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 496.

15. Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

OMB Control Number: 1545–1356.

Type of Review: Extension of a currently approved collection.

Description: Under Internal Revenue Code Section 7430, a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or civil proceeding that relates to the determination, collection, or refund of any tax, interest, or penalty. Treasury Regulation Section 301.7430–2(c) provides that the IRS will not award administrative costs under section 7430 unless the taxpayer files a written

request in accordance with the requirements of the regulation.

Regulation Project Number: TD 8725.

Affected Public: Individuals or households; Businesses or other for-profit organizations; and Not-for-profit institutions.

Estimated Number of Respondents: 38.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 38.

Estimated Time per Response: 2 hours 16 minutes.

Estimated Total Annual Burden Hours: 86.

16. Title: Preparer Penalties-Manual Signature Requirement.

OMB Control Number: 1545–1385.

Type of Review: Extension of a currently approved collection.

Description: The regulation in TD 8549 provides that persons who prepare U.S. Fiduciary income tax returns for compensation may, under certain conditions, satisfy the manual signature requirements by using a facsimile signature. However, they will be required to submit to the IRS a list of the names and identifying numbers of all fiduciary returns which are being filed with a facsimile signature.

Regulation Project Number: TD 8549.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 20,000.

Estimated Time per Response: 1 hour 12 minutes.

Estimated Total Annual Burden Hours: 24,000.

17. Title: Orphan Drug Credit.

OMB Control Number: 1545–1505.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code Section (IRC) 38, General business credit; provides a credit against the tax imposed by chapter 1 (Normal Taxes and Surtaxes) of the Internal Revenue Code. IRC 45C, Clinical testing expenses for certain drugs for rare diseases or conditions; states the credit determined under Section 38 for the taxable year is an amount equal to 25 percent of the qualified clinical testing expenses. IRC 280C, Certain expenses for which credits are allowable; allows taxpayers who claimed a credit for qualified clinical testing expenses the option to reduce the federal deduction of those testing expenses by the credit claimed.

Filers use Form 8820 to figure and claim the orphan drug credit and to elect the reduced credit under section 280C. The credit equals 25% of qualified clinical testing expenses paid or incurred during the tax year.

Form Number: IRS Form 8820.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 67.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 67.

Estimated Time per Response: 4 hours 42 minutes.

Estimated Total Annual Burden Hours: 316.

18. Title: Distributions From an HSA, Archer MSA, or Medicare Advantage MSA.

OMB Control Number: 1545–1517.

Type of Review: Extension of a currently approved collection.

Description: Form 1099–SA is used to report distributions made from a health savings account (HSA), Archer medical savings account (Archer MSA), or Medicare Advantage MSA (MA MSA). The distribution may have been paid directly to a medical service provider or to the account holder. A separate return must be filed for each plan type.

Form Number: IRS Form 1099–SA.

Affected Public: Businesses or other for-profits organizations.

Estimated Number of Respondents: 25,839.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 25,839.

Estimated Time per Response: 11 minutes.

Estimated Total Annual Burden Hours: 3,618.

19. Title: HSA, Archer MSA, or Medicare Advantage MSA Information.

OMB Control Number: 1545–1518.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code (IRC), Section 220(h) requires trustees to report to the IRS and medical savings accountholders contributions to and the year-end fair market value of any contributions made to a medical savings account (MSA). Congress requires Treasury to report to them the total contributions made to an MSA for the current tax year. IRC Section 223(h) requires the reporting of contributions to and the year-end fair market value of health savings accounts for tax years beginning after December 31, 2003. Form 5498–SA, is used to report contributions to and rollovers into Archer Medical Savings Account (MSAs), Medicare+Choice MSAs, and Health Savings Accounts (HSAs).

Form Number: IRS Form 5498–SA.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 9,167.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 9,167.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 1,559.

20. Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

OMB Control Number: 1545–1668.

Type of Review: Revision of a currently approved collection.

Description: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes: (1) Expanded section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers, (2) expanded section 6038 to require certain U.S. Partners of controlled foreign partnerships to report information about the partnerships, and (3) modified the reporting required under section 6046A with respect to acquisitions and dispositions of foreign partnership interests. Form 8865 is used by U.S. persons to fulfill their reporting obligations under sections 6038B, 6038, and 6046A. Form 8838–P is used to extend the statute of limitations for U.S. persons who transfers appreciated property to partnerships with foreign partners related to the transferor. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer.

Current Actions: There are changes to the existing collection: (1) The number of responses for each form and schedule is being reduced to account for filers (individuals, businesses and tax-exempt organizations) being reported under OMB numbers 1545–0123 and 1545–0074, (2) additional information is being collected to comply with the Tax Cuts and Jobs Act, Public Law 115–97, and new section 250, (3) information about the number of foreign partners subject to section 864(c)(8) is being collected, (4) information about section 721(c) partnerships is being collected, (5) information is being collected for disclosure requirements under Treasury Regulations 1.703–3, 1.707–6, and 1.707–8, and (6) new Schedules K–2 and K–3 replace, supplement, and clarify certain amounts formerly reported on Schedules K and K–1 of Form 8865.

Form Number: IRS Form 8865 and Schedules A, A–1, A–2, A–3, B, G, H, K, K–1, K–2, K–3, L, M, M–1, M–2, N, O, P, and IRS Form 8838 P.

Affected Public: Businesses or other for-profit organizations; Individuals or

households; and Not-for-profit institutions.

Estimated Number of Respondents: 3,695.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,695.

Estimated Time per Response: 22 hours 45 minutes.

Estimated Total Annual Burden Hours: 84,057.

21. Title: Biodiesel and Renewable Diesel Fuels Credit.

OMB Control Number: 1545–1924.

Type of Review: Extension of a currently approved collection.

Description: Section 40A biodiesel and renewable diesel fuels credit is retroactively extended for fuel sold or used in calendar years 2018 through 2022. The credit consists of the Biodiesel credit, Renewable diesel credit, Biodiesel mixture credit, Renewable diesel mixture credit and Small Agri-biodiesel producer credit. Claim the credit for the tax year in which the sale or use occurs. Partnership, S Corporations, Cooperatives, estates, and trusts must file this form to claim the credit.

Form Number: IRS Form 8864.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 934.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 934.

Estimated Time per Response: 4 hours 13 minutes.

Estimated Total Annual Burden Hours: 3,941.

22. Title: Foreign Account Tax Compliance Act (FATCA) Registration.

OMB Control Number: 1545–2246.

Type of Review: Extension of a currently approved collection.

Description: The IRS developed these forms under the authority of Internal Revenue Code (IRC) section 1471(b), which was added by Public Law 111–47, section 501(a). Section 1471 is part of the Foreign Account Tax Compliance Act (FATCA) legislative framework to obtain reporting from foreign financial institutions on the accounts held in their institutions by U.S. persons. Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration information is to be used by a foreign financial institution to apply for status as a foreign financial institution as defined in IRC 1471(b)(2).

The information from Form 8966, FATCA Report, is to be used by a responsible officer of a foreign institution to apply for a foreign account tax compliance Act individual identification number as defined in IRC 1471(b)(2). Form 8966–C is used to authenticate the Form 8966, U.S. Income Tax Return for Estates and Trusts, and to ensure the ability to identify discrepancies between the number of forms received versus those claimed to have been sent by the filer. Taxpayers use Form 8508–I to request a waiver from filing Form 8966 electronically. Form 8809–I is used to request an initial or additional extension of time for file 8966 for the current year.

Form Number: IRS Form 8966, IRS Form 8957, IRS Form 8966–C, IRS Form 8809–I, and IRS Form 8508–I.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 5,561,180.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 5,561,180.

Estimated Time per Response: 7 minutes up to 8.14 hours.

Estimated Total Annual Burden Hours: 2,912,282.

23. Title: Information Reporting for Certain Life Insurance Contract Transactions.

OMB Control Number: 1545–2281.

Type of Review: Extension of a currently approved collection.

Description: The collection covers the information reporting requirements for certain life insurance contracts under Internal Revenue Code (IRC) Section 6050Y, which was added by the Tax Cuts and Jobs Act (TCJA). Form 1099–LS is used by the acquirer of any interest in a life insurance contract (also known as a life insurance policy) in a reportable policy sale to report the acquisition. Form 1099–SB is used by the issuer of a life insurance contract (also known as a life insurance policy) to report the seller's investment in the contract and surrender amount with respect to an interest in a life insurance contract transferred in a ''reportable policy sale'' or transferred to a foreign person.

Form Number: IRS Form 1099–LS and IRS Form 1099–SB.

Affected Public: Businesses or other for-profits organizations.

Estimated Number of Respondents: 6,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 6,000.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 720.

24. Title: Employer Credit for Paid Family and Medical Leave.

OMB Control Number: 1545–2282.

Type of Review: Extension of a currently approved collection.

Description: The law establishes a credit for employers that provide paid family and medical leave to employees. This is a general business credit employers may claim, based on wages paid to qualifying employees while they are on family and medical leave, subject to certain conditions. The credit is for wages paid beginning after December 31, 2017 and it is not available for wages paid beginning after December 31, 2019.

Form Number: IRS Form 8994.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 660,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 660,000.

Estimated Time per Response: 1 hour 55 minutes.

Estimated Total Annual Burden Hours: 1,280,400.

25. Title: Limitation on Business Losses.

OMB Control Number: 1545–2283.

Type of Review: Extension of a currently approved collection.

Description: Form 461 and its separate instructions calculates the limitation on business losses, and the excess business losses that will be treated as net operating loss (NOL) carried forward to subsequent taxable years. In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. This form is used by noncorporate taxpayers and will be attached to a tax return (F1040, 1040NR, 1041, 1041–QFT, 1041–N, or 990–T).

Form Number: IRS Form 461.

Affected Public: Individuals or Households; Businesses or other for-profit organizations; and Not-for-profit institutions.

Estimated Number of Respondents: 2,909,026.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,909,026.

Estimated Time per Response: 22 minutes.

Estimated Total Annual Burden Hours: 1,105,430.

26. Title: Qualified Business Income Deduction.

OMB Control Number: 1545–2294.

Type of Review: Revision of a currently approved collection.

Description: The Tax Cuts and Jobs Act Section added section 199A to the Internal Revenue Code (IRC). IRC Section 199A provides an income tax benefit to investors in non-corporate businesses. Taxpayers use Form 8995 and Form 8995–A to figure and report the QBI deduction.

Current Actions: There are changes to the existing collection: (1) Form 8995–

A and Schedules A, B, C, and D were added to calculate and report the deduction, (2) the estimated number of responses were updated, and (3) the burden for Form 8995 was revised.

Form Number: IRS Form 8995, IRS Form 8995–A and Schedules A, B, C, and D.

Affected Public: Individuals or Households; Businesses or other for-profit organizations.

Estimated Number of Respondents: 41,426,000.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 41,426,000.

Estimated Time per Response: 8 hours 12 minutes.

Estimated Total Annual Burden Hours: 336,107,360.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 21, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–28120 Filed 12–27–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Brewer's Report of Operations and Quarterly Brewer's Report of Operations.

OMB Control Number: 1513–0007.

Type of Review: Extension of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5415 requires that all brewers furnish reports of operations and transactions as the Secretary of the Treasury (the Secretary) prescribes by regulation. Under that authority, the TTB regulations in 27 CFR part 25 require brewers to file monthly operations reports using TTB F 5130.9, Brewer's Report of Operations, if they anticipate an annual excise tax liability of $50,000 or more for beer in a given calendar year. Taxpayers who anticipate a liability of less than $50,000 for such taxes in a given year and had such liability the previous year may file quarterly operations reports using TTB F 5130.9 or the simplified TTB F 5130.26, Quarterly Brewer's Report of Operations. The information collected from brewers on these reports regarding the amount of beer they produce, receive, return, remove, transfer, destroy, or otherwise gain or dispose of is necessary to ensure the tax provisions of the IRC are appropriately applied.

Form: TTB F 5130.9 and TTB F 5130.26.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 7,500.

Frequency of Response: Monthly, Quarterly.

Estimated Total Number of Annual Responses: 36,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 27,000 hours.

2. Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

OMB Control Number: 1513–0008.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 7652 provides that products made in Puerto Rico, shipped to the United States, and withdrawn for consumption or sale are subject to a tax equal to the internal revenue tax imposed on like products made in the United States. In addition, that section provides that the taxes collected on such Puerto Rican products are covered over (transferred) into the Treasury of Puerto Rico. Under the TTB regulations in 27 CFR part 26, applicants use form TTB F 5170.7 to apply for authorization for, and to document, the shipment of tax-paid or tax-determined Puerto Rican spirits to the United States. The collected information documents the specific spirits and articles, the amounts shipped and received, and the amount of tax, and it identifies the consignor in Puerto Rico and consignee in the United States. TTB uses the information to verify the accuracy of prepayments of excise tax and semimonthly payments of deferred excise taxes, and to determine the amount of revenue to be transferred into the Treasury of Puerto Rico. This information is necessary to ensure the tax provisions of the IRC are appropriately applied.

Form: TTB F 5170.7.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 20.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 2,120.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,060 hours.

3. Title: Application for Basic Permit under the Federal Alcohol Administration Act.

OMB Control Number: 1513–0018.

Type of Review: Extension of a currently approved collection.

Description: Section 103 of the Federal Alcohol Administration Act (FAA Act, 27 U.S.C. 203) requires that a person must apply to the Secretary for a ''basic permit'' before beginning business as: (1) An importer into the United States of distilled spirits, wine, or malt beverages, (2) a producer of distilled spirits or wine, or (3) a wholesaler of distilled spirits, wine, or malt beverages. In addition, section 104 of the FAA Act (27 U.S.C. 204(c)) prescribes who is entitled to a basic permit, and it authorizes the Secretary to prescribe the manner and form of, and the information required in, basic permit applications. Under these authorities, the TTB regulations in 27 CFR part 1 require that applicants use TTB F 5100.24 to apply for new FAA Act basic permits. That application enables TTB to determine the location of the proposed business, the extent of its operations, and if the applicant is qualified under the FAA Act to receive a basic permit.

Form: TTB F 5100.24.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10,525.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 10,525.

Estimated Time per Response: 1.125 hours.

Estimated Total Annual Burden Hours: 11,538 hours.

4. Title: Formula and Process for Nonbeverage Products.

OMB Control Number: 1513–0021.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5111–5114 authorizes drawback (refund) of excise tax paid on distilled spirits used in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume that are unfit for beverage purposes, and it authorizes the Secretary to prescribe regulations to ensure that drawback is not paid for unauthorized purposes. Under those authorities, TTB has issued regulations to require that nonbeverage drawback claimants show that the taxpaid distilled spirits for which a claimant makes a drawback claim were used in the manufacture of a product unfit for beverage use. Respondents base this showing on the product's formula and manufacturing process, which they describe using form TTB F 5154.1 or its electronic equivalent in Formulas Online. The collected information allows TTB to ensure that the tax provisions of the IRC regarding drawback are appropriately applied. This information collection also is beneficial to respondents as TTB's determination regarding the described product allows claimants to know in advance of actual manufacture if the product is or is not fit for beverage purposes and thus eligible or not eligible for drawback.

Form: TTB F 5154.1.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 405.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 14,700.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 7,350 hours.

5. Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

OMB Control Number: 1513–0040.

Type of Review: Extension of a currently approved collection.

Description: As required by the IRC at 26 U.S.C. 5171(d), persons who intend to distill, process, or warehouse distilled spirits for non-beverage use, or who intend to manufacture articles using distilled spirits or warehouse bulk spirits for non-industrial use without bottling, are required to apply for and obtain a distilled spirits plant (DSP) operating permit before beginning such operations. Under that IRC authority, the TTB regulations in 27 CFR part 19 require such persons to apply for a DSP operating permit using form TTB F 5110.25. The form identifies the name and business address of the applicant, the DSP's location, and the operations to be conducted at the plant. Applicants also must submit a statement of business organization, information regarding the persons with significant interest in the business, and a list of trade names the applicant will use in connection with the specified operations. The collected information allows TTB to determine if an applicant is qualified under the IRC to receive a DSP operating permit.

Form: TTB F 5110.25.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 100 hours.

6. Title: Alcohol Fuel Plant (AFP) Reports and Miscellaneous Letterhead Applications, and Notices, Marks, and Records.

OMB Control Number: 1513–0052.

Type of Review: Extension of a currently approved collection.

Description: While distilled spirits produced or imported into the United States are normally subject to excise tax under the IRC at 26 U.S.C. 5001, the IRC at 26 U.S.C. 5214(a)(12) allows distilled spirits used for fuel purposes to be withdrawn free of that tax. As such, the IRC at 26 U.S.C. 5181 and 5207 requires a proprietor of a distilled spirits plant (DSP) established as an alcohol fuel plant (AFP) to make applications, maintain records, and render reports as the Secretary prescribes by regulation. Under those IRC authorities, TTB has issued AFP regulations in 27 CFR part 19 that require proprietors to keep certain records, provide certain notices, place certain marks on alcohol fuel containers, and make an annual operations report on form TTB F 5110.75. TTB uses the collected information to ensure that the tax provisions of the IRC are appropriately applied and to help prevent diversion of alcohol fuel to taxable beverage use.

Form: TTB F 5110.75.

Affected Public: Businesses or other for-profits; Not for-profit institutions; and Individuals or households.

Estimated Number of Respondents: 2,150.

Frequency of Response: Annually, On Occasion.

Estimated Total Number of Annual Responses: 2,150.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,150 hours.

7. Title: Tobacco Bond—Collateral, Tobacco Bond—Surety, and Tobacco Bond.

OMB Control Number: 1513–0103.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5711 requires every person, before commencing business as a manufacturer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, to file a bond in the amount, form, and manner as prescribed by the Secretary by regulation. Also, the IRC at 26 U.S.C. 7101 requires that such bonds be guaranteed by a surety or by the deposit of collateral in the form of United States Treasury bonds or notes. Under those IRC authorities, TTB has issued tobacco bond regulations in 27 CFR parts 40 and 44. Those regulations require the prescribed persons to file a surety or collateral bond with TTB in an amount equivalent to the potential tax liability of the person, within a minimum and a maximum amount. The TTB regulations also require a strengthening bond when the amount of an existing bond becomes insufficient or a superseding bond when a current bond is no longer valid for reasons specified by regulation. Respondents may provide a surety bond using TTB F 5000.25, a collateral bond using TTB F 5000.26, or they may use TTB F 5200.29 for either type of bond as an approved alternate procedure.

Form: TTB F 5200.25, TTB F 5220.26, and TTB F 5200.29.

Affected Public: Businesses or other for-profits; and Individuals or Households.

Estimated Number of Respondents: 120.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 120.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 120 hours.

8. Title: Monthly Report—Importer of Tobacco Products or Processed Tobacco.

OMB Control Number: 1513–0107.

Type of Review: Extension of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 5722, importers of tobacco products and of processed tobacco are required to make reports containing such information, in such form, at such

times, and for such periods as the Secretary shall prescribe by regulation. Under that authority, the TTB regulations in 27 CFR part 41 require importers of tobacco products and importers of processed tobacco to submit a monthly report on TTB F 5220.6 to account for such products on hand, received, and removed. TTB uses the collected information to help prevent diversion of tobacco products and processed tobacco into the illegal market.

Form: TTB F 5220.6.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 280.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 3,360.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 3,360 hours.

9. Title: Formulas for Fermented Beverage Products, TTB REC 5052/1.

OMB Control Number: 1513–0118.

Type of Review: Extension of a currently approved collection.

Description: Under the authority of the IRC at 26 U.S.C. 5051, 5052, and 7805, and of the FAA Act at 27 U.S.C. 205(e), the TTB regulations in 27 CFR parts 7 and 25 require beer and malt beverage producers and importers to file a formula when certain non-exempted ingredients, flavors, colors, or processes are used to produce a non-traditional fermented beverage product. This information collection, which respondents submit to TTB as a written notice, is necessary to ensure that the tax provisions of the IRC are appropriately applied, and that the alcohol beverage labeling provisions of the FAA Act are met for imported products that meet that Act's definition of malt beverage.

TTB Recordkeeping Number: TTB REC 5052/1.

Affected Public: Businesses or other for-profits; Individuals or households.

Estimated Number of Respondents: 550.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 1,650.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 1,650 hours.

10. Title: Formula and Process for Domestic and Imported Alcohol Beverages.

OMB Control Number: 1513–0122.

Type of Review: Extension of a currently approved collection.

Description: Chapter 51 of the IRC (26 U.S.C. chapter 51) governs the production, classification, and taxation of alcohol products, and the Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires alcohol beverage labels to provide consumers with adequate information as to the identity and quality of alcohol beverages. Each statute also authorizes the Secretary to issue regulations related to such activities. As such, the TTB regulations require alcohol beverage producers and importers to obtain formula approval for certain non-standard products to ensure that such products are properly classified for excise tax purposes under the IRC and properly labeled under the FAA Act. Currently, in lieu of the formula forms and letterhead notices specified in the TTB regulations for each alcohol commodity (distilled spirits, wine, and beer/malt beverages), which are approved under separate OMB control numbers, respondents, as an alternate procedure, may submit TTB F 5100.51 or its electronic equivalent in Formulas Online (FONL), as approved under this OMB control number.

Form: TTB F 5100.51.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 4,325.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 28,545.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 57,090 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 22, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–28215 Filed 12–27–21; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 414

Medicare Program; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Policy Issues, and Level II of the Healthcare Common Procedure Coding System; DME Interim Pricing in the CARES Act; Durable Medical Equipment Fee Schedule Adjustments To Resume the Transitional 50/50 Blended Rates To Provide Relief in Rural Areas and Non-Contiguous Areas; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1738–F, CMS–1687–F, and CMS–5531–F]

RINs 0938–AU17, 0938–AT21, and 0938–AU32

Medicare Program; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Policy Issues, and Level II of the Healthcare Common Procedure Coding System (HCPCS); DME Interim Pricing in the CARES Act; Durable Medical Equipment Fee Schedule Adjustments To Resume the Transitional 50/50 Blended Rates To Provide Relief in Rural Areas and Non-Contiguous Areas

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

ACTION: Final rule.

SUMMARY: This final rule establishes methodologies for adjusting the Medicare durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) fee schedule amounts using information from the Medicare DMEPOS competitive bidding program (CBP) for items furnished on or after the effective date specified in the **DATES** section of this final rule, or the date immediately following the duration of the emergency period described in the Social Security Act (the Act), whichever is later. This final rule also establishes procedures for making benefit category and payment determinations for new items and services that are durable medical equipment (DME), prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations under Medicare Part B. In addition, this rule classifies continuous glucose monitors (CGMs) as DME under Medicare Part B. Lastly, this final rule finalizes certain DME fee schedule-related provisions that were included in two interim final rules with comment period (IFC) that CMS issued on May 11, 2018, and May 8, 2020.

DATES: These regulations are effective on February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Alexander Ullman, 410–786–9671 or *DMEPOS@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose

This final rule makes changes related to: The Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule amounts to ensure access to items and services in rural areas; procedures for making benefit category and payment determinations for new items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations to prevent delays in coverage of new items and services; and classification of CGMs under the Part B benefit for DME to establish the benefit category for these items. Finally, we are finalizing provisions included in two interim final rules with comment period (IFC) that CMS issued on May 11, 2018, and May 8, 2020.

1. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule Adjustments

The purpose of this provision is to establish the methodologies for adjusting the fee schedule payment amounts for DMEPOS items and services furnished in non-competitive bidding areas (non-CBAs) on or after the effective date specified in the **DATES** section of this final rule, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later. The emergency period we are referring to is the Public Health Emergency (PHE) for coronavirus disease 2019 (COVID–19). We refer readers to section III.A.6. of this rule for details regarding the DMEPOS fee schedule changes CMS has already made as a result of the PHE for COVID–19.

2. DMEPOS Fee Schedule Adjustments for Items and Services Furnished in Rural Areas From June 2018 Through December 2018 and Exclusion of Infusion Drugs From the DMEPOS CBP

The purpose of this section is to finalize and address comments received on the May 11, 2018 IFC (83 FR 21912) titled ''Medicare Program; Durable Medical Equipment Fee Schedule Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Rural Areas and Non-Contiguous Areas'' (hereinafter referred to as the ''May 2018 IFC'').

3. Benefit Category and Payment Determinations for DME, Prosthetic Devices, Orthotics and Prosthetics, Therapeutic Shoes and Inserts, Surgical Dressings, or Splints, Casts, and Other Devices Used for Reductions of Fractures and Dislocations

The purpose of this section of the final rule is to establish procedures for making benefit category and payment determinations for new items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations that permit public consultation through public meetings. Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) requires the Secretary to establish procedures for coding and payment determinations for new DME under Part B of title XVIII of the Act that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for ICD–9–CM (which has since been replaced with ICD–10–CM as of October 1, 2015). We decided to expand these procedures to address all new external HCPCS level II code requests in 2005. We are finalizing procedures for making benefit category determinations and payment determinations for new items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations. Consistent with our current practices, the procedures will incorporate public consultation on these determinations.

The determination of whether or not an item or service falls under a Medicare benefit category, such as the Medicare Part B benefit category for DME, is a necessary step in determining whether an item may be covered under the Medicare program and, if applicable, what statutory and regulatory payment rules apply to the items and services. If the item is excluded from coverage by the Act or does not fall within the scope of a defined benefit category, the item cannot be covered under Medicare. On the other hand, if the item is not excluded from coverage by the Act and is found to fall within a benefit category, we need to determine what payment rules would apply to the item if other statutory criteria for coverage of the item are met, such as the reasonable and necessary criteria under section 1862(a)(1)(A) of the Act.

Therefore, the procedures that we are finalizing for use in determining if items and services fall under the Medicare Part B benefit categories for DME, prosthetic devices, orthotics, and prosthetics, surgical dressings, splints, casts and other devices for the reduction of fractures or dislocations, or therapeutic shoes and inserts continue our longstanding practice of establishing coverage and payment for new items and services soon after they are identified through the HCPCS code application process, promote transparency, and prevent delays in access to new technologies.

4. Classification and Payment for Continuous Glucose Monitors Under Medicare Part B

The purpose of this section of this final rule is to address classification and payment for CGMs under the Medicare Part B benefit for DME.

5. DME Interim Pricing in the CARES Act

The purpose of this section is to finalize and address comments received on the ''DME Interim Pricing in the CARES Act'' section of the May 8, 2020 IFC (85 FR 27550) titled ''Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program'' (hereinafter referred to as the ''May 2020 COVID–19 IFC''). This provision revised § 414.210 to provide temporarily increased DME fee schedule amounts in certain areas, as required by section 3712 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, March 27, 2020).

B. Summary of the Major Provisions

1. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule Adjustments

This rule revises § 414.210(g)(2) and (9) to establish the fee schedule adjustment methodologies for items and services furnished on or after the effective date specified in the **DATES** section of this final rule, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, in non-CBAs.

2. DMEPOS Fee Schedule Adjustments for Items and Services Furnished in Rural Areas From June 2018 Through December 2018 and Exclusion of Infusion Drugs From the DMEPOS CBP

This rule finalizes the following provisions of the May 2018 IFC (83 FR 21912):

- *Transition Period for Phase in of Adjustments to Fee Schedule Amounts:* We are finalizing the amendments to § 414.210(g)(9)(i) to reflect the extension of the transition period to December 31, 2016 for phasing in adjustments to the fee schedule amounts for certain DME and enteral nutrition, as required by section 16007(a) of the 21st Century Cures Act (Cures Act). In addition, we are finalizing the changes to § 414.210(g)(9)(iii), which resumed the fee schedule adjustment transition period in rural areas and non-contiguous areas effective June 1, 2018 so that the fee schedule amounts for certain items and services furnished in rural and non-contiguous areas from June 1, 2018 through December 31, 2018 were based on a 50/50 blend of adjusted and unadjusted rates. We are also finalizing changes to § 414.210(g)(9)(ii): For items and services furnished with dates of service from January 1, 2017 to May 31, 2018, and on or after January 1, 2019, the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount. We solicited comments on the resumption of the transition period for the phase in of fee schedule adjustments.
- *Technical Change Excluding DME Infusion Drugs from the DMEPOS CBP:* Section 5004(b) of the Cures Act amends section 1847(a)(2)(A) of the Act to exclude drugs and biologicals described in section 1842(o)(1)(D) of the Act from the DMEPOS CBP. We are finalizing changes to 42 CFR 414.402 to reflect the exclusion of infusion drugs from the DMEPOS CBP.

3. Benefit Category and Payment Determinations for DME, Prosthetic Devices, Orthotics and Prosthetics, Therapeutic Shoes and Inserts, Surgical Dressings, or Splints, Casts, and Other Devices Used for Reductions of Fractures and Dislocations

These provisions establish procedures for making benefit category and payment determinations for items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations for which a HCPCS Level II code has been requested. Specifically, the purpose of the procedure would be to determine whether the product for which a HCPCS code has been requested meets the Medicare definition of DME, a prosthetic device, an orthotic or prosthetic, a surgical dressing, splint, cast, or other device used for reducing fractures or dislocations, or a therapeutic shoe or insert and is not otherwise excluded under Title XVIII of the Act, to determine how payment for the item of service would be made, and to obtain public consultation on these determinations.

4. Classification and Payment for Continuous Glucose Monitors Under Medicare Part B

This provision classifies adjunctive CGMs as DME, and addresses comments received in response to the proposed rule. Additional determinations regarding whether a CGM is covered in accordance with section 1862(a)(1)(A) of the Act will be made by DME MACs using the local coverage determination (LCD) process or during the Medicare claim-by-claim review process.

5. DME Interim Pricing in the CARES Act

This section finalizes and addresses comments received on the May 2020 COVID–19 IFC section titled ''DME Interim Pricing in the CARES Act''. Specifically, this section finalizes the following policies that were included in the May 2020 COVID–19 IFC:

- We made conforming changes to § 414.210(g)(9), consistent with section 3712(a) and (b) of the CARES Act, omitting the language in section 3712(b) of the CARES Act that references an effective date that is 30 days after the date of enactment of the law.
- We revised § 414.210(g)(9)(iii), which describes the 50/50 fee schedule adjustment blend for items and services furnished in rural and non-contiguous areas, to address dates of service from June 1, 2018 through December 31, 2020 or through the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later.
- We added § 414.210(g)(9)(v) which states that, for items and services furnished in areas other than rural or noncontiguous areas with dates of service from March 6, 2020, through the remainder of the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), based on the fee schedule amount for the area is equal to 75 percent of the adjusted payment amount established under ''this section'' (by which we mean § 414.210(g)(1) through (8)), and 25 percent of the

unadjusted fee schedule amount. For items and services furnished in areas other than rural or noncontiguous areas with dates of service from the expiration date of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)) through December 31, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (referred to as ''this section'' in the regulation text).

- In addition, we revised § 414.210(g)(9)(iv) to specify for items and services furnished in areas other than rural and noncontiguous areas with dates of service from June 1, 2018 through March 5, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (''this section'' in the regulation text).

C. Summary of Cost and Benefits

1. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule Adjustments

We estimate that the DMEPOS fee schedule adjustment methodologies established in this final rule will increase payments an estimated $4.6 billion from the Federal Government to DMEPOS suppliers from CY 2022 to CY 2026 (for the purposes of this estimate, it is assumed the PHE ends on April 16, 2022, which is a necessary assumption for accounting purposes and is not intended to signal when the PHE will end). In CY 2022, we estimate that Medicare payments will increase about $200 million due to this provision of the final rule. Note, the Medicaid impact of this policy is explained later in this final rule.

2. DMEPOS Fee Schedule Adjustments for Items and Services Furnished in Rural Areas From June 2018 Through December 2018 and Exclusion of Infusion Drugs From the DMEPOS CBP

This provision resumed the blended adjusted fee schedule amounts during the transition period for certain DMEPOS items and services that were furnished in rural and non-contiguous areas not subject to the CBP beginning June 1, 2018 and ending December 31, 2018. There is no impact assumed against the baseline, which is explained in the regulatory impact analysis section (RIA) later in this final rule, as the period during which these fee schedule adjustments were in effect has passed.

The goal of the May 2018 IFC was to preserve beneficiary access to DME items and services in rural and non-contiguous areas not subject to the CBP during a transition period in which we would continue to study the impact of the change in payment rates on access to items and services in these areas. We believe that resuming the fee schedule adjustment transition period in rural and non-contiguous areas promoted stability in the DMEPOS market in these areas, and enabled us to work with stakeholders to preserve beneficiary access to DMEPOS.

3. Benefit Category and Payment Determinations for DME, Prosthetic Devices, Orthotics and Prosthetics, Therapeutic Shoes and Inserts, Surgical Dressings, or Splints, Casts, and Other Devices Used for Reductions of Fractures and Dislocations

We are finalizing a process for making benefit category and payment determinations for items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations. This policy is assumed to have an indeterminable fiscal impact due to the unique considerations given to establishing payment for specific items.

4. Classification and Payment for Continuous Glucose Monitors Under Medicare Part B

We are finalizing a policy that classifies adjunctive CGMs as DME. In addition, we are addressing comments on the proposed rule. This classification is assumed to have no fiscal impact when considered against the baseline, which is further explained in the regulatory impact analysis (RIA) section of this final rule.

5. DME Interim Pricing in the CARES Act

This section finalizes the temporary increase to certain DME payment rates from March 6, 2020 through the remainder of the duration of the emergency period (PHE) for COVID–19, in accordance with section 3712 of the CARES Act. Section 3712 of the CARES Act increases Medicare expenditures and beneficiary cost-sharing by increasing Medicare payment rates for certain DMEPOS items furnished in non-rural and contiguous non-competitively bid areas.

The increase is a result of paying a blend of 75 percent of the fully adjusted payment rates and 25 percent of the unadjusted payment rates and is estimated to increase affected DME fee schedule amounts by 33 percent, on average. This provision will have a negligible fiscal impact if the emergency period for COVID–19 ends by April 2022.

II. Rulemaking Overview

In the May 11, 2018 **Federal Register** (83 FR 21912), we published an interim final rule with comment period (IFC) titled ''Medicare Program; Durable Medical Equipment Fee Schedule Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Rural Areas and Non-Contiguous Areas''. In the May 8, 2020 **Federal Register** (85 FR 27550), we published an IFC titled ''Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program'' (hereinafter referred to as the May 2020 COVID–19 IFC). Subsequently in the November 4, 2020 **Federal Register** (85 FR 70358), we published a proposed rule titled ''Medicare Program; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Policy Issues and Level II of the Healthcare Common Procedure Coding System (HCPCS)'' (hereinafter referred to as the November 2020 proposed rule).

We received 331 (208 on the May 2018 IFC, 6 on the May 2020 COVID–19 IFC, and 117 on the November 2020 proposed rule) timely pieces of correspondence containing multiple comments on the provisions of the previously mentioned IFCs and proposed rule. Comments were submitted by DMEPOS suppliers, manufacturers, trade associations, beneficiaries, the Medicare Payment Advisory Commission (MedPAC), law firms, and healthcare providers.

The provisions that we are finalizing in this final rule range from minor clarifications to more significant modifications based on the comments received. Summaries of the public comments received and our responses to those public comments are set forth in the various sections of this final rule under the appropriate headings. We also note that some of the public comments received for the provisions addressed in this final rule were outside of the scope of the previously mentioned IFCs and proposed rule and as such, those out-of-scope public comments are not addressed in this final rule.

Additionally, we will not be finalizing three provisions of the November 2020 proposed rule in this final rule. The provision titled ''Exclusion of Complex Rehabilitative Manual Wheelchairs and Certain Other Manual Wheelchairs From the CBP'' was finalized in the FY

2022 Inpatient Rehabilitation Facility (IRF) final rule published on August 4, 2021 (86 FR 42362). Secondly, after further consideration, we will not be finalizing the proposed provisions titled ''Healthcare Common Procedure Coding System (HCPCS) Level II Code Application Process'' and ''Expanded Classification of External Infusion Pumps as DME.''

We are not finalizing any of the ''Healthcare Common Procedure Coding System (HCPCS) Level II Code Application Process'' proposals. We intend to continue to evaluate our processes, particularly as CMS and stakeholders continue to gain experience with the more frequent coding cycles.

We received 34 public comments on the HCPCS proposals. The public comments raised concerns about the HCPCS proposals. With regard to our proposed HCPCS Level II code application cycles, application resubmission, and reevaluation policies, commenters opposed the proposal for CMS to potentially delay a preliminary or final decision without placing a limit on the number of cycles a decision could be delayed.

Commenters also opposed our proposal to allow only two resubmissions of a code application for reevaluation for the same item or service particularly if new information is provided with the resubmission. While commenters mostly supported the proposals to codify more frequent coding cycles, a number of commenters requested additional process changes and increased transparency that in many cases may be infeasible within the proposed timelines for a coding cycle. Overwhelmingly, commenters responded negatively to our explanation of the term ''claims processing need'' and how it would apply throughout the HCPCS Level II code application evaluation process. Commenters also did not support CMS assessing whether a given item or service is ''primarily medical in nature'' as a threshold HCPCS Level II code application evaluation factor.

In addition, we are not finalizing the ''Expanded Classification of External Infusion Pumps as DME'' proposal because many commenters believed that the proposed rule was unclear, needed more development, raised concerns about cost-sharing and cost-shifting to the beneficiary, and raised safety concerns related to decisions regarding what drug therapies could safely be administered in a home/non-facility setting. Several commenters noted the proposed rule could increase beneficiary costs, and a commenter noted the policy would result in the use of an infusion pump as the choice of drug administration for payment purposes even if it was the less optimal method of administration. A commenter believed that the proposal would result in the beneficiary paying more for less, in light of the higher out-of-pocket costs for home administration of infusion drugs, and the home not being the highest-quality setting for infusion drug administration.

We proposed that an external infusion pump would be considered ''appropriate for use in the home'' if: (1) The Food and Drug Administration (FDA)-required labeling requires the associated home infusion drug to be prepared immediately prior to administration or administered by a health care professional or both; (2) a qualified home infusion therapy supplier (as defined at § 486.505) administers the drug or biological in a safe and effective manner in the patient's home (as defined at § 486.505); and (3) the FDA-required labeling specifies infusion via an external infusion pump as a route of administration, at least once per month, for the drug. We received 31 comments on this proposal from DME and infusion suppliers, beneficiaries, manufacturers, insurance companies, and trade associations. Many commenters supported the proposed interpretation of ''appropriate for use in the home'' and the three proposed criteria for determining when an infusion pump was ''appropriate for use in the home,'' as well as the fact that if finalized, this proposal would necessitate updates to the LCD for external infusion pumps to include additional drugs and biologicals. However serious concerns were raised about other aspects of the proposed rule. Some commenters stated that the proposal would be a very narrow policy change that would offer little in the way of expanded benefits for patients and would create administrative complexity and uncertainty regarding Medicare coverage. Some commenters supported the first criterion in our proposed standard for determining whether an external infusion pump and associated supplies could be covered under the Medicare Part B benefit for DME. However, those commenters advocated that CMS remove the requirement that the FDA-required labeling require the associated home infusion drug be ''prepared immediately prior to administration.'' They noted that this requirement is unclear, as most drugs have storage information which permits use of a drug after mixing. Some commenters supported the second criterion in our proposed standard, which required that a qualified home infusion therapy services supplier administer the drug or biological in a safe and effective manner in the patient's home.

Commenters opposed the third criterion in our proposed standard, and recommended that CMS remove the requirement that the FDA-required labeling specify an external infusion pump as a possible route of administration. Commenters stated that this requirement was too restrictive and could limit access to therapies that would otherwise be clinically appropriate for use in the home. Several commenters pointed out that not all drugs included in the LCDs for Intravenous Immune Globulin (policy number L33610) currently have labels that specify using an external infusion pump as a possible route of administration, though prescribers most often require these pumps to control the rate of infusion. Several commenters believed that the proposed rule needed more development, was unclear about which drugs could be covered under the Medicare Part B benefit for DME as supplies, and could pose safety concerns. A commenter noted the home setting is not the ideal environment for prepping sterile medications for injection or infusion. This commenter also stressed that the beneficiary may not be aware when selecting an administration site (home or outpatient) of the large difference in cost-sharing. Another commenter indicated that CMS should not be the agency to decide if home infusion was safe and appropriate. This commenter urged CMS to delay the expansion of the definition of DME to include additional external infusion pumps until CMS can gather an exact list of the drugs and biologicals that would be affected by this policy and determine whether such drugs and biologicals can be administered in the home safely and effectively under the parameters CMS proposed. We thank the commenters for their input on the HCPCS and infusion pump proposals.

III. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule Adjustments

A. Background

1. DMEPOS Competitive Bidding Program

Section 1847(a) of the Act, as amended by section 302(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173), mandates the Medicare DMEPOS CBP for contract

award purposes to furnish certain competitively priced DMEPOS items and services subject to the CBP:

- Off-the-shelf (OTS) orthotics, for which payment would otherwise be made under section 1834(h) of the Act;
- Enteral nutrients, equipment, and supplies described in section 1842(s)(2)(D) of the Act; and
- Certain DME and medical supplies, which are covered items (as defined in section 1834(a)(13) of the Act) for which payment would otherwise be made under section 1834(a) of the Act.

Section 1847(a) of the Act requires the Secretary of the Department of Health and Human Services (the Secretary) to establish and implement CBPs in competitive bidding areas (CBAs) throughout the U.S. Section 1847(a)(1)(B)(i) of the Act mandates that the programs be phased into 100 of the largest metropolitan statistical areas (MSA) by 2011 and additional areas after 2011. Thus far, CBAs have been either an MSA or a part of an MSA. Under the Office of Management and Budget (OMB) standards for delineating MSAs, MSAs have at least one urbanized area that has a population of at least 50,000. The MSA comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.[1] OMB updates MSAs regularly and the most recent update can be found in OMB Bulletin No. 20–01.[2] The statute allows us to exempt rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item or service, from the CBP. We may also exempt from the CBP items and services for which competitive acquisition is unlikely to result in significant savings.

We refer to areas in which the CBP is not or has not been implemented as non-competitive bidding areas (non-CBAs). We use the term ''former CBAs'' to refer to the areas that were formerly CBAs prior to a gap in the CBP, to distinguish those areas from ''non-CBAs.'' More information on why there was a gap in the CBP from January 1, 2019 through December 31, 2020 can be found in the November 14, 2018 final rule titled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) and Fee Schedule Amounts, and Technical Amendments To Correct Existing Regulations Related to the CBP for Certain DMEPOS,'' (83 FR 56922) (hereinafter ''CY 2019 ESRD PPS DMEPOS final rule'').

Non-CBAs include rural areas, non-rural areas, and non-contiguous areas. A rural area is defined in 42 CFR 414.202 as a geographic area represented by a postal ZIP code, if at least 50 percent of the total geographic area of the area included in the ZIP code is estimated to be outside any MSA. A rural area also includes a geographic area represented by a postal ZIP code that is a low population density area excluded from a CBA in accordance with section 1847(a)(3)(A) of the Act at the time the rules in § 414.210(g) are applied. Non-contiguous areas refer to areas outside the contiguous U.S.—that is, areas such as Alaska, Guam, and Hawaii (81 FR 77936).

2. Payment Methodology for CBAs

In the DMEPOS CBP, suppliers bid for contracts for furnishing multiple items and services, identified by HCPCS codes, under several different product categories. In the CY 2019 ESRD PPS DMEPOS final rule, we made significant changes to how we calculate single payment amounts (SPAs) under the DMEPOS CBP. Prior to these changes, for individual items within each product category in each CBA, the median of the winning bids for each item was used to establish the SPA for that item in each CBA. As a result of the changes we made in the CY 2019 ESRD PPS DMEPOS final rule, SPAs are calculated for the lead item in each product category (per § 414.402, the item in a product category with multiple items with the highest total nationwide Medicare allowed charges of any item in the product category prior to each competition) based on the maximum winning bid (the highest of bids submitted by winning suppliers) in each CBA.

Per § 414.416(b)(3), the SPA for each non-lead item in a product category (all items other than the lead item) is calculated by multiplying the SPA for the lead item by the ratio of the average of the 2015 fee schedule amounts for all areas for the non-lead item to the average of the 2015 fee schedule amounts for all areas for the lead item.

For competitively bid items and services furnished in a CBA, the SPAs replace the Medicare allowed amounts established using the lower of the supplier's actual charge or the fee schedule payment amount recognized under sections 1834(a)(2) through (7) of the Act. Section 1847(b)(5) of the Act provides that Medicare payment for competitively bid items and services is made on an assignment-related basis and is equal to 80 percent of the applicable SPA, less any unmet Part B deductible described in section 1833(b) of the Act.

3. Fee Schedule Adjustment Methodology for Non-CBAs

Section 1834(a)(1)(F)(ii) of the Act requires the Secretary to use information on the payment determined under the Medicare DMEPOS CBP to adjust the fee schedule amounts for DME items and services furnished in all non-CBAs on or after January 1, 2016. Section 1834(a)(1)(F)(iii) of the Act requires the Secretary to continue to make these adjustments as additional covered items are phased in under the CBP or information is updated as new CBP contracts are awarded. Similarly, sections 1842(s)(3)(B) and 1834(h)(1)(H)(ii) of the Act authorize the Secretary to use payment information from the DMEPOS CBP to adjust the fee schedule amounts for enteral nutrition and OTS orthotics, respectively, furnished in all non-CBAs. Section 1834(a)(1)(G) of the Act requires the Secretary to specify the methodology to be used in making these fee schedule adjustments by regulation, and to consider, among other factors, the costs of items and services in non-CBAs (where the adjustments would be applied) compared to the payment rates for such items and services in the CBAs.

In accordance with the requirements of section 1834(a)(1)(G) of the Act, we conducted notice-and-comment rulemaking in 2014 to specify methodologies for adjusting the fee schedule amounts for DME, enteral nutrition, and OTS orthotics in non-CBAs in 42 CFR 414.210(g). We will provide a summary of these methodologies, but also refer readers to the July 11, 2014 proposed rule titled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies,'' (79 FR 40208) (hereinafter ''CY 2015 ESRD PPS DMEPOS proposed rule''), and the November 6, 2014 final rule titled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable

[1] OMB 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas; Notice, June 28, 2010 (75 FR 37252).

[2] *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf?#.*

Medical Equipment, Prosthetics, Orthotics, and Supplies,'' (79 FR 66120) (hereinafter ''CY 2015 ESRD PPS DMEPOS final rule'') for additional details.

The methodologies set forth in § 414.210(g) account for regional variations in prices, including for rural and non-contiguous areas of the U.S. In accordance with § 414.210(g)(1), we determine regional adjustments to fee schedule amounts for each State in the contiguous U.S. and the District of Columbia, based on the definition of region in § 414.202, which refers to geographic areas defined by the Bureau of Economic Analysis (BEA) in the Department of Commerce for economic analysis purposes (79 FR 66226). Under § 414.210(g)(1)(i) through (iv), adjusted fee schedule amounts for areas within the contiguous U.S. are determined based on regional prices limited by a national ceiling of 110 percent of the regional average price and a floor of 90 percent of the regional average price (79 FR 66225). Under § 414.210(g)(1)(v), adjusted fee schedule amounts for rural areas are based on 110 percent of the national average of regional prices. Under § 414.210(g)(2), fee schedule amounts for non-contiguous areas are adjusted based on the higher of the average of the SPAs for CBAs in non-contiguous areas in the U.S., or the national ceiling amount.

For items and services that have been included in no more than 10 CBPs, § 414.210(g)(3) specifies adjustments based on 110 percent of the average of the SPAs. In cases where the SPAs from DMEPOS CBPs that are no longer in effect are used to adjust fee schedule amounts, § 414.210(g)(4) requires that the SPAs be updated by an inflation adjustment factor on an annual basis based on the Consumer Price Index for all Urban Consumers update factors from the mid-point of the last year the SPAs were in effect to the month ending 6 months prior to the date the initial payment adjustments would go into effect.

Under § 414.210(g)(5), in situations where a HCPCS code that describes an item used with different types of base equipment is included in more than one product category in a CBA, a weighted average of the SPAs for the code is computed for each CBA prior to applying the other payment adjustment methodologies in § 414.210(g). Under § 414.210(g)(6), we will adjust the SPAs for certain items prior to using those SPAs to adjust fee schedule amounts for items and services if price inversions have occurred under the DMEPOS CBP. Price inversions occur when one item in a grouping of items in a product category includes a feature that another similar item in the product category does not, and the average of the 2015 fee schedule amounts for the item with the feature is higher than the average of the 2015 schedule amounts for the item without the feature, but following a CBP competition, the SPA for the item with the feature is lower than the SPA for the item without the feature. For groupings of similar items where price inversions have occurred, the SPAs for the items in the grouping are adjusted to equal the weighted average of the SPAs for the items in the grouping.[3]

In § 414.210(g)(8), the adjusted fee schedule amounts are revised each time a SPA for an item or service is updated following one or more new DMEPOS CBP competitions and as other items are added to the DMEPOS CBP. The fee schedule amounts that are adjusted using SPAs are not subject to the annual DMEPOS covered item update and are only updated when SPAs from the DMEPOS CBP are updated or, in accordance with § 414.210(g)(10), when there are temporary gaps in the DMEPOS CBP. Updates to the SPAs may occur as contracts are recompeted. In the CY 2015 ESRD PPS DMEPOS final rule, we established § 414.210(g)(9) to provide for a transitional phase-in period of the DMEPOS fee schedule adjustments. We established a 6-month transition period for blended rates from January 1 through June 30, 2016 (79 FR 66228 through 66229). In establishing a transition period, we agreed with commenters that phasing in the adjustments to the fee schedule amounts would allow time for suppliers to adjust to the new payment rates, and further noted that we would monitor the impact of the change in payment rates on access to items and services and health outcomes using real time claims data and analysis (79 FR 66228). Under § 414.210(g)(9)(i), we specified that the fee schedule adjustments for items and services furnished between January 1, 2016 through June 30, 2016 would be based on a blend of 50 percent of the unadjusted fee schedule amount and 50 percent of the adjusted fee schedule amount. Under § 414.210(g)(9)(ii), we specified that for items and services furnished with dates of service on or after July 1, 2016, the fee schedule amounts would be fully adjusted in accordance with the rules specified in § 414.210(g)(1) through § 414.210(g)(8).

[3] For further discussion regarding adjustments to SPAs to address price inversions, we refer readers to the CY 2017 ESRD PPS DMEPOS final rule, titled Medicare Program; End-Stage Renal Disease Prospective Payment System, Coverage and Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Competitive Bidding Program Bid Surety Bonds, State Licensure and Appeals Process for Breach of Contract Actions, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Competitive Bidding Program and Fee Schedule Adjustments, Access to Care Issues for Durable Medical Equipment; and the Comprehensive End-Stage Renal Disease Care Model, 81 FR 77937 (November 4, 2016).

4. 21st Century Cures Act

Section 16007(a) of the Cures Act was enacted on December 13, 2016, and extended the transition period for the phase-in of fee schedule adjustments at § 414.210(g)(9)(i) by an additional 6 months from July 1, 2016 through December 31, 2016. In the May 2018 IFC, we amended § 414.210(g)(9)(i) to implement the 6-month extension to the initial transition period, as mandated by section 16007(a) of the Cures Act. Accordingly, the fee schedule amounts were based on blended rates until December 31, 2016, with full implementation of the fee schedule adjustments applying to items and services furnished with dates of service on or after January 1, 2017 (83 FR 21915). Section 16008 of the Cures Act amended section 1834(a)(1)(G) of the Act to require that the Secretary take into account certain factors when making any fee schedule adjustments under sections 1834(a)(1)(F)(ii) or (iii), 1834(h)(i)(H)(ii), or 1842(s)(3)(B) of the Act for items and services furnished on or after January 1, 2019. Specifically, the Secretary was required to take into account: (1) Stakeholder input solicited regarding adjustments to fee schedule amounts using information from the DMEPOS CBP; (2) the highest bid by a winning supplier in a CBA; and (3) a comparison of each of the following factors with respect to non-CBAs and CBAs: The average travel distance and cost associated with furnishing items and services in the area, the average volume of items and services furnished by suppliers in the area, and the number of suppliers in the area.

5. Extension of DMEPOS Fee Schedule Transition Period & Revised Methodology

In the May 2018 IFC (83 FR 21918), we expressed an immediate need to resume the transitional, blended fee schedule amounts in rural and non-contiguous areas, noting strong stakeholder concerns about the continued viability of many DMEPOS suppliers, our finding of a decrease in the number of suppliers furnishing items and services subject to the fee schedule adjustments, as well as the Cures Act mandate to consider additional information material to

setting fee schedule adjustments based on information from the DMEPOS CBP for items and services furnished on or after January 1, 2019. We explained that resuming these transitional blended rates would preserve beneficiary access to needed DME items and services in a contracting supplier marketplace, while also allowing us time to address the adequacy of the fee schedule adjustment methodology, as required by section 16008 of the Cures Act. As a result, we amended § 414.210(g)(9) by adding § 414.210(g)(9)(iii) to resume the fee schedule adjustment transition rates for items and services furnished in rural and non-contiguous areas from June 1, 2018 through December 31, 2018. We explained that resuming these transitional blended rates would allow additional time for suppliers serving rural and non-contiguous areas to adjust their businesses, prevent suppliers that beneficiaries may rely on for access to items and services in rural and non-contiguous areas from exiting the business, and allow additional time for us to monitor the impact of the blended rates. We also amended § 414.210(g)(9)(ii) to reflect that for items and services furnished with dates of service from January 1, 2017 to May 31, 2018, fully adjusted fee schedule amounts would apply (83 FR 21922). In addition, we added § 414.210(g)(9)(iv) to specify that fully adjusted fee schedule amounts would apply for items furnished in non-CBAs other than rural and non-contiguous areas from June 1, 2018 through December 31, 2018 (83 FR 21920). We explained that we would use the extended transition period to further analyze our findings and consider the information required by section 16008 of the Cures Act in determining whether changes to the methodology for adjusting fee schedule amounts for items furnished on or after January 1, 2019 are necessary (83 FR 21918 through 21919).

In the CY 2019 ESRD PPS DMEPOS final rule, we finalized changes to bidding and pricing methodologies under the DMEPOS CBP for future competitions (83 FR 57020 through 57025). Specifically, we finalized lead item pricing for all product categories under the DMEPOS CBP, which would use the bid for the lead item to establish the SPAs for both the lead item and all other items in the product category (the non-lead items). We explained that this change would reduce the burden on suppliers since they would no longer have to submit bids on numerous items in a product category. We also finalized changes to the methodology for calculating SPAs under the DMEPOS CBP based on lead item pricing using maximum winning bids for lead items in each product category. We finalized revisions to §§ 414.414 and 414.416 to reflect our changes to the bidding and pricing methodologies, and revised the definitions of bid, composite bid, and lead item in § 414.402. We expected that these changes would have a minimal effect on savings under the DMEPOS CBP. However, during Round 2021 of the DMEPOS CBP, we observed numerous occurrences where capacity, demand, and projected savings, in concert with our policies, were incomparable to previous rounds of competition.

Also, in the CY 2019 ESRD PPS DMEPOS final rule, we established fee schedule adjustment transition rules for items and services furnished from January 1, 2019 through December 31, 2020. We decided to make these fee schedule adjustment transition rules effective for a 2-year period only, for two reasons. First, we believed that we must proceed cautiously when adjusting fee schedules in the short term in an effort to protect access to items, while we continued to monitor health outcomes, assignment rates, and other information (83 FR 57029). Second, as part of the final rule, we made significant changes to the way bids are submitted and SPAs are calculated under the CBP. We stated in the final rule these changes could warrant further changes to the fee schedule adjustment methodologies in the future (83 FR 57030).

Consistent with the requirements of section 16008 of the Cures Act, we set forth our analysis and consideration of stakeholder input solicited on adjustments to fee schedule amounts using information from the DMEPOS CBP, the highest bid by a winning supplier in a CBA, and a comparison of the various factors with respect to non-CBAs and CBAs. We noted stakeholder concerns that the adjusted payment amounts constrained suppliers from furnishing items and services to rural areas, and their request for an increase to the adjusted payment amounts for these areas (83 FR 57025). In reviewing highest winning bids, we found no pattern indicating that maximum bids were higher for areas with lower volume than for areas with higher volume (83 FR 57026). In our consideration of the Cures Act factors with respect to non-CBAs and CBAs, we found higher costs for non-contiguous areas, an increased average travel distance in certain rural areas, a significantly lower average volume per supplier in non-CBAs, especially in rural and non-contiguous areas, and a decrease in the number of non-CBA supplier locations. Based on our consideration of the foregoing, we expressed our belief that the fee schedule amounts for items and services furnished from January 1, 2019 through December 31, 2020, in all rural or non-contiguous areas should be based on a blend of 50 percent of the adjusted fee schedule amounts and 50 percent of the unadjusted fee schedule amounts in accordance with the current methodologies under paragraphs (1) through (8) of § 414.210(g) (83 FR 57029).

We also expressed our belief that the fee schedule amounts for items and services furnished from January 1, 2019 through December 31, 2020, in all areas that are non-CBAs, but are not rural or non-contiguous areas, should be based on 100 percent of the adjusted fee schedule amounts in accordance with the current methodologies under paragraphs (1) through (8) of § 414.210(g) (83 FR 57029). We finalized amendments to the transition rules at § 414.210(g)(9) to reflect these fee schedule adjustment methodologies for items and services furnished from January 1, 2019 through December 31, 2020 (83 FR 57039; 83 FR 57070 through 57071).

6. The Coronavirus Aid, Relief, and Economic Security Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) was enacted on March 27, 2020. Section 3712 of the CARES Act specifies the payment rates for certain DME and enteral nutrients, supplies, and equipment furnished in non-CBAs through the duration of the emergency period described in section 1135(g)(1)(B) of the Act. Section 3712(a) of the CARES Act continues our policy of paying the 50/50 blended rates for items furnished in rural and non-contiguous non-CBAs through December 31, 2020, or through the duration of the emergency period, if longer. Section 3712(b) of the CARES Act increased the payment rates for DME and enteral nutrients, supplies, and equipment furnished in areas other than rural and non-contiguous non-CBAs through the duration of the emergency period. Beginning March 6, 2020, the payment rates for DME and enteral nutrients, supplies, and equipment furnished in these areas are based on 75 percent of the adjusted fee schedule amount and 25 percent of the historic, unadjusted fee schedule amount, which results in higher payment rates as compared to the full fee schedule adjustments that were previously required under § 414.210(g)(9)(iv). We made changes to

the regulation text at § 414.210(g)(9), consistent with section 3712 of the CARES Act, in an IFC that we published in the May 8, 2020 **Federal Register** titled ''Medicare and Medicaid Programs; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency.''

B. Current Issues

In the proposed rule (85 FR 70364), we proposed to establish fee schedule adjustment methodologies for items and services furnished in non-CBAs on or after April 1, 2021, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later. In the proposed rule (85 FR 70364), we stated that though the transition rules under 42 CFR 414.210(g)(9)(iii) and 414.210(g)(9)(v) expired on December 31, 2020, we believe that the rest of the current fee schedule adjustment rules at § 414.210(g) would continue to be in effect should the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B) (PHE) expire after January 1, 2021, and before April 1, 2021. At the time, we presumed that the PHE would expire in early 2021, and that we would finalize the proposed rule around that time. Now that April 1, 2021 has passed, but the PHE is still ongoing, and the proposed rule has yet to be finalized, we are making a technical edit to reflect the new effective date for this final rule. Consistent with our proposal, in the event that the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)) expires before the effective date specified in the **DATES** section of this final rule (rather than April 1, 2021), the current fee schedule adjustment rules at § 414.210(g)(1) through (8) would be used to adjust fee schedule amounts for items and services furnished in non-CBAs and the current fee schedule adjustment rule at § 414.210(g)(10) would be used to adjust fee schedule amounts for items and services furnished in CBAs or former CBAs until the final rule takes effect on the effective date specified in the **DATES** section of this final rule.

1. Section 16008 of the Cures Act Analysis

Section 1834(a)(1)(G) of the Act requires CMS to specify by regulation the methodology to be used in adjusting DMEPOS fee schedule amounts based on information from the DMEPOS CBP. Section 16008 of the Cures Act amended section 1834(a)(1)(G) to specifically require that CMS take into account a number of factors in making any fee schedule adjustments for items and services furnished on or after January 1, 2019, including: (1) Stakeholder input we have solicited on adjustments to fee schedule amounts using information from the DMEPOS CBP; (2) the highest bid by a winning supplier in a CBA; and (3) a comparison of the factors outlined in section 16008 of the Cures Act with respect to non-CBAs and CBAs. Our analysis of the Cures Act factors focuses on the effect we believe increased payment levels have had in rural and non-contiguous non-CBAs, and the effect we believe fully adjusted fees have had in non-rural contiguous non-CBAs. We also provide our analysis of other metrics we believe are important in measuring the impacts of our payment policies.

a. Stakeholder Input Gathered in Accordancew With Section 16008 of the Cures Act

Section 16008 of the Cures Act requires us to solicit and take into account stakeholder input in making fee schedule adjustments based on information from the DMEPOS CBP for items and services furnished on or after January 1, 2019. On March 23, 2017, we hosted a national provider call to solicit stakeholder input regarding adjustments to fee schedule amounts using DMEPOS CBP information (83 FR 57025 through 57026). More than 330 participants called in, with 23 participants providing verbal comments during the call. We also received 125 written comments from stakeholders in response to our request for written comments. Our announcement of this call, a copy of our presentation, the audio recording of the call, and its transcript can be found at the following link on the CMS website.[4]

In general, the commenters were mostly suppliers located in MSAs, but also included manufacturers, trade organizations, and healthcare providers such as physical and occupational therapists. For additional details about the national provider call and a summary of oral and written comments received, we refer readers to the CY 2019 ESRD PPS/DMEPOS proposed rule (83 FR 57026). For a summary of public comments received on the CY 2019 ESRD PPS DMEPOS proposed rule and our responses, we refer readers to the CY 2019 ESRD PPS DMEPOS final rule (83 FR 57030 through 57036).

While the stakeholder input from 2017 did not quantify the degree to which costs of furnishing items in CBAs versus rural areas or any other non-CBAs, the comments we received in response to our 2014 proposed rule (79 FR 40208) indicated that the adjusted fee schedule amounts for rural areas should be equal to 120 to 150 percent of the average of the regional single payment amounts (RSPAs) rather than 110 percent of the average of the RSPAs. In addition, a 2015 industry survey of suppliers of respiratory equipment indicated that the cost of furnishing respiratory equipment in ''super rural'' areas is 17 percent higher than the cost of furnishing respiratory equipment in CBAs.[5] The term ''super rural'' refers to areas identified as ''qualified rural areas'' under the ambulance fee schedule statute at section 1834(l)(12)(B) of the Act (as implemented at 42 CFR 414.610(c)(5)(ii)).

For the purposes of the fee schedule for ambulance services, rural areas are defined at 42 CFR 414.605 as areas located outside an urban area (MSA), or a rural census tract within an MSA as determined under the most recent version of the Goldsmith modification as determined by the Federal Office of Rural Health Policy at the Health Resources and Services Administration (HRSA). The most recent version of the Goldsmith Modification are the Rural-Urban Commuting Area (RUCA) codes, which are a method of determining rurality.[6] Under 42 CFR 414.610(c)(5)(ii), for ground ambulance services furnished during the period July 1, 2004 through December 31, 2022, the payment amount for the ground ambulance base rate is increased by 22.6 percent where the point of pickup is in a rural area determined to be in the lowest 25 percent of rural population arrayed by population density. We refer to this as the ''super rural'' bonus, and the areas that receive this super rural bonus as ''super rural'' areas.[7] For purposes of payment under the Medicare ambulance fee schedule, a ''super rural'' area is thus a rural area determined to be in the lowest 25 percent of rural population arrayed by population density. DMEPOS industry stakeholders have recommended that this differential in payment between super rural areas and MSAs may be adopted in the DMEPOS fee schedule payment context as well.

[4] *https://www.cms.gov/Outreach-and-Education/Outreach/NPC/National-Provider-Calls-and-Events-Items/2017-03-23-DMEPOS.*

[5] *https://www.cqrc.org/img/CQRCCost SurveyWhitePaperMay2015Final.pdf.*

[6] *https://www.hrsa.gov/rural-health/about-us/definition/index.html.*

[7] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AmbulanceFeeSchedule/afspuf.*

In general, we continue to receive feedback from industry stakeholders expressing their belief that the fully adjusted fee schedule amounts are too low and would have an adverse impact on beneficiary access to items and services furnished in rural areas if they are resumed in these areas. Industry stakeholders have also stated that the fully adjusted fee schedule amounts are insufficient to cover the supplier's costs, particularly for delivering items in rural areas.

We indicated in the November 2020 proposed rule that we have been closely monitoring beneficiary health outcomes and access to DMEPOS items. We stated that there has been no decline in allowed services for items subject to the fee schedule adjustments at any point in time, including 2017 and the first half of 2018 when payment in rural and non-contiguous areas was based on the fully adjusted fee schedule amounts. Traditional Medicare or fee-or-service allowed services for items subject to the fee schedule adjustments rose from 24,882,018 in 2015 to 25,604,836 in 2016, 26,065,601 in 2017, and 26,481,002 in 2018. This increase in allowed services occurred even though beneficiary fee-for-service enrollment dropped by 0.6 percent from 33.7 million in 2016 to 33.5 million in 2018 while Medicare Advantage beneficiary enrollment rose by 16.0 percent from 18.4 million in 2016 to 21.3 million in 2018. During this time, suppliers accepted assignment (Medicare payment in full) for most items and services (99.79 percent in 2017 and 99.81 percent in 2018). This rate of assignment remained extremely high (99.68 percent in 2017 and 99.70 percent in 2018) even after removing claims for Medicare participating suppliers and suppliers furnishing items to beneficiaries with dual (Medicare and Medicaid) eligibility, where assignment is mandatory. In addition, we stated that we continue to monitor over one thousand health metrics (emergency room visits, physician office visits, nursing home and hospital admissions, length of need, deaths, etc.) and have not detected any negative impact of the fee schedule adjustments on health outcomes. When analyzing the 2015 monthly average health outcome rates for beneficiaries in non-CBAs, which was the last year we did not make any fee schedule adjustments in non-CBAs, we noted reductions in both 2017 and 2018 in mortality rates, hospitalization rates, physician visits, SNF admissions, and monthly days in the hospital. The percentage of beneficiaries with emergency room visits increased from 3.6 to 3.9 percent and monthly days in nursing homes remained unchanged. Finally, we noted that beneficiary inquiries and complaints related to DMEPOS items and services have steadily declined since 2016 and have not increased.

b. Highest Winning Bids in CBAs Analysis

Section 16008 of the Cures Act requires us to take into account the highest amount bid by a winning supplier in a CBA when making fee schedule adjustments based on information from the DMEPOS CBP for items and services furnished on or after January 1, 2019. As discussed earlier, in the CY 2019 ESRD PPS DMEPOS final rule (83 FR 57026), we found no pattern indicating that maximum bids are higher for areas with lower volume than for areas with higher volume. For additional details, we refer readers to the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34360 through 34367). Additionally, for Round 2021 of the DMEPOS CBP, SPAs were calculated for the lead item in each product category based on the maximum winning bid, and therefore the maximum winning bid is taken into account when making fee schedule adjustments based on information from the CBP for items and services included in Round 2021 and furnished on or after January 1, 2019.

c. Travel Distance Analysis

Section 16008 of the Cures Act also requires us to take into account a comparison of the average travel distance and costs associated with furnishing items and services in CBAs and non-CBAs. In the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34367 through 34371), we compared the average size of different non-CBAs nationally and found that the CBAs had much larger service areas than the non-CBAs. We also compared the average travel distances for suppliers in the different areas using claims data for items and services subject to the fee schedule adjustments. From our analysis, we found that the average distance traveled in CBAs was generally greater than in most non-CBAs. However, in reviewing certain non-CBAs, such as Frontier and Remote (FAR) areas,[8] Outside Core Based Statistical Areas (OCBSAs),[9] and super rural areas,[10] we found that suppliers generally must travel farther distances to beneficiaries located in those areas than for beneficiaries located in CBAs and other non-CBAs. For additional details on our previous travel distance analysis, we refer readers to the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34367 through 34371).

In the November 2020 proposed rule, we updated some of the travel distance data used in our previous travel distance analysis with data from 2018, which at the time was the most recent full year of CBP data. As of January 1, 2021, Round 2021 of the CBP is underway and there are currently contract suppliers furnishing OTS back and knee braces in CBAs. We did not award competitive bidding contracts to suppliers for any of the other product categories that were bid during Round 2021 of the CBP because the SPAs (calculated based on bids) did not achieve expected savings.[11]

As we indicated in the CY 2019 ESRD DMEPOS final rule (83 FR 57027), we looked at hospital beds and oxygen and oxygen equipment, as they are items that are most likely to be delivered locally by suppliers using company vehicles, as well as all items subject to the fee schedule adjustments. The last time these items were included in the CBP was in 2018, and so we believe this 2018 data is still relevant for the purposes of this analysis.

In reviewing the data from 2018, we found that the same trends we presented in the CY 2019 ESRD PPS DMEPOS proposed rule, which were based on 2016 data, apply. Similar to our previous travel distance analysis, to prevent the data from being skewed in certain ways, we only included claims where the supplier billing address is in the same or adjoining State as the beneficiary address, and we excluded claims from suppliers with multiple locations that always use the same billing address. These data restrictions left in place 96 percent of allowed claims lines when looking at hospital beds, 97 percent when looking at

[8] A Frontier and Remote (FAR) area is statistically delineated by the Health Resources and Services Administration (HRSA) based on remoteness and population sparseness. HRSA Methodology for Designation of Frontier and Remote Areas, 79 FR 25599 through 25603 (May 5, 2014).

[9] Outside Core Based Statistical Areas are delineated by OMB as counties that do not qualify for inclusion in a Core Based Statistical Area. OMB 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas; Notice, 75 FR 37245 (June 28, 2010).

[10] Under the Ambulance Fee schedule (AFS), temporary add-on payments known as the ''super rural bonus'' are available in relation to areas that are within the lowest 25 percentile of all rural areas arrayed by population density. 42 CFR 414.610(c)(5)(ii).

[11] *https://www.cms.gov/files/document/round-2021-dmepos-cbp-single-payment-amts-fact-sheet.pdf.*

oxygen, and 92 percent when looking at all items.

TABLE 1—2018 AVERAGE NUMBER OF MILES BETWEEN SUPPLIER AND BENEFICIARY *

Beneficiary area	Hospital beds	Oxygen	All items
CBAs	28	23	30
Non-CBA MSAs	24	22	28
Non-CBA Micro Areas	22	22	27
Non-CBA OCBSA	28	31	37
Super Rural	37	37	42
FAR level 1	27	31	36
FAR level 3	40	41	47

* Includes claims where the supplier billing address is in the same or adjoining state as the beneficiary address, excluding claims from suppliers with multiple locations that always use the same billing address.

We also reviewed in the November 2020 proposed rule travel distance data updated by partial 2019 data spanning January through November 2019 (85 FR 70366). Average travel distances in former CBAs decreased, while average travel distances in rural and non-rural non-CBAs increased. Section 16008 of the Cures Act requires a comparison of average travel distance with respect to non-CBAs and CBAs. At the time of the November 2020 proposed rule, there were no CBAs due to the gap period in the DMEPOS CBP, allowing any Medicare-enrolled DMEPOS suppliers to furnish DMEPOS items and services. In the November 2020 proposed rule, we still reviewed data from former CBAs, as we believed the decrease in average travel distance in the former CBAs was additional confirmation that travel distances are generally greater in CBAs while a CBP is in effect, when compared to non-CBAs. We stated that average supplier travel distances in the former CBAs decreased for a variety of reasons. For one, CBP contract suppliers must furnish items and services to any beneficiary located in a CBA. During a gap period in the CBP, any supplier may furnish items and services to a beneficiary located in a former CBA and suppliers are no longer obligated to service a beneficiary who may be farther away from the supplier. Additionally, more suppliers can now furnish items and services to beneficiaries, so a beneficiary could also receive items and services furnished by a supplier located closer to the beneficiary. Section 16008 of the Cures Act requires us to take into account a comparison of the average travel distance and costs associated with furnishing items and services in CBAs and non-CBAs. As a result, we believe a payment methodology should account for this factor, and the increased costs suppliers may face in reaching certain non-CBAs. When we say certain non-CBAs, we are referring to non-CBAs classified as either super rural, FAR, or OCBSA. This is because although we found that the average travel distance for suppliers in non-CBAs is generally lower than the average travel distance and costs for suppliers in CBAs while the CBP was in effect, we found that suppliers generally must travel farther distances to beneficiaries located in non-CBAs that are super rural, FAR or OCBSA than for beneficiaries located in CBAs and other non-CBAs. Still, industry stakeholders have expressed their belief that the fully adjusted fee schedule amounts are too low and have an adverse impact on beneficiary access to items and services furnished in rural non-CBAs. We have not seen evidence of this, but because stakeholder input is another factor in section 16008 of the Cures Act, we are also factoring stakeholder input into our payment methodology, and therefore believe a payment methodology should result in higher payments for DMEPOS suppliers that furnish items and services to all rural areas, instead of just those areas with greater travel distance than CBAs. We believe this errs on the side of caution and may incentivize suppliers to furnish items and services to all rural areas.

d. Cost Analysis

We presented our analysis of different sources of cost data in the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34371 through 34377). Overall, in comparing CBAs to non-CBAs, we found that CBAs tended to have the highest costs out of the cost data we examined. For certain cost data, we also found that Alaska and Hawaii—both non-contiguous areas—tended to have higher costs than many contiguous areas of the U.S. We stated in the November 2020 proposed rule that we updated this analysis with more recent data and did not notice any significant differences in these overall findings.

We believe these findings support a payment methodology that considers such increased costs in non-contiguous areas.

We also noted in the November 2020 proposed rule that we consider assignment rates as a source of cost data and consider it a measure of the sufficiency of payment to cover a supplier's costs for furnishing items and services under the Medicare program (85 FR 70366). Assignment rates for items subject to the fee schedule adjustments have not varied significantly around the country, and they have consistently remained over 99 percent in all areas. Thus, for the overwhelming majority of claims for items and services furnished in the non-CBAs that were subject to the fee schedule adjustments, suppliers have decided to accept the Medicare payment amount in full, and have not needed to charge the beneficiary for any additional costs that the Medicare allowed payment amount did not cover. Of note, for the 17 months from January 2017 through May 2018 when Medicare paid at the fully adjusted fee level in all areas, or about 40 percent below the unadjusted fee schedule amounts on average, the assignment rate did not dip below 99 percent for the items and services subject to the adjusted fee schedule amounts.

e. Average Volume of Items and Services Furnished by Suppliers in the Area Analysis

Section 16008 of the Cures Act requires that we take into account a comparison of the average volume of items and services furnished by suppliers in CBAs and non-CBAs. In the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34377), we found that in virtually all cases, the average volume of items and services furnished by suppliers is higher in CBAs than non-CBAs. In the November 2020 proposed rule we reviewed updated data from 2018, and found that in most cases, the average volume of items and services furnished by suppliers was higher in

CBAs than in non-CBAs (85 FR 70367). We reviewed the number of allowed claim lines on a national level for 15 different product categories subject to the fee schedule adjustments. In doing so, we found that non-CBAs had more allowed claim lines than CBAs for 4 of the 15 product categories that we reviewed (nebulizer, oxygen, seat lifts, and transcutaneous electrical nerve stimulation (TENS) devices). Rural non-CBAs had more allowed claim lines than CBAs for 2 of the 15 product categories that we reviewed (seat lifts and TENS). Finally, non-rural non-CBAs had more allowed claims lines than CBAs for those same two product categories (seat lifts and TENS).

Additionally, total services per supplier continued to increase in 2018 and 2019 in all non-CBAs. Thus, we found that the average volume per supplier in non-CBAs continues to increase while assignment rates are 99 percent or higher, and overall utilization remains steady or is increasing. We believe these findings support a payment methodology that takes into account and ensures beneficiary access to items and services in non-CBAs with relatively low volume.

f. Number of Suppliers Analysis

Section 16008 of the Cures Act requires us to take into account a comparison of the number of suppliers in the area.

The number of suppliers billing Medicare Fee-for-Service (FFS) for items subject to fee schedule adjustments in all non-CBAs declined from June 2018 through the end of 2019, which is the time period in which we paid the fully adjusted fees in non-rural, contiguous non-CBAs and the blended rates in rural and non-contiguous non-CBAs, in accordance with 42 CFR 414.210(g)(9)(iii) and (iv). More specifics about this decline can be found in Table 2. We note that the decline in the number of billing suppliers is part of a long-term trend that preceded the adjustment of the fee schedule amounts beginning in 2016, but we are still concerned about this trend, particularly for rural and non-contiguous areas, because beneficiaries could have trouble accessing items and services in these lower population areas if more suppliers decide to stop serving these areas.

In the November 2020 proposed rule we studied supplier numbers and found that when looking at a sample of HCPCS codes for high volume items subject to fee schedule adjustments (E1390 for oxygen concentrators, E0601 for CPAP machines, E0260 for semi-electric hospital beds, and B4035 for enteral nutrition supplies), that the average volume of items furnished by suppliers before they stopped billing Medicare is very small compared to the average volume of items furnished by suppliers who continued to bill (85 FR 70367). Data showed that large national chain suppliers were accepting a large percentage of the beneficiaries who were previously served by the smaller suppliers that exited the Medicare market. In addition, the average volume per supplier continues to increase (as the number of suppliers who bill Medicare has declined in recent years, the suppliers that still bill Medicare are picking up more volume), while overall services continue to grow, suggesting industry consolidation rather than any type of access issue for DME. Therefore, the decline in the number of supplier locations may be largely a result of the same degree of consolidation of suppliers furnishing items subject to the fee schedule adjustments rather than a decline in beneficiary access to items subject to the fee schedule adjustments. In addition, this trend in consolidation is matched by an increase in the average volume of items furnished per supplier, increasing economies of scale for these suppliers, although this does decrease the number of overall suppliers' beneficiaries can choose from to provide DMEPOS items. We do note that the number of enrolled DMEPOS suppliers did increase by 2 percent from 86,061 in 2019 to 87,800 in 2020, the highest total since 2016 when the total number of enrolled DMEPOS suppliers was 88,786. There are therefore still many DMEPOS supplier locations throughout the country furnishing DMEPOS items and services.

However, to determine what effect, if any, our payment amounts have had on the number of billing suppliers, in the November 2020 proposed rule, we also examined supplier numbers during defined timeframes in which we paid suppliers the unadjusted and adjusted fees, and the 50/50 blended rates (50 percent unadjusted and 50 percent adjusted) (85 FR 70367). The declines in the number of billing suppliers in both rural and non-rural non-CBAs were very similar, even when we increased payment levels to the blended rates in rural and non-contiguous non-CBAs, and continued paying the fully adjusted fees in non-rural/contiguous non-CBAs. We did not see an appreciable difference in supplier reductions between the two areas. We noted that non-contiguous non-CBAs exhibited a slightly different trend than other non-CBAs, as the number of billing suppliers in these areas increased from 2015 to 2016 when we paid the unadjusted fees, and January 2017 to May 2018 when we paid the fully adjusted fees, but subsequently declined between June 2018 to November 2019 when we paid the blended rates.

For this analysis, we reviewed the following timeframes and noted the payment policies in effect at that time:

- *Period 1:* January 2015–December 2015: Unadjusted fees in all non-CBAs.
- *Period 2:* January 2016–December 2016: Blended rates in all non-CBAs (as noted previously, Congress passed section 16007 of the Cures Act on December 13, 2016, which made the blended rates effective retroactively in all non-CBAs from June 30 through December 31, 2016).
- *Period 3:* January 2017–May 2018: Fully adjusted fees in all non-CBAs.
- *Period 4:* June 2018–November 2019: Blended rates in rural and non-contiguous non-CBAs, fully adjusted fees in non-rural non-CBAs in the contiguous U.S.

TABLE 2—NUMBER OF SUPPLIERS WHO BILLED FOR DME SUBJECT TO THE FEE SCHEDULE ADJUSTMENTS

Period	CBA	% Change	Non-CBA non-rural	% Change	Non-CBA rural	% Change	Non-CBA non-contiguous	% Change
Jan 2015–Dec 2015	12,717		10,694		11,491		1,150	
Jan 2016–Dec 2016	11,698	−8.0	10,103	−5.5	10,772	−6.3	1,229	6.9
Jan 2017–May 2018 (fully adjusted)	9,127	−22.0	9,520	−5.8	10,173	−5.6	1,295	5.4
Jun 2018–Nov 2019	10,381	13.7	8,778	−7.8	9,401	−7.6	1,238	−4.4

* Claims data through 2019/11/29 (2019 Week 48), Provider Enrollment, Chain, and Ownership System (PECOS) data through 2019/09/17.

As we noted in our previous analysis (83 FR 34380), we believe that oxygen and oxygen equipment is one of the most critical items subject to the fee schedule adjustments in terms of beneficiary access. If access to oxygen and oxygen equipment is denied to a beneficiary who needs oxygen, serious health implications can result. Oxygen and oxygen equipment are also items that must be delivered to the beneficiary, and set up and used properly in the home for safety reasons. Access to oxygen and oxygen equipment in remote areas thus remains critical and has been stressed by stakeholders. To determine if there were pockets of the country where access to oxygen and oxygen equipment was in jeopardy, in the November 2020 proposed rule, we reviewed data depicting how many non-CBA counties are being served by only one oxygen supplier (85 FR 70368). From 2016 to 2018, there was a total of 2,691 non-CBA counties with beneficiaries receiving Medicare-covered oxygen supplies. For each year, there were approximately 38 to 39 counties being served by only one oxygen supplier, serving approximately 68 to 78 beneficiaries receiving approximately 736 to 896 services (annually) in those areas. Among the counties with only one oxygen supplier, the majority had only one oxygen user during that year. All counties with a single oxygen supplier from 2016 to 2018 had 100 percent assignment rates for oxygen services, and more than half of the single-supplier counties were in Puerto Rico.

We believe this shows that access to oxygen and oxygen equipment is not in jeopardy. If there are oxygen claims for only one beneficiary in the area, then only one billing supplier would show up in the data. This does not mean that the supplier submitting the claims for this one beneficiary is the only supplier available to furnish oxygen and oxygen equipment in the area. There may be other suppliers able to serve these areas as well and this would show up in the claims data if there were more beneficiaries using oxygen in these areas and these beneficiaries used more than one supplier. This also shows how non-CBAs can have far less volume and fewer billing suppliers than CBAs. Thus, we believe paying more money to suppliers serving rural and non-contiguous non-CBAs takes into account those factors specified in section 16008 of the Cures Act (volume and number of suppliers), and it errs on the side of caution to prevent beneficiary access issues.

2. DMEPOS Fee Schedule Adjustment Impact Monitoring Data

In addition to the various Cures Act factors, we monitored other metrics we believe are important in measuring the impacts of our payment policies. We stated in the November 2020 proposed rule (85 FR 70368) that in reviewing claims data processed through mid-November in 2018 and 2019, that assignment rates for all claims for DMEPOS items and services subject to fee schedule adjustments went up slightly from 2018 to 2019 in both non-rural non-CBAs (from 99.826 percent or 12,948,603 assigned services out of 12,971,110 to 99.833 percent or 11,594,547 assigned services out of 11,613,970) and rural non-CBAs (from 99.79 percent or 13,285,838 assigned services out of 13,313,575 to 99.81 percent or 11,863,434 assigned services out of 11,885,683). We stated to keep in mind that the 2019 claims data was not yet complete, so the number of allowed services will be greater than what we reported, but the final rate of assignment will likely not change much if at all.

When looking at claims processed through May 28, 2021, we found that assignment rates for all claims for DMEPOS items and services subject to fee schedule adjustments went slightly up in non-rural non-CBAs from 2019 to 2020 (99.82 percent to 99.85 percent) and 2020 to 2021 (99.85 percent to 99.88 percent). Assignment rates also increased in rural non-CBAs from 2019 to 2020 (99.80 to 99.84 percent) and 2020 to 2021 (99.84 to 99.85 percent). Finally, assignment rates also increased in non-contiguous non-CBAs from 2019 to 2020 (99.53 percent to 99.79 percent) and 2020 to 2021 (99.79 percent to 99.89 percent). We have also been monitoring other claims data from non-CBAs, and we have not observed any trends indicating an increase in adverse beneficiary health outcomes associated with the fee schedule adjustments. We monitor mortality rates, hospitalization rates, ER visit rates, SNF admission rates, physician visit rates, monthly days in hospital, and monthly days in SNF. Except for death information, which comes from the Medicare Enrollment Database, all other outcomes are derived from claims (inpatient, outpatient, Part B carrier, and SNF). Our monitoring materials cover historical and regional trends in these health outcome rates across a number of populations, allowing us to observe deviations that require further drilldown analyses. We monitor health outcomes in the enrolled Medicare population (Medicare Parts A and B), dual Medicare and Medicaid population, long-term institutionalized population, as well as various DME utilizers and access groups. This helps paint a complete picture of whether an increase in an outcome is across the board (not linked to DME access), or is unique to certain populations. Specifically, we focus on any increases that are unique to the DME access groups, which include beneficiaries who are likely to use certain DME based on their diagnoses, and we would conduct drilldown analyses and policy research to pinpoint potential reasons for such increases.

In addition, in the November 2020 proposed rule, we examined what effect, if any, paying the blended rates in rural and non-contiguous non-CBAs had on utilization of DME (85 FR 70368). We compared the utilization of oxygen equipment between June 2017 through December 2017, and June 2018 through December 2018. We compared these two time periods, because we paid the blended rates in rural and non-contiguous non-CBAs from June 1, 2018 through December 31, 2018, in accordance with the 2018 IFC (83 FR 21915). During the 2017 time period, we paid the fully adjusted fees in all non-CBAs. During the 2018 time period, we paid the blended rates in rural and non-contiguous non-CBAs and the fully adjusted fees in the non-rural contiguous non-CBAs from June 1, 2018 through December 31, 2018. We specifically studied oxygen utilization in rural areas without Micropolitan Statistical Areas, that is OCBSAs, as these counties have the least populated urban areas, and as we stated in the CY 2019 ESRD PPS DMEPOS final rule, one reason for paying higher rates was to ensure beneficiary access in rural and remote areas (83 FR 57029). We found that the number of allowed units in OCBSAs decreased comparably in all areas. Payment at the blended rates between June 1, 2018, and December 31, 2018, increased allowed charges in OCBSAs by 42 percent, but this had no apparent effect on increasing services in OCBSAs. Additionally, the significant reduction of liquid oxygen equipment allowed services trend continued in OCBSAs as well as in all areas. The decline in the number of oxygen concentrators that were furnished declined at the same rate in OCBSAs as in all areas. Access to oxygen equipment in OCBSAs was unchanged, despite a 49 percent increase in unit prices.

In sum, we do not believe our payment rates had a discernible impact on any trends that were already occurring before we paid the higher fees, and we did not see any appreciable differences between the areas in which

we paid the higher 50/50 blended rates in rural and non-contiguous non-CBAs and the areas in which we pay the fully adjusted fees in non-rural/contiguous non-CBAs. In addition, assignments rates are still high in all non-CBAs—over 99 percent—which means over 99 percent of suppliers are accepting Medicare payment as payment in full and not balance billing beneficiaries for the cost of the DME.

We sought comments on all of our findings.

TABLE 3—SUMMARY OF OUR ANALYSIS OF THE SECTION 16008 CURES ACT FACTORS

Section 16008 Cures Act factors	Summary of our analysis
Stakeholder Input	• Most of the input we have received has come from the DMEPOS industry, such as DMEPOS suppliers, expressing that the fully adjusted fee schedule amounts are too low, and that CMS should increase how much Medicare pays DMEPOS suppliers to furnish items and services to beneficiaries in non-CBAs. These stakeholders expressed concerns that the level of the adjusted payment amounts constrains suppliers from furnishing items and services to rural areas. • Stakeholder input that did not support such payment increases included input from the Medicare Payment Advisory Commission (MedPAC), which believed any adjustment for rural and non-contiguous areas should be limited to only the amount needed to ensure access, targeted at areas and products for which an adjustment is needed, and that CMS should consider taking steps to offset the cost of any adjustments. MedPAC supported setting fee schedule rates in urban, contiguous non-CBAs based 100 percent on information from the CBP.*
Highest Winning Bid	• In the CY 2019 ESRD PPS DMEPOS final rule (83 FR 57026), we found no pattern indicating that maximum bids are higher for areas with lower volume than for areas with higher volume.
Travel Distance	• Average travel distance between the supplier and beneficiary is generally higher in CBAs than in non-CBAs, except for non-CBAs classified as FAR, super rural, or OCBSA.
Cost	• We examined four sources of cost data: (1) The Practice Expense Geographic Practice Cost Index (PE GPCI), (2) delivery driver wages from the Bureau of Labor Statistics (BLS), (3) real estate taxes from the U.S. Census Bureau's American Community Survey (ACS), and (4) gas and utility prices from the Consumer Price Index (CPI). • Overall, in comparing CBAs to non-CBAs, CBAs tended to have the highest costs out of the cost data we examined. For certain cost data, we also found that Alaska and Hawaii—both non-contiguous areas—tended to have higher costs than many contiguous areas of the U.S. Assignment rates, which we consider to be a measure of the sufficiency of payment to cover a supplier's costs for furnishing items and services under the Medicare program, have consistently remained high at over 99 percent (out of 100) in non-CBAs, meaning over 99 percent of suppliers furnishing items subject to fee schedule adjustments in the non-CBAs are accepting the Medicare payment in full.
Volume	• CBAs generally have higher volume than non-CBAs. • Total services per supplier continued to increase in 2018 and 2019 in non-CBAs.
Number of Suppliers	• The number of suppliers billing Medicare for furnishing items and services subject to fee schedule adjustments in the non-CBAs has been declining for several years, and this downward trend started years before CMS started adjusting fee schedule amounts in the non-CBAs in 2016. • When looking at a sample of HCPCS codes for high volume items subject to fee schedule adjustments, the average volume of items furnished by suppliers before they stopped billing Medicare is very small compared to the average volume of items furnished by suppliers who continued to bill. Data shows that large national chain suppliers are accepting a large percentage of the beneficiaries who were previously served by the smaller suppliers that exited the Medicare market. In addition, the average volume per supplier continues to increase (as the number of suppliers who bill Medicare decline, the suppliers that still bill Medicare are picking up more volume), while overall services continue to grow, suggesting industry consolidation rather than any type of access issue for DME. Therefore, the decline in the number of supplier locations is largely a result of the consolidation of suppliers furnishing items subject to the fee schedule adjustments rather than a decline in beneficiary access to items subject to the fee schedule adjustments. • When looking at different timeframes over the last several years in which we paid different fee schedule amounts (unadjusted fees, adjusted fees, and the 50/50 blended rates), we did not see an appreciable effect that these payment changes had on stemming the reduction in the number of suppliers billing Medicare. • All counties with a single oxygen supplier from 2016 to 2018 had 100 percent assignment rates for oxygen services, and more than half of the single-supplier counties were in Puerto Rico.

* *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/comment-letters/08312018_esrd_cy2019_dme_medpac_comment_v2_sec.pdf.*

C. Proposed Provisions

After reviewing updated information that must be taken into consideration in accordance with section 1834(a)(1)(G) of the Act in determining adjustments to DMEPOS fee schedule amounts, we proposed to revise § 414.210(g) to establish three different methodologies for adjusting fee schedule amounts for DMEPOS items and services included in more than 10 competitive bidding programs furnished in non-CBAs on or after April 1, 2021, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later (85 FR 70370). We proposed three different fee schedule adjustment methodologies, based on the non-CBA in which the items are furnished: (1) One fee schedule adjustment methodology for items and services furnished in non-contiguous non-CBAs; (2) another adjustment methodology for items and services furnished in non-CBAs within the contiguous United States that are defined as rural areas at § 414.202; and (3) a third adjustment methodology for items and services furnished in all other non-CBAs (non-rural areas within the contiguous United States) (85 FR 70370). With respect to

items and services furnished in no more than ten competitive bidding programs, we proposed to continue using the methodology in § 414.210(g)(3) to adjust the fee schedule amounts for these items furnished on or after April 1, 2021 (85 FR 70370). The rest of the discussion that follows addresses the fee schedule adjustments for items and services that have been included in more than ten competitive bidding programs.

First, we proposed to continue paying the 50/50 blended rates in non-contiguous non-CBAs (85 FR 70370). However, we proposed that the 50/50 blend will no longer be a transition rule under § 414.210(g)(9), and will instead be the fee schedule adjustment methodology for items and services furnished in these areas under § 414.210(g)(2) unless revised in future rulemaking. We proposed that the fee schedule amounts for items and services furnished on or after April 1, 2021, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, in non-contiguous non-CBAs be adjusted so that they are equal to a blend of 50 percent of the greater of the average of the SPAs for the item or service for CBAs located in non-contiguous areas or 110 percent of the national average price for the item or service determined under § 414.210(g)(1)(ii) and 50 percent of the unadjusted fee schedule amount for the area, which is the fee schedule amount in effect on December 31, 2015, increased for each subsequent year beginning in 2016 by the annual update factors specified in sections 1834(a)(14), 1834(h)(4), and 1842(s)(1)(B) of the Act, respectively, for durable medical equipment and supplies, off-the-shelf orthotics, and enteral nutrients, supplies, and equipment. We explained our rationale for a methodology that incorporates 110 percent of the national average price in our CY 2015 ESRD PPS DMEPOS final rule (79 FR 66225). We stated that we believe that a variation in payment amounts both above and below the national average price should be allowed, and we believe that allowing for the same degree of variation (10 percent) above and below the national average price is more equitable and less arbitrary than allowing a higher degree of variation (20 percent) above the national average price than below (10 percent), as in the case of the national ceiling and floor for the Prosthetic & Orthotic fee schedule, or allowing for only 15 percent variation below the national average price, as in the case of the national ceiling and floor for the DME fee schedule (79 FR 66225).

Second, we proposed to continue paying the 50/50 blended rates in rural contiguous areas; however, we proposed that the 50/50 blend will no longer be a transition rule under § 414.210(g)(9), and will instead be the fee schedule adjustment methodology for items and services furnished in these areas under § 414.210(g)(2) unless revised in future rulemaking (85 FR 70370). We proposed that the fee schedule amounts for items and services furnished in rural contiguous areas on or after April 1, 2021 or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, be adjusted so that they are equal to a blend of 50 percent of 110 percent of the national average price for the item or service determined under § 414.210(g)(1)(ii) and 50 percent of the fee schedule amount for the area in effect on December 31, 2015, increased for each subsequent year beginning in 2016 by the annual update factors specified in sections 1834(a)(14), 1834(h)(4), and 1842(s)(1)(B) of the Act, respectively, for durable medical equipment and supplies, off-the-shelf orthotics, and enteral nutrients, supplies, and equipment. We also proposed to revise § 414.210(g)(1)(v) to address the period before April 1, 2021, to say that for items and services furnished before April 1, 2021, the fee schedule amount for all areas within a State that are defined as rural areas for the purposes of this subpart is adjusted to 110 percent of the national average price determined under paragraph (g)(1)(ii) of this section. We decided to propose a policy of paying a 50/50 blend of adjusted and unadjusted rates in non-contiguous non-CBAs and in rural non-CBAs, as opposed to a different ratio (such as a 75/25 blend, which is an alternative we considered and discuss further in this section), because past stakeholder input from the DME industry has expressed support for this 50/50 blend. For instance, we proposed paying the 50/50 blend for rural and non-contiguous non-CBAs from January 1, 2019 through December 31, 2020 in our CY 2019 ESRD PPS DMEPOS proposed rule, and we finalized this policy in our CY 2019 ESRD PPS DMEPOS final rule. Most of the comments we received on the proposed rule were from commenters in the DME industry, such as homecare associations, DME manufacturers, and suppliers, and these commenters generally supported the 50/50 blended rates provisions.

Third, for items and services furnished on or after April 1, 2021 or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, in all other non-rural non-CBAs within the contiguous United States, we proposed that the fee schedule amounts be equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1)(iv) (85 FR 70370).

Accordingly, we proposed to add paragraph § 414.210(g)(9)(vi) to say that for items and services furnished in all areas with dates of service on or after April 1, 2021, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act, whichever is later, based on the fee schedule amount for the area is equal to the adjusted payment amount established under § 414.210(g) (85 FR 70370).

Thus under our proposed provision, we will continue paying suppliers significantly higher rates for furnishing items and services in rural and non-contiguous areas as compared to items and services furnished in other areas because of stakeholder input indicating higher costs in these areas, greater travel distances and costs in certain non-CBAs compared to CBAs, the unique logistical challenges and costs of furnishing items to beneficiaries in the non-contiguous areas, significantly lower volume of items furnished in these areas versus CBAs, and concerns about financial incentives for suppliers in surrounding urban areas to continue including outlying rural areas in their service areas. Previous feedback from industry stakeholders expressed concern regarding beneficiary access to items and services furnished in rural and remote areas.

Furthermore, in our analysis, we found that suppliers must travel farther distances to deliver items to beneficiaries located in super rural areas and areas outside both MSAs and micropolitan statistical areas than the distances they must travel to deliver items to beneficiaries located in CBAs (while the CBP was in effect). We also found that certain non-contiguous areas tended to have higher costs, and had smaller numbers of oxygen suppliers and beneficiaries. Rural and non-contiguous areas also have much lower volume of DMEPOS items furnished by suppliers than in CBAs, and we are also concerned that national chain suppliers or suppliers in higher populated urban areas that are currently serving rural areas may abandon these areas if they are less profitable markets due to fee

schedule adjustments and may instead concentrate on the larger markets only. We believe that this feedback as well as these findings supports a payment methodology that errs on the side of caution and ensures adequate payment for items and services furnished to beneficiaries in all rural and non-contiguous non-CBAs. We also believed that the proposed fee schedule adjustment methodologies would create an incentive for suppliers to continue serving areas where fewer beneficiaries reside and will therefore further ensure beneficiary access to items and services in these areas. We proposed to continue paying the 50/50 blended rates in rural and non-contiguous non-CBAs, and 100 percent of the adjusted payment amount established under § 414.210(g)(1)(iv) in non-rural non-CBAs in the contiguous U.S., takes into account stakeholder feedback as well as information from our previous and updated analyses of the Cures Act factors (85 FR 70371).

The proposed fee schedule adjustment methodologies rely on SPAs generated by the CBP. We only awarded Round 2021 CBP contracts to bidders in the OTS back braces and OTS knee braces product categories.[12] We did not award Round 2021 CBP contracts to bidders that bid in any other product categories that were included in Round 2021 of the CBP, therefore, CMS does not have any new SPAs for these items and services. As a result, we stated in the November 2020 proposed rule that we were seriously considering whether to simply extend application of the current fee schedule adjustment transition rules for all of the items and services that were included in Round 2021 of the CBP but have essentially been removed from Round 2021 of the CBP (85 FR 70371). That is, for non-CBAs, the fee schedule adjustment transition rules at § 414.210(g)(9) and, for CBAs and former CBAs (CBAs where no CBP contracts are in effect), the fee schedule adjustment rules at § 414.210(g)(10), would be extended until a future round of the CBP. More specifically, for non-CBAs, we proposed to extend the transition rules at § 414.210(g)(9)(iii) and (v) for items and services included in product categories other than the OTS back and knee brace product categories, and, for these same items and services furnished in CBAs or former CBAs, we proposed to extend the rules at § 414.210(g)(10), until such product categories are competitively bid again in a future round of the CBP (85 FR 70371). In this situation, we stated that the proposed fee schedule adjustments discussed previously in the November 2020 proposed rule and in this final rule would only apply to OTS back braces and OTS knee braces furnished in non-CBAs on or after April 1, 2021 (85 FR 70371) . However, as we discussed previously in this final rule, now that April 1, 2021 has passed, but the PHE is still ongoing, and this rule has yet to be finalized, we are finalizing the proposed language with a technical edit to reference the effective date specified in the **DATES** section of this final rule to reflect the new effective date.

In short, beginning on the effective date specified in the **DATES** section of this final rule or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act, whichever is later, there would be several different fee schedule adjustment methodologies in effect, depending on where an item or service is furnished, and whether CMS has awarded Round 2021 CBP contracts for that item or service. For OTS back braces and OTS knee braces included in Round 2021 of the CBP and furnished in CBAs, payment would be made in accordance with the methodologies described in 42 CFR 414.408. For OTS back braces and OTS knee braces included in Round 2021 of the CBP and furnished in rural and non-contiguous non-CBA areas, payment would be made in accordance with the methodologies we have proposed in the November 2020 proposed rule (85 FR 70371) and discuss in this final rule at § 414.210(g)(2). For OTS back braces and OTS knee braces included in Round 2021 of the CBP furnished in non-rural and contiguous non-CBA areas, payment would be made using the methodologies described in 42 CFR 414.210(g)(1)(iv).

For items and services included in the product categories that have essentially been removed from Round 2021 of the CBP, payment would be based on the methodologies described in 42 CFR 414.210(g)(10) when such items and services are furnished in CBAs or former CBAs. When such items and services are furnished in rural and non-contiguous non-CBAs, payment would be based on the methodologies we proposed at 42 CFR 414.210(g)(2) and the methodology at 42 CFR 414.210(g)(4). In non-rural and contiguous non-CBA areas, payment for these items and services would be based on the methodologies described in 42 CFR 414.210(g)(1)(iv) and the methodology at (g)(4). CMS welcomed comment on whether the transition rules at § 414.210(g)(9) and fee schedule adjustment rules at § 414.210(g)(10) should continue for these items and services that have essentially been removed from Round 2021 of the CBP. Specifically, we invited comment on whether we should extend the transition rules at § 414.210(g)(9)(iii) and (v) for items and services furnished in non-CBAs and included in product categories other than the OTS back and knee brace product categories, and, for these same items and services furnished in CBAs or former CBAs, whether we should extend the rules at § 414.210(g)(10), until such product categories are competitively bid again in a future round of the CBP.

Comment: Several commenters supported paying the 50/50 blended rates in rural and non-contiguous non-CBAs on a permanent basis. A few commenters believed this methodology will better ensure beneficiary access by helping DMEPOS suppliers stay in business and account for costs related to the COVID–19 pandemic. A commenter stated that there are costs related to the pandemic that are unlikely to be eliminated by the end of the COVID–19 public health emergency, and they thus support a permanent extension of the current rural non-CBA blended rates. A commenter stated they appreciated that the proposal would bring stability to DMEPOS suppliers by eliminating the transitional nature of these rates and making them part of the fee schedule adjustment methodology until revised in future rulemaking. A commenter supported higher payments in rural areas, and stated they supported the proposal that for DME items and services furnished before April 1, 2021, the fee schedule amount for all areas within a State that are defined as rural areas would be adjusted to 110 percent of the national average price.

Response: We thank the commenters for support of our proposal. In finalizing this fee schedule adjustment methodology, we aim to ensure that suppliers are incentivized to serve beneficiaries in rural and non-contiguous non-CBAs.

We agree that higher payments can better ensure access to items and services and maintain, if not increase, a supplier's willingness to furnish items and services. We do point out however that higher payments to suppliers results in higher cost sharing for beneficiaries, which could negatively affect access to DMEPOS items and services if beneficiaries decide to forego such items and services due to higher cost sharing.

Regarding comments supporting a permanent adoption of the 50/50 blended rates in rural and non-contiguous non-CBAs, as well as the

[12] The link to the announcement is *https://www.cms.gov/files/document/round-2021-dmepos-cbp-single-payment-amts-fact-sheet.pdf.*

comment appreciating that this methodology will no longer be a transition rule under § 414.210(g)(9), we note that although we are finalizing our proposal to pay 50/50 blended rates in the rural and non-contiguous non-CBAs, as we further discuss in section ''E. Provisions of Final Rule'' of this final rule, we will likely be revisiting this issue and the fee schedule adjustment methodologies for all items in all areas again in the future. Furthermore, regarding commenter's concerns about the potential for lasting COVID–19 pandemic costs, and the permanence of the 50/50 blended rate fee schedule adjustment methodology, we are unsure of the extent to which COVID–19 has affected the costs of furnishing DMEPOS and whether such costs will indeed be permanent. For example, we have not seen any significant changes in assignment rates across the country, and we consider assignment rates to be indicative of the sufficiency of payment to cover a supplier's costs for furnishing DMEPOS items and services to Medicare beneficiaries. We will continue to monitor payments in rural and contiguous areas and all non-CBAs, as well as health outcomes, assignment rates, and other information in such areas.

Regarding the comment supporting our proposal that for DME items and services furnished before April 1, 2021, the fee schedule amount for all areas within a State that are defined as rural areas would be adjusted to 110 percent of the national average price, we note that the effective date for this final rule will now be the effective date specified in the **DATES** section of this final rule rather than April 1, 2021. Additionally, the COVID–19 PHE was renewed, effective on October 18, 2021.

As a result, we are finalizing the language as proposed with a technical edit to now address the period before the effective date specified in the **DATES** section of this final rule, instead of before April 1, 2021. Specifically, for items and services furnished before the effective date specified in the **DATES** section of this final rule, the fee schedule amount for all areas within a State that are defined as rural areas for the purposes of this subpart is adjusted to 110 percent of the national average price determined under paragraph (g)(1)(ii) of this section. In the November 2020 proposed rule, we proposed to reference April 1, 2021 in the revised § 414.210(g)(1)(v). However, as we previously discussed in this final rule, April 1, 2021 has passed and the PHE is still ongoing. Because this rule has not finalized yet, we are finalizing the proposed regulation text with a technical edit to reference the effective date specified in the **DATES** section of this final rule rather than the April 1, 2021 effective date.

Comment: A commenter believed that the closer the rates are to the 2015 unadjusted fee schedule, the more innovation there would be from providers.

Response: We thank the commenter for their comment. The commenter did not elaborate on why they believed the closer the rates are to the 2015 fee unadjusted fee schedule, the more innovation there would be from providers. Nevertheless, we are not aware of, nor do we believe there is a link between innovation and the 2015 fee schedule. In fact, the Government Accountability Office (GAO) and the HHS Office of Inspector General (OIG) have published numerous reports detailing how the unadjusted fee schedule amounts were higher, often significantly, than the amounts that suppliers paid to purchase products from manufacturers and wholesalers, the list prices on suppliers' websites, and the amounts paid by private payers and other government purchasers.[13] We do not think using the 2015 fee schedule rates leads to innovation.

Comment: Some commenters, in expressing their support of the proposed 50/50 blended rates in rural and non-contiguous non-CBAs, highlighted differences between rural and urban areas. A commenter stated that non-urban costs-to-serve is higher due to labor/drive times, use of higher cost third party distribution services, and lower equipment return rates. A commenter also discussed their hiring practices and associated labor costs, stating that employing individuals they deemed to be qualified in areas outside of the metropolitan areas is more challenging and costlier because of a limited pool of qualified individuals in these areas. Another commenter stated that Medicare beneficiaries in rural areas are geographically dispersed, hard to reach, and do not have the same access to systems of care available in more populated areas. The commenter stated that tough terrain, long distances between patients and providers/suppliers, and fewer health care resources mean that DME suppliers must incur added costs to deliver the appropriate medical equipment and supplies to patients on a timely basis. The commenter stated that this translates into added costs for transportation, delivery and clinical staff, fuel, and other expenses. The commenter stated that extension of the blended rates promotes access for beneficiaries in rural areas, making it less likely suppliers will be forced to close or stop providing DME to Medicare beneficiaries, and that they provide choices to beneficiaries to select from among a greater number of DME suppliers, as well as a greater variety of brand-name items and services that may meet their needs better than others.

Response: We have presented our analysis of factors that affect the cost of furnishing DMEPOS items and services in rural areas (areas outside MSAs) versus non-rural areas (MSAs) in past rulemaking (83 FR 57025) and in the preamble of the proposed rule and this final rule. While the data shows that the volume of items furnished in CBAs and MSAs is higher than the volume of items furnished in areas outside MSAs, the data we analyzed indicates that other factors such as: Labor rates/wages; gasoline prices; rent, utilities and other overhead costs; average travel time and distances; etc., suggest that these costs are higher in CBAs and MSAs than in areas outside MSAs. We have not been able to definitively conclude that the overall costs of furnishing DMEPOS items and services are higher or lower in rural areas than in other areas. However, for now, we believe it is necessary to continue paying the higher rates to suppliers for furnishing items in rural and non-contiguous areas to maintain access to DMEPOS items and services in these more remote areas.

Comment: Several commenters stated that the fee schedule rates for non-rural areas should be at a 75/25 blended rate. Commenters stated that the 75/25 blended rates that are currently in effect in non-rural contiguous non-CBAs, in accordance with section 3712(b) of the CARES Act, should continue even after the public health emergency ends. A commenter supported continuing the 75/25 blend, and to phase in the full fee schedule adjustments in these areas beginning January 1, 2024. A commenter clarified that the 75 percent portion should be based on the current rates in former CBAs, and the 25 percent portion of the blended payment formula should be based on the unadjusted fee schedule. A few commenters stated that the current rates were developed via a flawed auction bid methodology, and they were based on pre-pandemic demand and cost structure. A commenter stated that this payment should last not just through the end of the public health emergency, but until the product categories can be re-bid under a program structured to reflect

[13] *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/jun18_medpacreporttocongress_rev_nov2019_note_sec.pdf.*

what they say are true market conditions. Another commenter stated the 75/25 blended rates will ensure suppliers can continue to provide critical DME to beneficiaries as suppliers encounter increased costs and a different market as a result of the pandemic. A few commenters stated that there are costs related to the pandemic that are unlikely to be eliminated by the end of the public health emergency, and they thus support a permanent extension of the current non-rural non-CBA blended rates.

A few commenters also stated concerns regarding access to home respiratory services, including oxygen. For instance, commenters discussed how the COVID–19 PHE has caused more patients to receive home respiratory therapy. Commenters were unsure how many of these patients would require home respiratory therapy on a long-term basis, and that it was therefore important that CMS establish payment rates that will sustain DME and home respiratory therapy suppliers now and over the longer term.

Response: Section 3712 of the CARES Act (Pub. L. 116–136) specifies the payment rates for certain DME and enteral nutrients, supplies, and equipment furnished in non-CBAs through the duration of the emergency period described in section 1135(g)(1)(B) of the Act. Section 3712(a) of the CARES Act continued our policy of paying the 50/50 blended rates for items furnished in rural and non-contiguous non-CBAs through December 31, 2020, or through the duration of the emergency period, if longer. Section 3712(b) of the CARES Act increased the payment rates to a 75/25 blend for DME and enteral nutrients, supplies, and equipment furnished in areas other than rural and non-contiguous non-CBAs through the duration of the COVID–19 public health emergency period.

In the May 2020 COVID–19 IFC, we stated we believed the purpose of section 3712 of the CARES Act was to aid suppliers in furnishing items under very challenging situations during the COVID–19 PHE (85 FR 27571).

Furthermore, we have long maintained that the fully adjusted rates in non-rural non-CBAs are sufficient. For instance, we indicated in the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34382) that although the average volume of items and services furnished by suppliers in non-rural non-CBAs is lower than the average volume of items and services furnished by suppliers in CBAs, the travel distances and costs for these areas are lower than the travel distances and costs for CBAs. We stated that because the travel distances and costs for these areas are lower than the travel distances and costs for CBAs, we believe the fully adjusted fee schedule amounts are sufficient.

Assignment rates were above 99 percent in non-rural contiguous non-CBAs when the fully adjusted rates were implemented. With regards to oxygen, in 2019 when we were paying the fully adjusted rates in non-rural non-CBAs, the assignment rate for oxygen was 99.95 percent. From 2020 to 2021, assignment rates for oxygen in non-rural non-CBAs were nearly identical—99.96 percent in 2020, and 99.95 percent in 2021. Additionally, when looking at non-CBAs on a national level, we have not seen evidence of a sustained increase in oxygen use as a result of the COVID–19 PHE. For all non-CBAs, the total number of claim lines for oxygen declined from 2019 to 2020 by 5.63 percent, and declined by 2.27 percent from 2020 to 2021. This is from using data through the same week in the respective year (week 42), to understand the impact of the fee schedule adjustment while accounting for claim delay.

We will continue to monitor payments in all non-CBAs, as well as health outcomes, assignment rates, and other information.

Comment: A commenter stated the rates for the non-rural non-CBAs should increase at least to the clearing price (or to the maximum winning bids) of the ''old'' SPA, or an additional 5–10 percent, to account for an increase in costs of raw materials, production, and supply chain. The commenter stated that they expected SPAs to increase under the new bidding methodologies we finalized in the CY 2019 ESRD PPS DMEPOS final rule, and that the non-rural non-CBA rates should reflect these expected increases.

Another commenter stated CMS should apply an adjustment to the pricing methodology to offset the lack of volume increase in the non-rural non-CBAs.

Response: We continue to believe that the fully adjusted rates in non-rural non-CBAs are sufficient and that paying any additional amount once the PHE ends would be unnecessary. We will continue to monitor payments in these and all non-CBAs, including health outcomes, assignment rates, and other information.

Comment: A commenter stated CMS should extend the 50/50 blended rates to non-rural, non-CBAs to ensure that beneficiaries have appropriate access and choice of quality DME items and services, including OTS orthoses subject to competitive bidding for the first time.

Response: As noted previously, once the PHE ends, we believe paying fee schedule amounts equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1)(iv) in non-rural contiguous non-CBAs will be sufficient. Assignment rates were above 99 percent in these areas when the fully adjusted rates were implemented. We will continue to monitor payments in these and all non-CBAs, including health outcomes, assignment rates, and other information.

Comment: A few commenters discussed how in a bidding program, there is a guarantee that there will be fewer competitors and larger volume of business, but that does not exist in non-bid areas and therefore there is no logical nexus between rates established in CBAs and the costs to serve in non-CBAs. The commenters also cited concern with the steady decreasing number of DME suppliers across the country, and stated it indicates a dwindling number of suppliers and real potential access issues.

Response: We believe there is a logical nexus between rates established in CBAs and the costs to furnish items in non-CBAs. We believe the 99 percent assignment rate in non-CBAs is a strong indication that there is a logical nexus between CBAs and the costs to furnish items in non-CBAs. As we noted in the November 2020 proposed rule, we consider assignment rates as a source of cost data and consider it a measure of the sufficiency of payment to cover a supplier's costs for furnishing items and services under the Medicare program (85 FR 70366). Assignment rates for items subject to the fee schedule adjustments have not varied significantly around the country, and they have consistently remained over 99 percent in all areas. Thus, for the overwhelming majority of claims for items and services furnished in the non-CBAs that were subject to the fee schedule adjustments, suppliers have decided to accept the Medicare payment amount in full, and have not needed to charge the beneficiary for any additional costs that the Medicare allowed payment amount did not cover. We also have not seen evidence of fee schedule adjustments causing access issues, but we will continue to monitor for any such issues. Finally, we note that the number of enrolled DMEPOS suppliers increased by 2 percent from 86,061 in 2019 to 87,800 in 2020, the highest total since 2016 when the total number of enrolled DMEPOS suppliers was 88,786. There are therefore still many DMEPOS supplier locations throughout the

country furnishing DMEPOS items and services.

Comment: The commenters shared the changes they have experienced as a result of the COVID–19 pandemic, as well as their recommendations for what the payment rates should be in the former CBAs. Several commenters stated they oppose extending the application of the current fee schedule adjustment transition rules for all of the items and services that were included in Round 2021 of the CBP but were effectively removed from Round 2021 of the CBP. A few commenters cited the COVID–19 pandemic as a reason for opposing extending the transition period and rates, saying that these rates were based on pre-PHE demand, and that fee schedule adjustments should reflect a new environment suppliers and manufacturers are facing as a result of the COVID–19 pandemic. Commenters stated additional costs from increased freight and other supply chain costs, shipping delays, hazard pay for direct care employees, personal protective equipment (PPE), and software and hardware to enable employees to work remotely. Commenters stated that these additional costs will likely continue throughout the pandemic, and may continue post-pandemic. A few commenters stated that SPAs were developed via a flawed auction bid methodology, and were outdated. A commenter recommended that the rates in former CBAs should reflect those established for Round 2 and Round 1 re-compete, updated by the CPI–U for each year since then. The commenter stated that setting the SPAs at these prior rates will provide suppliers with an increase that is necessary to reflect the 2020 change in the market.

Many commenters stated payment rates in the former CBAs should be based on a 90/10 blended payment formula, with the 90 percent based on the current payment rates in former CBAs (including the CPI–U updates), and the 10 percent based on the 2015 unadjusted fee schedules. Commenters stated that setting the rates based upon a 90–10 blended rate would provide for a modest increase to compensate for what they say is a flawed SPA setting methodology, for rates they say are 6 years old in a market they say has changed over those years, and for what they say are increased costs caused by the COVID–19 pandemic. A commenter stated that rates in former CBAs should at least be increased to the clearing price of those former bid program amounts.

Response: Per § 414.210(g)(10), during a temporary gap in the entire DMEPOS CBP and National Mail Order CBP or both, the fee schedule amounts for items and services that were competitively bid and furnished in areas that were competitive bidding areas at the time the program(s) was in effect are adjusted based on the SPAs in effect in the competitive bidding areas on the last day before the CBP contract period of performance ended, increased by the projected percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the 12-month period ending on the date after the contract periods ended. If the gap in the CBP lasts for more than 12 months, the fee schedule amounts are increased once every 12 months on the anniversary date of the first day of the gap period based on the projected percentage change in the CPI–U for the 12-month period ending on the anniversary date.

We do not agree that increasing the adjusted fee schedule amounts for items and services furnished in the former CBAs based on a 90/10 blended payment formula is necessary. The assignment rate for the vast majority of the items and services that were included in Round 2021 of the CBP has remained around 99 percent in the former CBAs in 2020 and 2021. If the costs to furnish DMEPOS items and services in the former CBAs increased as a result of COVID–19 or the DME market has fundamentally changed as a result of the COVID–19 pandemic to the point where the current payment rates are insufficient, we believe this would be reflected in the assignment rates and assignment rates would decrease across a variety of former CBAs and product categories in 2020 and 2021. However, that has not happened. For instance, when looking at the monthly assignment rate for oxygen in 2020 (the assignment rates of all former CBAs aggregated, with claims data through May 14, 2021), every month in 2020 had an assignment rate of 99 percent.

Further, in 2021, the assignment rate has remained the same except for the months of March and April, in which there was 100 percent assignment. Finally, in response to comments saying that setting the rates based upon a 90–10 blended rate would provide for a modest increase to compensate for a flawed SPA calculation methodology, and 6-year-old rates in a changed market, we would like to note that it has not been 6 years since the last CBP contract performance period ended.

Until the next round of the CBP commences, we believe the payment rates set forth in § 414.210(g)(10) for the former CBAs will be sufficient, but we will continue to monitor for any issues.

Comment: A few commenters supported the proposal for CBAs and former CBAs (CBAs where no CBP contracts are in effect), in which the fee schedule adjustment rules at § 414.210(g)(10) would be extended until a future round of the CBP.

Response: We thank the commenters for their support of our proposal.

Comment: A couple of commenters requested that given concerns and uncertainty caused by the COVID–19 pandemic, CMS should postpone the implementation of the fee schedule adjustment methodologies in non-CBAs for the orthotics, back and knee braces included in Round 2021 of the CBP. The commenters stated that they should be paid at the unadjusted fee schedule amount for furnishing such items outside of CBAs. The commenters stated there are significant differences between the provision of DME and O&P care in urban/suburban areas and the rural or non-contiguous areas that make up the majority of non-CBAs. For instance, a commenter discussed how Medicare beneficiaries in rural areas are geographically dispersed, hard to reach, and do not have the same access to systems of care available in more populated areas. The commenter stated that tough terrain, long distances between patients and providers/suppliers, and fewer health care resources mean that DME suppliers must incur added costs to deliver the appropriate medical equipment and supplies to patients on a timely basis. The commenter stated this translates into added costs for transportation, delivery and clinical staff, fuel, and other expenses.

Response: We have been closely monitoring the implementation of Round 2021 of the CBP, and have not detected any issues with the fee schedule adjustments for OTS back and knee braces. In the non-CBAs, the assignment rates for the back and knee braces included in Round 2021 of the CBP are over 99 percent. We also believe that continuing to pay for those orthotic codes at the unadjusted fee schedule amount would be fiscally imprudent as that would mean continuing to pay at rates the HHS Office of Inspector General has previously found to be grossly excessive.[14] MedPAC noted in its comments on the CY 2019 ESRD PPS DMEPOS final rule (83 FR 57035) that, ''Expanding CBP into new product categories, such as orthotics, would produce substantial savings and help

[14] *https://oig.hhs.gov/oas/reports/region5/51700033.pdf.*

prevent fraud and abuse.'' [15] MedPAC, when discussing the history of DMEPOS payment methods, has also noted that excessively high payment rates increased expenditures and likely encouraged inappropriate utilization.[16] This is of particular relevance because of recent past instances of fraud involving orthotic braces.[17] [18]

We believe fee schedule adjustments for these items and services are appropriate, and we would like to note that such adjustments are mandated by section 1834(a)(1)(F) of the Act. We will continue to monitor for any issues.

Comment: A commenter stated there were flaws in the data CMS presented, such as not having a control group to see if data like ER admission rates are relative to DMEPOS changes or other trends like pressure on hospitals from CMS to decrease readmissions or face penalties.

Response: We believe our health outcomes monitoring data are robust and a valuable tool. We compare historical health outcomes data between CBAs, non-rural non-CBAs, and rural CBAs in the same BEA region. Thus, we do see if health outcomes changes are unique to certain BEA regions or areas within those regions, and if they track with other BEA regions or other areas within the same BEA region. We also compare historical health outcomes data for non-contiguous non-CBAs and non-contiguous CBAs.

As we indicated in the November 2020 proposed rule, we monitor mortality rates, hospitalization rates, ER visit rates, SNF admission rates, physician visit rates, monthly days in hospital, and monthly days in SNF (85 FR 70368). Except for death information, which comes from the Medicare Enrollment Database, all other outcomes are derived from claims (inpatient, outpatient, Part B carrier, and SNF). Our monitoring materials cover historical and regional trends in these health outcome rates across a number of populations, allowing us to observe deviations that require further drilldown analyses. We monitor health outcomes in the enrolled Medicare population (Medicare Parts A and B), dual Medicare and Medicaid population, long-term institutionalized population, as well as various DME utilizers and access groups. This helps paint a complete picture of whether an increase in an outcome is across the board (not linked to DME access), or is unique to certain populations. Specifically, we focus on any increases that are unique to the DME access groups, which include beneficiaries who are likely to use certain DME based on their diagnoses, and we would conduct drilldown analyses and policy research to pinpoint potential reasons for such increases.

Additionally, our health outcomes monitoring data is but one piece of multiple sources of data that we use to analyze the effects of the fee schedule adjustments. We also analyze assignment rates, total services, total services by supplier, travel distance, and other data to provide a more complete picture on the effects of the fee schedule adjustments.

Comment: A commenter discussed the assignment rate data that continues to be above 99 percent in non-CBAs, saying the increase in assignment rate over time does not surprise them, as the commenter, a DME supplier, says customers choose to pay cash for common affordable items, such as walkers, instead of pursuing a prescription or documentation as it is not worth the time and hassle. The commenter stated that if a beneficiary sees a doctor for a walker, in order for the beneficiary to get reimbursed for the walker, the beneficiary will likely have to schedule another visit for the more major health issues they are experiencing, as the commenter stated most doctors now only address one issue at a time, and that this will never be measured in the CMS data.

Response: Although there could be a situation in which a beneficiary elects to pay cash for some DME items, we do not believe this explains the consistently high assignment rates across different parts of the country for prolonged periods of time. High assignment rates preceded the fee schedule adjustments, and high assignment rates have continued even after the fee schedule adjustments have been in effect for the last several years. We believe the high assignment rates are an indication that the payment rates are sufficient and that assignment rates are a valuable tool in monitoring the effects of the fee schedule adjustments.

Comment: Commenters shared their concerns in regards to beneficiary complaints and patient choice of equipment. Specifically, a commenter stated its hypothesis that beneficiary complaints to CMS have decreased because beneficiaries have become resigned to accept low quality products because the commenter, a DME supplier, has told beneficiaries they cannot afford to buy the name brand products at the rates Medicare pays. The commenter also stated that spending an hour navigating through call centers to complain about the big national and regional chains where they are being consolidated is fruitless. Additionally, the commenter stated that complaining to CMS is fruitless if the beneficiary does not like the one option offered by a supplier accepting assignment, and that beneficiaries accept what they can get and if it does not work they come back and buy the nice piece of equipment out of pocket. The commenter also stated that suppliers will continue to consolidate, and that beneficiaries will continue to have fewer options not just in terms of suppliers, but in DMEPOS products. Another commenter expressed concern that suppliers have stopped carrying specific items for which Medicare payments are too low, and stated that they have seen many essential items such as heavy-duty walkers are not well reimbursed and thus it is harder to find a DME supplier that carries one and will sell to Medicare patients.

Response: We recognize the value of and encourage beneficiaries to communicate any complaints about their DME to Medicare. More information on filing a complaint about DME can be found here: *https://www.medicare.gov/claims-appeals/file-a-complaint-grievance/complaints-about-durable-medical-equipment-dme.*

With regard to patient choice and suppliers supplying specific equipment, we believe the situations the commenters describe underscore one of the many benefits of the DMEPOS CBP. We also believe that expanding the CBP into additional areas of the country would provide these benefits to more beneficiaries and could work towards addressing some of the concerns the commenters have expressed.

The Medicare Learning Network Fact Sheet MLN900927 titled, ''DMEPOS Competitive Bidding Program Referral Agents'' discusses some of these benefits that are relevant to those situations the commenters describe.[19]

In particular, and as discussed in MLN900927, the CBP includes a beneficiary safeguard to ensure that beneficiaries have access to specific

[15] *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/comment-letters/08312018_esrd_cy2019_dme_medpac_comment_v2_sec.pdf.*

[16] *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/jun18_medpacreporttocongress_rev_nov2019_note_sec.pdf.*

[17] *https://www.justice.gov/opa/pr/federal-indictments-and-law-enforcement-actions-one-largest-health-care-fraud-schemes.*

[18] *https://www.justice.gov/opa/pr/five-individuals-charged-roles-65-million-nationwide-conspiracy-defraud-federal-health-care.*

[19] *https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/DME_Ref_Agt_Factsheet_ICN900927.pdf.*

brands when needed to avoid an adverse medical outcome. This safeguard, which is sometimes called the Physician Authorization Process, allows a physician (including a podiatric physician) or treating practitioner (that is, a physician assistant, clinical nurse specialist, or nurse practitioner) to prescribe a specific brand or mode of delivery to avoid an adverse medical outcome. The physician or treating practitioner must document in the beneficiary's medical record the reason why the specific brand is necessary to avoid an adverse medical outcome. This documentation, which would be in the physician's order and notes, must include all of the following:

- The product's brand name.
- The features that this product has versus other brand name products.
- An explanation of how these features are necessary to avoid an adverse medical outcome.

If a physician or treating practitioner prescribes a particular brand for a beneficiary to avoid an adverse medical outcome, the contract supplier must, as a term of its contract, ensure that the beneficiary receives the needed item. The contract supplier has three options:

- The contract supplier can furnish the specific brand as prescribed.
- The contract supplier can consult with the physician or treating practitioner to find another appropriate brand of item for the beneficiary and obtain a revised written prescription.
- The contract supplier can assist the beneficiary in locating a contract supplier that will furnish the particular brand of item prescribed by the physician or treating practitioner.

If the contract supplier cannot furnish the specific brand and cannot obtain a revised prescription or locate another contract supplier that will furnish the needed item, the contract supplier must furnish the item as prescribed. We discuss this particular issue further in the final rule we published in the **Federal Register** on April 10, 2007 titled ''Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues'' (72 FR 18064).

A contract supplier is prohibited from submitting a claim to Medicare if it provides an item other than that specified in the written prescription. Any change in the prescription requires a revised written prescription. In addition, contract suppliers are required to accept assignment for items they furnish to Medicare beneficiaries.

Comment: A commenter questioned why the total number of DMEPOS services had been increasing from 2016 to 2018 despite a decline in enrolled beneficiaries. The commenter posited several theories for this increase, including the notion that it is because items supplied have decreased in quality and require more frequent replacement, the surviving regional and national suppliers know that they can only be profitable when ''up-selling'' customers to accept all eligible accessories and supplies when dispensing, that technology advances have allowed for an increase in resupply rates, and that there is rampant fraud resulting in billions of dollars of claims. Finally, the commenter questioned whether the numbers would look different if all the fraud-related items and suppliers were not in this data.

Response: We have been monitoring claims and health outcomes data such as deaths, emergency room visits, physician office visits, hospital and nursing home admissions and lengths of stay, etc., very closely since the fee schedule adjustments were implemented in 2016 and have not seen any signs that health outcomes have been negatively affected by the fee schedule adjustments. Overall, health outcomes have remained the same or have improved since 2016, and this is an indication that there has not been a decrease in the quality of DMEPOS items and services furnished. Although we know that a certain percentage of Medicare claims for DMEPOS items and services are fraudulent, we do not currently have data to determine whether fee schedule adjustments have had any impact on the number of fraudulent claims furnished for DMEPOS items and services.

In the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 57032), we discussed utilization trends in the non-CBAs for the 2016 to 2018 time period. In particular, we noted that while utilization of DME varied throughout area and by particular item, the number of total services increased from 2016 to 2017 (2.05 percent), and from 2017 to 2018 (3.08 percent) when looking at the number of total services furnished through week 34 of the respective year. We noted that there had been a persistent increase in total volume of services furnished in non-CBAs from 2016 to 2018, and that this was driven by an increase in CPAP/RADs. All other products exhibited either a continuous decline from 2016 through 2018, or at least a decline from 2017 to 2018.

When looking at updated data from 2019 to 2020 and 2020 to 2021 (using data through the same week in the respective year—week 42—to understand the impact of the fee schedule adjustment while accounting for claim delay), the total number of claim lines for all items and services subject to fee schedule adjustments in the non-CBAs slightly decreased, and we believe COVID–19 likely played a role in this decrease. For instance, researchers have documented that in 2020 there was a decrease in health care utilization as a result of the COVID–19 pandemic.[20] [21]

From 2019 to 2020, the only product categories that experienced an increase in total number of claim lines were CPAP device and supplies, infusion pump and supplies, and insulin infusion pump and supplies. For example, for CPAP device and supplies, the total number of claim lines increased by 3.43 percent from 2019 to 2020 (when using data through week 42 of the respective year). From 2020 to 2021, only the transcutaneous electrical nerve stimulation (TENS) product category experienced an increase in total number of claim lines with a 0.78 percent increase.

Comment: Commenters provided insights into our travel distance analysis. Specifically, a commenter stated that the travel distance analysis CMS presented in the November 2020 proposed rule, which presented the average number of miles between suppliers and beneficiaries, does not accurately reflect their business network, nor service and clinical support infrastructure. For instance, the commenter stated that while their patients do receive services directly to their home, the majority of services are delivered to the hospital or outpatient setting at the time of discharge. The commenter stated they also maintain distribution centers to allow shipment of ongoing supplies as needed, and that often their central distribution warehouses are used to ship on behalf of the service billing locations. Another commenter stated that average travel distance to furnish items and services to beneficiaries in 2017 was far greater outside of CBAs than in CBAs.

Response: We appreciate learning about the nature of the commenter's business network and how it effects their travel distance for furnishing services to beneficiaries. Section 16008 of the Cures Act requires us to conduct a comparison of several factors with respect to non-CBAs and CBAs, and one of those factors is the average travel distance and cost associated with

[20] *https://www.healthsystemtracker.org/chart-collection/how-have-healthcare-utilization-and-spending-changed-so-far-during-the-coronavirus-pandemic/#item-covidcostsuse_marchupdate_4.*

[21] *https://aspe.hhs.gov/pdf-report/Medicare-FFS-Spending-Utilization.*

furnishing items and services in the area. The kind of travel that the commenter experiences may be true for their particular company. However, past stakeholder input from the DME industry has often focused on the travel distances DME suppliers travel to reach beneficiaries' homes, particularly in rural areas. As such, that is why we decided to focus on the travel distance between the beneficiary's residential ZIP code and the supplier's ZIP code. With regard to the commenter saying that the average travel distance to furnish items and services to beneficiaries in 2017 was far greater outside of CBAs than in CBAs, our data does not show that to be the case, unless looking at specific types of areas. As we found in the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34367 through 34371) and in the November 2020 proposed rule (85 FR 70366), travel distances were only greater in certain non-CBAs, which included Frontier and Remote (FAR), OCBSAs, and Super Rural areas.

D. Alternatives Considered but Not Proposed

We considered, but did not propose, three alternatives to our provisions and we sought comments on these alternatives:

1. Adjust Fee Schedule Amounts for Super Rural Areas and Non-Contiguous Areas Based on 120 Percent of the Fee Schedule Amounts for Non-Rural Areas

Under the first alternative, we considered prior suggestions from stakeholders to use the ambulance fee schedule concept of a ''super rural area'' when determining fee schedule adjustments for non-CBAs (85 FR 70371). Specifically, we considered the provision to eliminate the definition of rural area at § 414.202 and 42 CFR 414.210(g)(1)(v), which brings the adjusted fee schedule amounts for rural areas up to 110 percent of the national average price determined under § 414.210(g)(1)(ii). In place of this definition and rule, we considered the provision for an adjustment to the fee schedule amounts for DMEPOS items and services furnished in super rural non-CBAs within the contiguous U.S. equal to 120 percent of the adjusted fee schedule amounts determined for other, non-rural non-CBAs within the same State. For example, the adjusted fee schedule amount for super rural, non-CBAs within Minnesota would be based on 120 percent of the adjusted fee schedule amount (in this case, the regional price) for Minnesota established in accordance with § 414.210(g)(1)(i) through (iv). Consistent with the ambulance fee schedule rural adjustment factor at § 414.610(c)(5)(ii), we considered defining ''super rural'' as a rural area determined to be in the lowest 25 percent of rural population arrayed by population density, where a rural area is defined as an area located outside an urban area (MSA), or a rural census tract within an MSA as determined under the most recent version of the Goldsmith modification as determined by the Federal Office of Rural Health Policy at the Health Resources and Services Administration. Per this definition and under this alternative rule, certain areas within MSAs would be considered super rural areas whereas now they are treated as non-rural areas because they are located in counties that are included in MSAs. For all other non-CBAs, including areas within the contiguous U.S. that are outside MSAs but do not meet the definition of super rural area, we considered adjusting the fee schedule amounts using the current fee schedule adjustment methodologies under § 414.210(g)(1) and § 414.210(g)(3) through (8).

In addition to addressing past stakeholder input, this alternative approach would provide a payment increase that is somewhat higher than, but similar to the 17 percent payment differential identified by stakeholders in 2015 based on a survey of respiratory equipment suppliers.[22] In addition, we have received input from suppliers that serve low population density areas within MSAs that are not CBAs. These stakeholders claim that they are serving low population density areas that are not near to or served by suppliers located in the urban core areas of the MSA and believe they must receive higher payments than suppliers serving the higher population density areas of the MSA. Under the alternative fee schedule adjustment methodology, if these low population density areas were to meet the definition of super rural area, they would receive a 20 percent higher payment than areas that are not super rural areas. This alternative payment rule would address these concerns with how the current payment rules and definition of rural area affect these areas, and would target payments for those rural areas that are low population density areas, regardless of whether they are located in an MSA or not. This approach would also address concerns raised from stakeholders on the March 23, 2017 call regarding the cost of traveling long distances to serve far away, remote areas.

Under this alternative, § 414.210(g)(2), which addresses fee schedule adjustments for DMEPOS items and services furnished in non-contiguous areas, would be replaced with a new rule that adjusts the fee schedule amounts for non-contiguous areas based on the higher of 120 percent of the average of the SPAs for the item or service in CBAs outside the contiguous U.S. (currently only Honolulu, Hawaii), or the national average price determined under § 414.210(g)(1)(ii).

Comment: A couple commenters stated that while they did not support the alternative of adjusting the fee schedule amounts for super rural and non-contiguous areas based on 120 percent of the fee schedule amounts for non-rural areas, they recommend eliminating the fee schedule amounts for rural areas up to 110 percent of the national average price determined under § 414.210(g)(1)(ii)) and maintaining the 50/50 blend, but replacing the current rural definition (and corresponding ZIP codes) by including the ''super rural'' ZIP codes within the current array of rural ZIP codes. The commenters stated that because certain areas within MSAs are treated as non-rural areas, as they are located in counties that are included in MSAs, the commenters were concerned that the current array of suppliers in higher populated urban areas that are currently serving these rural areas within an MSA may abandon these areas if they are less profitable.

Response: Although we are not finalizing this particular alternative that we considered, we acknowledge the commenters' recommendations regarding this particular alternative and we will keep these points in mind for future consideration.

Comment: A commenter stated it would not be appropriate to adjust the fee schedule amounts relying on the geographic designations used in the Ambulance Fee Schedule, or suggested rates based on industry data from 2015. The commenter stated many things have changed since 2015 that have affected the costs of furnishing items and services, including the COVID–19 pandemic and the increased costs of personal protective equipment (PPE), supply shortages, and personnel costs. The commenter also stated that the Census Bureau has shifted to a sampling methodology that impacts the RUCAs, which has changed the way the ZIP code designations are calculated under the Ambulance Fee Schedule, and that they were concerned that these changes have led super-rural areas and rural areas being designated as urban. The

[22] *https://www.cqrc.org/img/CQRCCostSurveyWhitePaperMay2015Final.pdf.*

commenter stated that before this methodology is applied to any other part of Medicare, CMS must work to address the underlying problems these changes have created.

Response: We are not finalizing this particular alternative and will keep these points in mind for future consideration.

After consideration of the public comments we received, we are not finalizing this alternative considered.

2. Establish Additional Phase-in Period for Fully Adjusted Fee Schedule Amounts for Rural Areas and Non-Contiguous Areas

We considered proposing an alternative fee schedule adjustment methodology that would establish an additional transition period to allow us to determine the impact of the new SPAs and monitor the impact of adjusted fee schedule amounts (85 FR70372). Under this alternative, we considered adjusting the fee schedule amounts for items and services furnished in rural areas and non-contiguous non-CBAs based on a 75/25 blend of adjusted and unadjusted rates for the 3-year period from April 1, 2021, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, through December 31, 2023. Such a phase-in would bring the fee schedule payment amounts down closer to the fully adjusted fee levels and allow for a 3-year period to monitor the impact of the lower rates on access to items and services in these areas before potentially phasing in the fully adjusted rates in 2024.

Comment: A commenter stated they favor the permanent extension of the current rural and non-rural non-CBA blended rates instead of the alternative phase-in of the fully adjusted fee schedule amounts discussed in the November 2020 proposed rule, as it is important for patients and suppliers to have stable rates, in their view.

Response: We did not propose to extend the 75/25 blended rates in the non-rural contiguous non-CBAs once the PHE ends. We did, however, propose a fee schedule adjustment methodology under § 414.210(g)(1) for the non-rural contiguous non-CBAs that is not time-limited, transitional, or dependent upon the next round of the CBP. We agree with the commenter that it is important to provide patients and suppliers with stable rates to the extent feasible. Of note, the fully adjusted rates had been in continuous effect in the non-rural contiguous non-CBAs from January 2017 through March 5, 2020. During that time period, the rate of assignment for items and services subject to fee schedule adjustments furnished in those areas was over 99 percent. We believe that the fully adjusted rates will be sufficient for when the PHE ends.

After consideration of the public comments we received, we are not finalizing this alternative considered.

3. Extend Current Fee Schedule Adjustments for Items and Services Furnished in Non-CBAs, CBAs, and Former CBAs That Were Included in Product Categories Removed From Round 2021 of the CBP

CMS only awarded Round 2021 CBP contracts to bidders in the OTS back braces and OTS knee braces product categories. CMS did not award Round 2021 CBP contracts to bidders that bid in any other product categories that were included in Round 2021 of the CBP, therefore, CMS does not have any new SPAs for these items and services. As a result, under this alternative, we considered whether to simply extend application of the current fee schedule adjustment rules for all of the items and services that were included in Round 2021 of the CBP but were essentially removed from Round 2021 of the CBP (85 FR 70372). Specifically, for items and services included in product categories that have essentially been removed from Round 2021 of the CBP, CMS considered extending the transition rules at § 414.210(g)(9)(iii) and (v) for items and services furnished in non-CBAs and the fee schedule adjustment rules at § 414.210(g)(10) for items and services furnished in CBAs or former CBAs until such product categories are competitively bid again in a future round of the CBP. Under this alternative, we would adjust the fee schedule amounts for items and services furnished in areas other than rural areas and non-contiguous non-CBAs in accordance with § 414.210(g)(9)(v) based on 100 percent of the adjusted rates beginning on April 1, 2021 or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, through the date immediately preceding the effective date of the next round of CBP contracts. As previously discussed in this final rule, now that April 1, 2021 has passed, but the public health emergency is still ongoing, and this rule has yet to be finalized, we are making a technical edit to reflect the new effective date for this final rule. The fee schedule amounts for items and services removed from the CBP and furnished in rural and non-contiguous non-CBAs would continue to be adjusted based on a 50/50 blend in accordance with § 414.210(g)(9)(iii) through the date immediately preceding the effective date of the next round of CBP contracts. Under, this alternative, the fee schedule adjustment transition rules under § 414.210(g)(9) would continue in effect through the date immediately preceding the effective date of the next round of CBP contracts. This alternative differs from our proposal and this final rule, as we proposed and are finalizing a fee schedule adjustment methodology for non-CBAs under § 414.210(g)(1) and (g)(2), that is not time-limited, transitional, or dependent upon the next round of the CBP.

For items and services included in product categories that have effectively been removed from Round 2021 of the CBP, the fee schedule amounts for items and services furnished in CBAs or former CBAs would continue to be adjusted in accordance with § 414.210(g)(10) through the date immediately preceding the effective date of the next round of CBP contracts. In contrast, for items and services that are included in Round 2021 of the CBP, the fee schedule amounts for such items and services would be adjusted in accordance with the adjustment methodologies outlined in this final rule; we would pay the 50/50 blended rates in rural and non-contiguous non-CBAs, and 100 percent of the adjusted payment amount established under § 414.210(g)(1)(iv) in non-rural non-CBAs in the contiguous U.S.

Comment: Commenters opposed this alternative for the reasons discussed in previous comments in section III.C. of this final rule. Most commenters opposed continuation of the current rates in the former CBAs, supported a permanent extension of the 50/50 blended rates in rural and non-contiguous non-CBAs, and opposed paying 100 percent of the adjusted payment amount established under § 414.210(g)(1)(iv) in non-rural non-CBAs in the contiguous U.S. Commenters opposed continuation of the current rates in the former CBAs saying they are based on SPAs established by a flawed bid methodology developed over 6 years ago. Instead, and as previously discussed, many commenters supported a permanent extension of the 50/50 blended rates in rural and non-contiguous non-CBAs, a 75/25 blended rate methodology in the non-rural non-CBAs in the contiguous U.S., and a 90/10 blended rate methodology in the former CBAs in which the 90 percent must be based on the current payment

rates in the former CBAs (including the CPI–U updates) and the 10 percent must be based on the 2015 unadjusted fee schedule. Finally, as previously discussed, a few commenters supported the proposal for CBAs and former CBAs (CBAs where no CBP contracts are in effect), in which the fee schedule adjustment rules at § 414.210(g)(10) would be extended until a future round of the CBP. However, these commenters did not support the non-CBA policies in this alternative considered, and instead supported a permanent extension of the 50/50 blended rates in rural and non-contiguous non-CBAs, and a 75/25 blended rate methodology in the non-rural non-CBAs in the contiguous U.S.

Response: After consideration of the public comments we received, we are not finalizing this alternative considered. As we discuss in section III.E. of this final rule titled ''Provisions of Final Rule'', we will be finalizing our proposals discussed later in this section. We expect to revisit fee schedule adjustments in the future.

E. Provisions of Final Rule

We are finalizing our proposals, with the modification of the effective date, in this final rule. In the November 2020 proposed rule, we proposed the fee schedule adjustment methodologies for items and services furnished in non-CBAs on or after April 1, 2021, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later (85 FR 70370). However, as we previously discussed in this final rule, now that April 1, 2021 has passed, and given that the COVID–19 PHE is still ongoing, we are making a technical edit to change the April 1, 2021 date to the effective date specified in the **DATES** section of this final rule to reflect the new effective date for these provisions. Other than the modification of the April 1, 2021 effective date, we are finalizing our proposals without modification.

First, we will continue paying the 50/50 blended rates in non-contiguous non-CBAs, but the 50/50 blend will no longer be a transition rule under § 414.210(g)(9), and will instead be the fee schedule adjustment methodology for items and services furnished in these areas under § 414.210(g)(2) unless revised in future rulemaking. For items and services furnished in non-contiguous non-CBAs, the fee schedule amounts for such items and services furnished on or after the effective date specified in the **DATES** section of this final rule, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, will be adjusted so that they are equal to a blend of 50 percent of the greater of the average of the SPAs for the item or service for CBAs located in non-contiguous areas or 110 percent of the national average price for the item or service determined under § 414.210(g)(1)(ii) and 50 percent of the unadjusted fee schedule amount for the area, which is the fee schedule amount in effect on December 31, 2015, increased for each subsequent year beginning in 2016 by the annual update factors specified in sections 1834(a)(14), 1834(h)(4), and 1842(s)(1)(B) of the Act, respectively, for durable medical equipment and supplies, off-the-shelf orthotics, and enteral nutrients, supplies, and equipment.

Second, we will continue paying the 50/50 blended rates in rural contiguous areas, but the 50/50 blend will no longer be a transition rule under § 414.210(g)(9), and will instead be the fee schedule adjustment methodology for items and services furnished in these areas under § 414.210(g)(2) unless revised in future rulemaking. For items and services furnished in rural contiguous areas on or after the effective date specified in the **DATES** section of this final rule or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, the fee schedule amounts will be adjusted so that they are equal to a blend of 50 percent of 110 percent of the national average price for the item or service determined under § 414.210(g)(1)(ii) and 50 percent of the fee schedule amount for the area in effect on December 31, 2015, increased for each subsequent year beginning in 2016 by the annual update factors specified in sections 1834(a)(14), 1834(h)(4), and 1842(s)(1)(B) of the Act, respectively, for durable medical equipment and supplies, off-the-shelf orthotics, and enteral nutrients, supplies, and equipment.

We note that the 50/50 blended rates for DMEPOS items and services furnished in rural and non-contiguous areas that we are finalizing in this rule are, on average, approximately 66 percent higher than the fully adjusted fee schedule amounts. Previous stakeholder input from MedPAC has indicated that the 50/50 blended rates are ''costly'' and create ''. . . a financial burden for the Medicare program and beneficiaries''. MedPAC has also previously opined on the appropriateness of the unadjusted fee schedule, which comprises 50 percent of the 50/50 blended rates. MedPAC stated, ''products not included in the CBP continue to largely be paid on the basis of the historical fee schedule, and the Commission has found many of these rates are likely excessive.'' [23] In light of this previous stakeholder input from MedPAC, we are concerned that this fee schedule adjustment methodology may result in payment amounts that are excessive compared to the fully adjusted fee schedule amounts. However, as we discussed in the November 2020 proposed rule, this fee schedule adjustment methodology errs on the side of caution, as we aim to ensure beneficiary access to items and services in rural and remote areas of the country. For instance, we proposed paying the 50/50 blend for rural and non-contiguous non-CBAs from January 1, 2019, through December 31, 2020, in our CY 2019 ESRD PPS DMEPOS proposed rule, and we finalized this policy in our CY 2019 ESRD PPS DMEPOS final rule. Most of the comments we received on this proposal were from commenters in the DME industry, such as homecare associations, DME manufacturers, and suppliers, and these commenters generally supported the 50/50 blended rates proposal.

The 50/50 blended rates were initially established for phase in purposes, so we may consider alternative methodologies for adjusting fee schedule amounts for rural and non-contiguous areas in the future. We will be undertaking analyses to assess the extent to which these payments are ''excessive'', as per MedPAC's comment. In addition, we may decide it is necessary to propose changes to the fee schedule adjustment methodologies in the future depending on potential changes to the CBP. Therefore, we will likely be revisiting this issue and the fee schedule adjustment methodologies for all items in all areas again in the future.

Third, we will revise § 414.210(g)(1)(v) to establish that for items and services furnished before the effective date specified in the **DATES** section of this final rule, the fee schedule amount for all areas within a state that are defined as rural areas for the purposes of this subpart is adjusted to 110 percent of the national average price determined under paragraph (g)(1)(ii) of this section. In the November 2020 proposed rule, we proposed to reference April 1, 2021 in the revised § 414.210(g)(1)(v). However, as we previously discussed in this final rule,

[23] *https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/comment-letters/08312018_esrd_cy2019_dme_medpac_comment_v2_sec.pdf.*

April 1, 2021, has passed and the COVID–19 PHE is still ongoing. Because this rule has yet to be finalized, the regulation text will reference the effective date specified in the **DATES** section of this final rule effective date rather than April 1, 2021.

Fourth, we are finalizing our proposal so that for items and services furnished on or after the effective date specified in the **DATES** section of this document, or the date immediately following the termination of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)) (that is, the COVID–19 PHE), whichever is later, in all other non-rural, non-CBAs within the contiguous United States, the fee schedule amounts will be equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1)(iv).

Fifth and finally, we are finalizing our proposal to add paragraph § 414.210(g)(9)(vi) to establish that for items and services furnished in all areas with dates of service on or after the effective date specified in the **DATES** section of this document, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act, whichever is later, based on the fee schedule amount for the area is equal to the adjusted payment amount established under § 414.210(g).

IV. DMEPOS Fee Schedule Adjustments for Items and Services Furnished in Rural Areas From June 2018 Through December 2018 and Exclusion of Infusion Drugs From the DMEPOS CBP

A. Overview

On May 11, 2018 we published an IFC (83 FR 21912) in the **Federal Register** titled ''Medicare Program; Durable Medical Equipment Fee Schedule Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Rural Areas and Non-Contiguous Areas''. In this section of this final rule, we will present the provisions of the May 2018 IFC followed by summation of the comments received and our responses.

Section 5004(b) of the Cures Act amended section 1847(a)(2)(A) of Act to exclude drugs and biologicals described in section 1842(o)(1)(D) of the Act from the DMEPOS CBP. In the May 2018 IFC, we made conforming changes to the regulation to reflect the exclusion of infusion drugs, described in section 1842(o)(1)(D) of Act, from items subject to the DMEPOS CBP.

As discussed in section II. of this rule, in the May 2018 IFC, we also expressed an immediate need to resume the transitional, blended fee schedule amounts in rural and non-contiguous areas, noting strong stakeholder concerns about the continued viability of many DMEPOS suppliers, our finding of a decrease in the number of suppliers furnishing items and services subject to the fee schedule adjustments, as well as the Cures Act mandate to consider additional information material to setting fee schedule adjustments based on information from the DMEPOS CBP for items and services furnished on or after January 1, 2019 (83 FR 21918). We amended § 414.210(g)(9) by adding § 414.210(g)(9)(iii) to resume the fee schedule adjustment transition rates for items and services furnished in rural and non-contiguous areas from June 1, 2018 through December 31, 2018. We also amended § 414.210(g)(9)(ii) to reflect that for items and services furnished with dates of service from January 1, 2017 to May 31, 2018, fully adjusted fee schedule amounts would apply (83 FR 21922). We also added § 414.210(g)(9)(iv) to specify that fully adjusted fee schedule amounts would apply for certain items furnished in non-CBAs other than rural and non-contiguous areas from June 1, 2018 through December 31, 2018 (83 FR 21920). We explained that we would use the extended transition period to further analyze our findings and consider the information required by section 16008 of the Cures Act in determining whether changes to the methodology for adjusting fee schedule amounts for items furnished on or after January 1, 2019 were necessary (83 FR 21918 through 21919). We respond to the comments we received on these issues later in this final rule.

B. Background

1. Background for Payment Revisions for DMEPOS

For further background regarding the DMEPOS CBP, payment methodology for CBAs, and the fee schedule adjustment methodology for non-CBAs, we refer readers to section III.A. of this final rule.

On February 26, 2014, we published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** titled, ''Medicare Program; Methodology for Adjusting Payment Amounts for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Using Information from Competitive Bidding Programs'' (79 FR 10754). In that ANPRM, we solicited stakeholder input on several factors including whether the costs of furnishing various DMEPOS items and services vary based on the geographic area in which they are furnished in relation to developing a payment methodology to adjust DMEPOS fee schedule amounts or other payment amounts in non-CBAs based on DMEPOS competitive bidding payment information.

We received approximately 185 comments from suppliers, manufacturers, professional, State and national trade associations, physicians, physical therapists, beneficiaries and their caregivers, and State government offices. Commenters generally stated that costs vary by geographic region and that costs in rural and non-contiguous areas of the U.S. (Alaska, Hawaii, Puerto Rico, etc.) are significantly higher than costs in urban areas and contiguous areas of the U.S. A commenter representing many manufacturers and suppliers listed several key variables or factors that influence the cost of furnishing items and services in different areas that should be considered. This commenter stated that information on all bids submitted under the CBP should be considered and not just the bids of winning suppliers. Some commenters expressed concern that the SPAs assume a significant increase in volume to offset lower payment amounts. Commenters also recommended phasing in the adjusted fee schedule amounts, allowing for adjustments in fees if access issues arise, and annual inflation updates to adjusted fee schedule amounts.

On July 11, 2014, we published the CY 2015 ESRD PPS proposed rule in the **Federal Register** titled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;'' (79 FR 40208) as required by section 1834(a)(1)(G) of the Act, to establish methodologies for using information from the CBP to adjust the fee schedule amounts for items and services furnished in non-CBAs in accordance with sections 1834(a)(1)(F)(ii) and 1834(h)(1)(H)(ii) of the Act. We also proposed making adjustments to the payment amounts for enteral nutrition as authorized by section 1842(s)(3)(B) of the Act.

We received 89 public comments on the proposed rule, including comments from patient organizations, patients, manufacturers, health care systems, and DME suppliers. We made changes to the proposed methodologies based on these comments and finalized a method for paying higher amounts for certain items furnished in areas defined as rural areas. In addition, we provided a 6-month fee schedule adjustment phase in period from January through June of 2016, during which the fee schedule amounts

would be based on 50 percent of the unadjusted fees and 50 percent of the adjusted fees to allow time for suppliers to adjust to the new payment rates and to monitor the impact of the change in payment rates on access to items and services. On November 6, 2014, we published the CY 2015 ESRD PPS final rule (79 FR 66223 through 66265) to finalize the methodologies at § 414.210(g) based on public comments received on the CY 2015 ESRD PPS proposed rule (79 FR 40208). A summary of the methodologies is described in section III.A. of this final rule.

To update the adjusted fee schedule amounts based on new competitions and provide for a transitional phase-in period of the fee schedule adjustments, we established § 414.210(g)(8) and (9) in the CY 2015 ESRD PPS final rule (79 FR 66263). In § 414.210(g)(8), the adjusted fee schedule amounts are updated when a SPA for an item or service is updated following one or more new DMEPOS CBP competitions and as other items are added to DMEPOS CBP. The fee schedule amounts that are adjusted using SPAs are not subject to the annual DMEPOS covered item update and are only updated when SPAs from the DMEPOS CBP are updated. Updates to the SPAs may occur as contracts are recompeted. Section 414.210(g)(9)(i), specifies that the fee schedule adjustments were phased in for items and services furnished with dates of service from January 1, 2016, through June 30, 2016, so that each fee schedule amount was adjusted based on a blend of 50 percent of the fee schedule amount if not adjusted based on information from the CBP, and 50 percent of the adjusted fee schedule amount. Section 414.210(g)(9)(ii) specifies that for items and services furnished with dates of service on or after July 1, 2016, the fee schedule amounts would be equal to 100 percent of the adjusted fee schedule amounts. Commenters recommended CMS phase in the fee schedule adjustments to give suppliers time to adjust to the change in payment amounts (79 FR 66228). Some commenters recommended a 4-year phase-in of the adjusted fees. CMS agreed that phasing in the adjustments to the fee schedule amounts would allow time for suppliers to adjust to the new payment rates and would allow time to monitor the impact of the change in payment rates on access to items and services. We decided 6 months was enough time to monitor access and health outcomes to determine if the fee schedule adjustments created a negative impact on access to items and services. Therefore, we finalized a 6-month phase-in period of the blended rates (79 FR 66228 through 66229).

We finalized the 6-month transition period from January 1 through June 30, 2016 in the CY 2015 ESRD PPS final rule (79 FR 66223) that was published in the **Federal Register** on November 6, 2014. The Cures Act was enacted on December 13, 2016, and section 16007(a) of the Cures Act extended the transition period for the phase-in of fee schedule adjustments at § 414.210(g)(9)(i) by 6 additional months so that fee schedule amounts were based on a blend of 50 percent of the adjusted fee schedule amount and 50 percent of the unadjusted fee schedule amount until December 31, 2016 (with full implementation of the fee schedule adjustments applying to items and services furnished with dates of service on or after January 1, 2017).

2. Transition Period for Phase-In of Fee Schedule Adjustments

We determined that the transitional period for the phase-in of adjustments to fee schedule amounts should be resumed in non-CBA rural and non-contiguous areas to ensure access to necessary items and services in these areas. The May 2018 IFC amended § 414.210(g)(9) to change the end date for the initial transition period for the phase-in of adjustments to fee schedule amounts for certain items based on information from the DMEPOS CBP from June 30, 2016 to December 31, 2016, to reflect the extension that was mandated by section 16007(a) of the Cures Act. The May 2018 IFC also amended § 414.210(g)(9) to resume the transition period for the phase-in of adjustments to fee schedule amounts for certain items furnished in non-CBA rural and non-contiguous areas from June 1, 2018 through December 31, 2018, for the reasons discussed in this final rule.

a. Statutory Mandate To Reconsider Fee Schedule Adjustments

After we established the fee schedule adjustment methodology under § 414.210(g), Congress amended section 1834(a)(1)(G) of the Act to require that CMS take certain steps and factors into consideration regarding the fee schedule adjustments for items and services furnished on or after January 1, 2019, to ensure that the rates take into account certain aspects of providing services in non-CBAs. Specifically, section 16008 of the Cures Act amended section 1834(a)(1)(G) of the Act to require in the case of items and services furnished on or after January 1, 2019, that in making any adjustments to the fee schedule amounts in accordance with sections 1834(a)(1)(F)(ii) and (iii) of the Act, the Secretary must: (1) Solicit and take into account stakeholder input; and (2) take into account the highest bid by a winning supplier in a CBA and a comparison of each of the following factors with respect to non-CBAs and CBAs:

- The average travel distance and cost associated with furnishing items and services in the area.
- The average volume of items and services furnished by suppliers in the area.
- The number of suppliers in the area.

On March 23, 2017, CMS hosted a national provider call to solicit stakeholder input regarding adjustments to fee schedule amounts using information from the DMEPOS CBP.[24] The national provider call was announced on March 3, 2017, and we requested written comments by April 6, 2017. We received 125 written comments from stakeholders. More than 330 participants called into our national provider call, with 23 participants providing oral comments during the call. In general, the commenters were mostly suppliers, but also included manufacturers, trade organizations, and healthcare providers such as physical and occupational therapists. These industry stakeholders expressed concerns that the level of the adjusted payment amounts constrained suppliers from furnishing items and services to rural areas. These stakeholders requested an increase to the adjusted payment amounts for these areas. The written comments generally echoed the oral comments from the call held on March 23, 2017, whereby commenters claimed that the adjusted fees were not sufficient to cover the costs of furnishing items and services in rural and non-contiguous areas and that it was having an impact on access to items and services in these areas. For additional details about the national provider call and a summary of oral and written comments received, we refer readers to the CY 2019 ESRD PPS/DMEPOS proposed rule (83 FR 57026).

In the May 2018 IFC, we stated that one of the factors CMS must consider when making fee schedule adjustments for items and services furnished on or after January 1, 2019, in accordance with section 16008 of the Cures Act, is the average volume of items and

[24] *https://www.cms.gov/Outreach-and-Education/Outreach/NPC/National-Provider-Calls-and-Events-Items/2017-03-23-DMEPOS.html?DLPage=1&DLEntries=10&DLSort=0&DLSortDir=descending.*

services furnished by suppliers in an area (83 FR 21917). We then noted that data for items furnished in 2016 and 2017 showed that the average volume of items furnished by suppliers in CBAs exceeded the average volume of items furnished by suppliers in rural and non-contiguous areas. We stated that this supports stakeholder input that the suppliers in rural and non-contiguous areas have an average volume of business less than that of their counterparts in CBAs, and that this difference may make it more difficult for suppliers in rural and non-contiguous areas to meet their expenses (83 FR 21917).

In addition, at the time of this May 2018 IFC, the adjusted fee schedule amounts for stationary oxygen equipment in non-contiguous, non-CBAs were lower than the SPA for stationary oxygen equipment in the Honolulu, Hawaii, CBA and the adjusted fee schedule amounts for stationary oxygen equipment in some rural areas were lower than the SPAs in CBAs within the same State. This was due to the combination of the fee schedule adjustments and the budget neutrality offset that CMS applied to stationary oxygen equipment and contents due to the separate oxygen class for oxygen generating portable equipment (OGPE).

In 2006, CMS established a separate payment class for OGPE (which are portable concentrators with transfilling equipment), through notice and comment rulemaking (71 FR 65884). The authority to add this payment class is located at section 1834(a)(9)(D) of the Act, and at the time of the May 2018 IFC, section 1834(a)(9)(D) of the Act only allowed CMS to establish new classes of oxygen and oxygen equipment if such classes were budget neutral, which meant that the establishment of new oxygen payment classes did not result in oxygen and oxygen equipment expenditures for any year that were more or less than the expenditures that would have been made had the new classes not been established. We also stated that in the May 2018 IFC that accordance with § 414.226(c)(6), CMS reduced the fee schedule amounts for stationary oxygen equipment in non-CBAs to make the payment classes for oxygen and oxygen equipment budget neutral as required by section 1834(a)(9)(D) of the Act (83 FR 21917). Due to the combination of the fee schedule adjustment and the budget neutrality offset, the adjusted fee schedule amounts for stationary oxygen equipment in non-contiguous non-CBAs and some rural areas were lower than the SPAs in Honolulu, Hawaii, and CBAs within the same State, respectively. We stated that this was significant because the methodology at 42 CFR 414.210(g) attempted to ensure that the adjusted fee schedule amounts for items and services furnished in rural areas within a State were no lower than the adjusted fee schedule amounts for non-rural areas within the same State. We then noted that CBAs are areas where payment for certain DME items and services is based on SPAs established under the CBP rather than adjusted fee schedule amounts, and that CBAs tend to have higher population densities and typically correspond with urban census tracts (83 FR 21917).

We explained that the budget neutrality offset resulted in payment amounts for stationary oxygen equipment in CBAs being higher than the adjusted fee schedule amounts in some cases. We stated that restoring the blended fee schedule rates paid in rural and non-contiguous non-CBAs during the transition period would result in fee schedule amounts for oxygen and oxygen equipment in these areas being higher than the SPAs paid in all of the CBAs. Therefore, we stated payment at the blended rates would avoid situations where payment for furnishing oxygen in a rural or non-contiguous, non-CBA was lower than payment for furnishing oxygen in a CBA (83 FR 21917). The May 2018 IFC also contained provisions related to wheelchair payment. For further discussion of the wheelchair payment provisions that were included in the May 2018 IFC, see the final rule titled: Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2022 and Updates to the IRF Quality Reporting Program; Payment for Complex Rehabilitative Wheelchairs and Related Accessories (Including Seating Systems) and Seat and Back Cushions Furnished in Connection With Such Wheelchairs, published on August 4, 2021 (86 FR 42362).

Since the publication of the May 2018 IFC, the Consolidated Appropriations Act of 2021 (Pub. L. 116–260) was signed into law on December 27, 2020. Effective April 1, 2021, section 121 of this Act eliminated the budget neutrality requirement set forth in section 1834(a)(9)(D)(ii) of the Act for separate classes and national limited monthly payment rates established for any item of oxygen and oxygen equipment using the authority in section 1834(a)(9)(D)(i) of the Act. Effective for claims with dates of service on or after April 1, 2021, the fee schedule amounts for HCPCS codes E0424, E0431, E0433, E0434, E0439, E0441, E0442, E0443, E0444, E0447, E1390, E1391, E1392, E1405, E1406, and K0738 are adjusted to remove a percentage reduction necessary to meet the budget neutrality requirement previously mandated by section 1834(a)(9)(D)(ii) of the Act.

b. Fee Schedule Adjustment Impact Monitoring Data

We also discussed in the May 2018 IFC how we monitor claims data from non-CBAs, some of which at the time pre-dated the implementation of the fully adjusted fee schedule amounts (83 FR 21917). The data did not show any observable trends indicating an increase in adverse health outcomes such as mortality, hospital and nursing home admission rates, monthly hospital and nursing home days, physician visit rates, or emergency room visits in 2016 or 2017 compared to 2015 in the non-CBAs, overall. We have continued to monitor claims data from non-CBAs and have not observed any trends indicating an increase in adverse beneficiary health outcomes associated with the fee schedule adjustments.

In addition, we monitored and continue to monitor data on the rate of assignment in non-CBAs, which reflects when suppliers are accepting Medicare payment as payment in full and not balance billing beneficiaries for the cost of the DME. Before and after the publication of the May 2018 IFC, assignment rates for items subject to fee schedule adjustments have continued to remain around 99 percent. We also solicited comments on ways to improve our fee schedule adjustment impact monitoring data in the May 2018 IFC.

c. Resuming Transitional Blended Fee Schedule Rates in Rural and Non-Contiguous Areas

We stated that the monitoring data described in section II.C.2. of the May 2018 IFC was retrospective claims data for payment of items already furnished, and that it was limited to a retrospective view to address potential future problems (83 FR 21918).

We also provided Medicare claims data showing that the number of supplier locations furnishing DME items and services subject to the fee schedule adjustments decreased by 22 percent from 2013 to 2016 (83 FR 21918).

We stated there were additional factors that section 16008 of the Cures Act requires us to take into account in making adjustments to the fee schedule amounts for items and services furnished beginning in 2019. For instance, we stated that the average volume of items and services furnished per supplier in non-CBAs is

significantly less than the average volume of items and services furnished per supplier in CBAs. Additionally, we stated that the number of suppliers in general has been steadily decreasing over time, and as the number of suppliers serving non-CBAs continues to decline, the volume of items and services furnished by the remaining suppliers increases (83 FR 21918). At the time of the publication of the May 2018 IFC, we did not know if the suppliers that remained would have the financial ability to continue expanding their businesses to continue to satisfy market demand. We also did not know if large suppliers serving both urban and rural areas would continue to serve the rural areas representing a much smaller percentage of their business than urban areas (83 FR 21918).

Based on the stakeholder comments and decrease in the number of supplier locations, we stated there was an immediate need to resume the transitional, blended fee schedule amounts in rural and non-contiguous areas. We stated that resuming these transitional blended rates would preserve beneficiary access to needed DME items and services in a contracting supplier marketplace, while allowing CMS to address the adequacy of the fee schedule adjustment methodology, as required by section 16008 of the Cures Act (83 FR 21918).

We stated that suppliers have noted that they have struggled under the fully adjusted fee schedule and that they do not believe they can continue to furnish the items and services at the current rates (83 FR 21918). Industry stakeholders stated that the fully adjusted fee schedule amounts were not sufficient to cover supplier costs for furnishing items and services in rural and non-contiguous areas and the number of suppliers furnishing items in these areas continued to decline. We stated that section 16008 of the Cures Act mandates that we consider stakeholder input and additional information in making fee schedule adjustments based on information from the DMEPOS CBP for items and services furnished beginning in 2019. The information we collected at the time included input from many stakeholders in the DMEPOS industry indicating that the fully adjusted fee schedule amounts were too low and that this was having an adverse impact on beneficiary access to items and services, particularly in rural and non-contiguous areas. Given these concerns about the continued viability of many DMEPOS suppliers, coupled with the Cures Act mandate to consider additional information material to setting fee schedule adjustments, we stated it would be unwise to continue with the fully adjusted fee schedule rates in the rural and non-contiguous areas for 7 months. We stated that any adverse impacts on beneficiary health outcomes, or on small businesses exiting the market, could be irreversible. We stated that it was in the best interest of the beneficiaries living in these areas to maintain a blend of the historic unadjusted fee schedule amounts and fee schedule amounts adjusted using SPAs established under the DMEPOS CBP to prevent suppliers that might be on the verge of closing from closing, as they may be the only option for beneficiaries in these areas. We stated that while our systematic monitoring in these areas has not shown problematic trends to this point, that monitoring by its nature looks backward. We stated that given the rapid changes in health care delivery that may disproportionately impact rural and more isolated geographic areas, there was concern that the continued decline of the fees and the number of suppliers in such areas may impact beneficiary access to items and services. We stated that these adjustments would maintain a balance between the higher historic rates and rates adjusted based on bidding in larger metropolitan areas where suppliers furnish a much larger volume of DMEPOS items and services and support continued access to services. Therefore, we revised § 414.210(g)(9) to resume the fee schedule adjustment transition rates for items and services furnished in rural and non-contiguous areas from June 1, 2018 through December 31, 2018, while we further analyzed this issue (83 FR 21918).

C. Technical Changes To Conform the Regulations to Section 5004(b) of the Cures Act: Exclusion of DME Infusion Drugs Under the CBP

Another provision in the May 2018 IFC that we are finalizing in this final rule relates to section 5004(b) of the Cures Act, which amended section 1847(a)(2)(A) of the Act to exclude drugs and biologicals described in section 1842(o)(1)(D) of the Act from the CBP. We made conforming technical changes to the regulations text consistent with statutory requirements to exclude drugs and biologicals from the CBP (83 FR 21920). We amended 42 CFR 414.402 to reflect that infusion drugs are not included in the CBP by revising the definition of ''Item'' in paragraph (2) to add the words ''and infusion'' after the words ''other than inhalation.'' The sentence reads as follows: ''Supplies necessary for the effective use of DME other than inhalation and infusion drugs.''

We also removed a reference to drugs being included in the CBP by deleting the phrase ''or subpart I'' in § 414.412(b)(2). The sentence reads as follows: ''The bids submitted for each item in a product category cannot exceed the payment amount that would otherwise apply to the item under subpart C of this part, without the application of § 414.210(g), or subpart D of this part, without the application of § 414.105. The bids submitted for items in accordance with paragraph (d)(2) of this section cannot exceed the weighted average, weighted by total nationwide allowed services, as defined in § 414.202, of the payment amounts that would otherwise apply to the grouping of similar items under subpart C of this part, without the application of § 414.210(g), or subpart D of this part, without the application of § 414.105.'' Similarly, we made a conforming technical change to § 414.414(f) in the discussion of ''expected savings'' so that infusion drugs are not taken into account by deleting the words ''or drug'' and the phrase ''or the same drug under subpart I'' from § 414.414(f). The ''expected savings'' text reads as follows: ''A contract is not awarded under this subpart unless CMS determines that the amounts to be paid to contract suppliers for an item under a competitive bidding program are expected to be less than the amounts that would otherwise be paid for the same item under subpart C or subpart D.''

D. Provisions of the May 11, 2018 Interim Final Rule With Comment Period

1. Transition Period for Phase-In of Fee Schedule Adjustments

We amended § 414.210(g)(9)(i) to change the end date for the initial transition period for the phase in of adjustments to fee schedule amounts for certain items based on information from the DMEPOS CBP from June 30, 2016, to December 31, 2016, as mandated by section 16007(a) of the Cures Act. We also amended § 414.210(g)(9)(ii) to reflect that fully adjusted fee schedule amounts apply from January 1, 2017, through May 31, 2018, and then on or after January 1, 2019. We also added § 414.210(g)(9)(iii) to resume the transition period for the phase in of adjustments to fee schedule amounts for certain items furnished in rural and non-contiguous areas from June 1, 2018, through December 31, 2018. Finally, we added § 414.210(g)(9)(iv) to reflect that fully adjusted fee schedule amounts

apply for certain items furnished in non-CBA areas other than rural and non-contiguous areas from June 1, 2018, through December 31, 2018.

We discussed in section II.C.1. of the May 2018 IFC that industry stakeholders stated that the fully adjusted fee schedule amounts were not sufficient to cover supplier costs for furnishing items and services in rural and non-contiguous areas and were impacting beneficiary health outcomes (83 FR 21918). Section 16008 of the Cures Act requires CMS to consider certain factors in making fee schedule adjustments using information from the CBP for items and services furnished in non-CBAs on or after January 1, 2019. We stated that we should immediately resume the blended fee schedule rates in rural and non-contiguous areas that were in place during CY 2016, while we further analyzed this issue to safeguard beneficiaries' access to necessary items and services in rural and non-contiguous areas. We stated that additional information and factors would be considered when addressing the fee schedule adjustments for items and services furnished on or after January 1, 2019, and that these factors include differences in costs associated with furnishing items in heavier populated CBAs versus less populated or remote rural and non-contiguous areas (83 FR 21920). Even though January 1, 2019 was just 7 months away from the June 1, 2018, effective date of this May 2018 IFC, we believed that it would be unwise to continue with the fully adjusted fee schedule rates in the rural and non-contiguous areas for 7 months. Therefore, we concluded that we should resume the transition period's blended fee schedule rates for items furnished in rural areas and non-contiguous areas not subject to the CBP from June 1, 2018, through December 31, 2018. We stated that the volume of items furnished per supplier in rural and non-contiguous areas was far less than the volume of items furnished per supplier in CBAs, indicating that the cost per item in these areas may be higher than the cost per item in CBAs (83 FR 21920). We also expressed concern that national chain suppliers may close locations in more remote areas if the rate they are paid for furnishing items in a market where the volume of services is low does not justify the overhead expenses of retaining the locations (83 FR 21920).

We received a total of 208 timely pieces of correspondence in response to the May 2018 IFC. Many of the comments we received on the May 2018 IFC were similar to or the same as comments we received on the CY 2019 ESRD PPS DMEPOS proposed rule and which we summarized and responded to in the CY 2019 ESRD PPS DMEPOS final rule (83 FR 56922). Most of the commenters were DME suppliers.

Comment: Most commenters supported extending the 50/50 blended rates to the rural and non-contiguous non-CBAs. Some reasons that commenters gave for why they supported this policy were that it would help suppliers stay in business and service rural patients. Commenters also discussed how rural areas face unique circumstances. For example, a commenter stated many of their patients are in islands in remote areas, and another commenter discussed the challenges they face when servicing Native American reservations, such as power failures, weather changes, longer travel distances, poor cell phone reception, and higher delivery charges. Another commenter stated beneficiaries in rural areas are geographically dispersed, harder to reach, and do not have the same access to systems of care as those in more populated areas. Some commenters who were DME suppliers stated that they have reduced their delivery service area due to not getting paid enough, and that the cost of doing business has increased, which warranted higher payments. Some commenters also stated that costs are higher in rural areas, and travel distances are larger than in urban areas. A commenter stated this policy furthers a goal of achieving rural health equity with healthier, wealthier suburban and urban areas.

Response: We acknowledge the comments for this particular provision in the May 2018 IFC.

Comment: Many commenters wanted CMS to extend the blended rates to all non-CBAs, and to do so for longer than the 7-month period that was established in the May 2018 IFC. Several commenters stated we should extend the blended rates to all non-CBAs in 2019. Some stated we should permanently extend the blended rates to all non-CBAs. As support for this some commenters stated that non-CBAs do not have the same level of volume as CBAs, non-CBAs have a lower population density, less suppliers, the cost of doing business is higher in non-CBAs than it is in CBAs, and that suppliers serving rural areas also serve non-rural areas. A commenter stated that providing the same services in some non-CBAs requires more staff than in CBAs, and that Bureau of Labor Statistics (BLS) data show fuel and health care expenditures are higher in rural areas. Some commenters were concerned that beneficiaries would not get the items or services they need and their health outcomes would worsen as a result.

Response: We continue to believe that the fully adjusted rates in non-rural and contiguous non-CBAs are sufficient. Assignment rates continued to remain above 99 percent after the publication of the May 2018 IFC, and we have not found evidence that these fee schedule adjustments are causing beneficiary access or health outcomes issues. As we indicated in the CY 2019 ESRD PPS DMEPOS final rule (83 FR 56922), we agree that the average volume of items and services furnished by suppliers in non-rural non-CBAs is lower than the average volume of items and services furnished by suppliers in CBAs, and that total population and population density are both lower in non-rural non-CBAs than in CBAs. However, volume of services furnished is only one factor impacting the cost of furnishing DMEPOS items and services. A number of other factors affecting the costs of furnishing DMEPOS items and services such as wages, gasoline, rent, utilities, travel distance and service area size point to higher costs in CBAs than non-rural non-CBAs. Additionally, as we found in the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 34367 through 34371) and in the November 2020 proposed rule (85 FR 70366), travel distances were only greater in certain non-CBAs, which included Frontier and Remote (FAR), OCBSAs, and Super Rural areas.

Comment: Many commenters also wanted us to retroactively apply the blended rates to all the claims in 2017 and 2018 that we paid at the fully adjusted rate. Commenters stated that if we were concerned about the adequacy of the fully adjusted fees, then we should retroactively pay suppliers the blended rates for the time we paid them the fully adjusted rates. Commenters explained that 7 months of blended rates were not enough to stabilize an industry with a declining number of suppliers, and that paying the blended rates retroactively would also help ensure beneficiary access to DME.

Response: In the May 2018 IFC we amended § 414.210(g)(9)(i) to reflect the extension of the transition period to December 31, 2016 for phasing in adjustments to the fee schedule amounts for certain items based on information from the DMEPOS CBP, as required by section 16007(a) of the Cures Act. In the May 2018 IFC, we also continued the 50/50 blend for rural, non-contiguous areas from June 1 through December 31, 2018. We did not believe it was appropriate or necessary to retroactively increase the rates paid for items and

services subject to the fee schedule adjustments that were furnished in 2017. Retroactively increasing payment amounts for items and services that had already been furnished to beneficiaries would not result in an increase in access to such items and services.

Comment: Some commenters stated CMS should adopt add-on payments for non-CBAs because of higher costs in non-CBAs. For instance, a commenter stated that CMS should establish two percentage add-ons for the non-CBA areas: One for the non-rural non-CBAs and one for the rural non-CBAs. The commenter stated that the costs of providing respiratory services can be higher than the costs for other products and they recommended setting the non-rural non-CBAs at the regional standard payment amount (SPA) + 16 percent, and the rural non-CBAs at the regional SPA + 22 percent. The commenter stated that they based these amounts on their own cost survey of oxygen and sleep therapy providers and manufacturing companies that showed costs were 5 percent higher than the SPAs in CBAs, that costs are 13 percent higher in non-CBAs than in CBAs, and 17.5 percent higher in super-rural areas than in CBAs. Some commenters used the Ambulance Fee Schedule as an example of an add-on policy CMS could use, which includes super-rural add-on payment. A commenter stated that CMS should set the 50/50 blend rates in all non-CBAs, and then pay an even higher amount of 10 percent in rural and non-contiguous areas. The commenter also stated that the most significant variables that affect DME supplier costs are labor rates, transportation, population density, miles/time between points of service, and regulatory costs. The commenter stated specific costs that CMS should take into account when adjusting fees in non-CBAs include geographic wage index factors, gas, taxes, employee wages and benefits, wear and tear of vehicles, average per capita income, training, delivery, set up, historical Medicare home placement volume, proximity to nearby CBAs, employing a respiratory therapist (required by State law in several States), electricity charges freight charges, 24/7 service availability, documentation requirements, average per patient cost, licensing, accreditation surety bonds, audits, population density, miles and time between points of service, local and state regulatory costs, and vehicle insurance and liability insurance. Another commenter stated how CMS uses a special rule for rural areas for items included in more than 10 CBAs. The commenter stated CMS could supplement this special rule by making it more generous, and also applying the national ceiling prices in areas with a limited number of suppliers or low average volume of Medicare business. The commenter stated CMS could also establish an add-on payment for low volume or low supplier areas, based on its general approach used for rural areas in the ambulance fee schedule, which would involve increasing the base payment by a percentage amount. A commenter stated the 50/50 blended rates were not enough and that CMS should return to paying the 2015 unadjusted fee schedule rates in all non-CBAs.

Response: We did not implement any of the add-on payments described by the commenters in the May 2018 IFC, and did not discuss such policies in the Alternatives Considered section of the May 2018 IFC (83 FR 21924). In the CY 2019 ESRD PPS DMEPOS final rule (83 FR 57034), in response to similar comments requesting such add-on payments, we thanked the commenters for their specific recommendations regarding adopting add-on payments for items and services furnished in non-CBAs. We also stated that we did not propose any payments like those described by commenters, but that we would keep these recommendations in mind for future rulemaking.

In the November 2020 proposed rule, one of our Alternatives Considered (85 FR 70371) was proposing to eliminate the definition of rural area at §§ 414.202 and 414.210(g)(1)(v), which brings the adjusted fee schedule amounts for rural areas up to 110 percent of the national average price determined under § 414.210(g)(1)(ii). In place of this definition and rule, we considered proposing an adjustment to the fee schedule amounts for DMEPOS items and services furnished in super rural non-CBAs within the contiguous U.S. equal to 120 percent of the adjusted fee schedule amounts determined for other, non-rural non-CBAs within the same State. For example, the adjusted fee schedule amount for super rural, non-CBAs within Minnesota would be based on 120 percent of the adjusted fee schedule amount (in this case, the regional price) for Minnesota established in accordance with § 414.210(g)(1)(i) through (iv).

Consistent with the ambulance fee schedule rural adjustment factor at § 414.610(c)(5)(ii), we considered defining ''super rural'' as a rural area determined to be in the lowest 25 percent of rural population arrayed by population density, where a rural area is defined as an area located outside an urban area (MSA), or a rural census tract within an MSA as determined under the most recent version of the Goldsmith modification as determined by the Federal Office of Rural Health Policy at the Health Resources and Services Administration. Per this definition and under this alternative rule, certain areas within MSAs would be considered super rural areas whereas now they are treated as non-rural areas because they are located in counties that are included in MSAs. For all other non-CBAs, including areas within the contiguous U.S. that are outside MSAs but do not meet the definition of super rural area, we considered adjusting the fee schedule amounts using the current fee schedule adjustment methodologies under § 414.210(g)(1) and (g)(3) through (8).

We did not receive comments supporting finalizing this alternative, and we did not finalize this alternative considered in this final rule.

Finally, as we stated in the CY 2019 ESRD PPS DMEPOS final rule (83 FR 57034), we recognize that there are certain supplier cost and volume differences in rural and non-contiguous non-CBAs, which is why this final rule distinguishes rural and non-contiguous non-CBAs from other non-CBAs and results in higher payments to suppliers furnishing items in the rural and non-contiguous non-CBAs. We also believe that paying an amount in addition to the blended 50/50 payment rates would be excessive and unnecessary, and not in line with what most commenters requested, as most commenters specifically requested the blended 50/50 payment rates in rural and non-contiguous non-CBAs. This indicates that such payment rates are sufficient, which is why we are also not incorporating the ambulance fee schedule's concept of a super rural add-on into our 50/50 blend. With regard to taking into account certain costs when adjusting fees in non-CBAs, we have already analyzed and taken into account several cost data variables as part of section 16008 of the Cures Act in the CY 2019 ESRD PPS DMEPOS proposed rule (83 FR 57027), and in the November 2020 proposed rule (85 FR 70367).

Comment: Some commenters disagreed with our definition of rural at § 414.202. Some commenters that were DME suppliers were dissatisfied that some areas that they service did not qualify as a rural area. A few commenters stated CMS should define all non-CBAs as rural. Another commenter stated the CMS definition of a rural area is extremely narrow, and that CMS should adopt, what the commenter referred to as OMB's rural definition, which the commenter stated

were all counties that are not part of an MSA. A commenter wondered why the rural definition at § 414.202 did not match the criteria for a critical access hospital. A commenter stated all of West Virginia should be considered rural, and another commenter stated there were remote areas in West Virginia that were classified as non-rural per the rural definition at § 414.202.

Response: As defined in § 414.202, rural area means, for the purpose of implementing § 414.210(g), a geographic area represented by a postal zip code if at least 50 percent of the total geographic area of the area included in the zip code is estimated to be outside any metropolitan area (MSA). A rural area also includes a geographic area represented by a postal zip code that is a low population density area excluded from a competitive bidding area in accordance with the authority provided by section 1847(a)(3)(A) of the Act at the time the rules at § 414.210(g) are applied. We did not propose or implement any changes to our rural definition in the May 2018 IFC, but we will keep these points in mind for future rulemaking. For further background on the origin of our rural definition, see our CY 2015 ESRD PPS DMEPOS proposed rule (79 FR 40284) and the CY 2015 ESRD PPS DMEPOS final rule (79 FR 66228).

Comment: MedPAC did not support our proposal extending the 50/50 blended rates to rural non-CBAs. MedPAC stated that if CMS determines that payment rates in non-CBAs should be increased to maintain access to medically necessary DMEPOS products, then increases should be limited and targeted, and CMS should consider taking steps to offset the cost of higher payment rates. MedPAC stated that returning to a 50/50 blend of historical fee schedule rates and competitive bidding program (CBP) derived rates will result in large payment increases, often of 50 percent or more. Further, these large increases are in addition to other payment rate adjustments CMS has already made to protect access, such as an increase of roughly 10 percent in rural non-CBAs.

MedPAC stated that while they understand CMS continues to study supplier costs in non-CBAs in accordance with its mandate under the Cures Act, the interim final rule does not present supplier cost data that could be used to justify the magnitude of the payment increase. MedPAC encouraged CMS to use the best available data to determine whether costs that suppliers must necessarily incur are higher in non-CBAs relative to CBAs and, if so, whether an adjustment smaller than the one discussed in the interim final rule would be sufficient to ensure access.

MedPAC stated any payment increase in non-CBAs should be directed only to products that exhibit signs of potential access problems, and that the cost of DMEPOS products themselves likely do not vary substantially across geographic areas, but other costs might (for example, delivery or personnel costs). Therefore, depending on the nature of the product, MedPAC concluded that the total cost associated with furnishing a product may or may not vary substantially across geographic areas, and the magnitude of that variation might also be different across products.

Additionally, MedPAC stated that any payment increase in non-CBAs should be directed only to areas that exhibit signs of potential access problems. Non-CBAs include a wide variety of areas, ranging from moderate-size urban areas to remote rural areas. An identified potential access problem in a rural or non-contiguous area should not be used as a basis to increase payment rates across all non-CBAs. MedPAC stated issues faced by suppliers in rural and non-contiguous areas are likely different from those faced in urban non-CBAs, many of which are metropolitan statistical areas with populations of 250,000 or more. Furthermore, if CMS has concerns about payment rates in urban non-CBAs, CMS has better ways to establish appropriate payment rates than applying a large, across-the-board payment increase. For example, CMS could set payment rates in moderate-size urban non-CBAs by expanding the CBP to include those areas and use the information from those competitions to help set payment rates in smaller non-CBAs. Finally, MedPAC stated CMS should consider offsetting the increased costs by further expanding the products included in the CBP.

Response: We appreciate MedPAC's comments on the May 2018 IFC. We agree that the 50/50 blended rates were a significant payment increase, and that they affected large parts of the country. However, at the time of publication of the May 2018 IFC, we were concerned about the potential for beneficiary access issues to occur based off of feedback from industry stakeholders and our data showing a reduction in the number of suppliers billing Medicare Fee-for-Service for items and services subject to fee schedule adjustments. To err on the side of caution, we decided we should immediately resume the transition period and pay 50/50 blended rates in rural and non-contiguous non-CBAs for all items and services subject to fee schedule adjustments.

In looking back at the years since the publication of the May 2018 IFC, we still have not seen evidence of the beneficiary access issues industry stakeholders claimed were happening as a result of the fee schedule adjustments. We also note that in the ensuing months in which we paid the fully adjusted rates in the non-rural and contiguous non-CBAs and the 50/50 blended rates in the rural or non-contiguous non-CBAs, the assignment rates for both areas remained around 99 percent. We will certainly keep MedPAC's points in mind for future rulemaking, particularly as we continue to evaluate the appropriateness of such significant payment increases for wide swaths of the country, and as we contemplate future changes to the CBP. Finally, we also agree with expanding the products included in the CBP, and we note that we have included OTS back and knee braces in Round 2021 of the CBP.

Comment: Several commenters submitted comments on ways to improve the DMEPOS fee schedule adjustment impact monitoring data, in response to us soliciting comments on ways to improve our fee schedule adjustment impact monitoring data in the May 2018 IFC (83 FR 21917). Some commenters left comments about the Medicare complaint process. A commenter stated that it is hard for beneficiaries to navigate through the Medicare complaint process and that they have to get transferred to different offices to complain about access. The commenter was concerned complaints were going unreported or given up on due to the complexity of the reporting process, and the commenter encouraged CMS to develop one central, public facing hotline where beneficiaries can submit a complaint hotline without being transferred to several offices. Another commenter stated the CMS patient complaint and access monitoring is not capturing patient complaints, and that many patients are either paying out of pocket or are going without the care. The commenter recommended reaching out to hospital case managers and social workers about this issue. Another commenter stated that CMS should get another process for complaints that is easier to navigate. The commenter stated CMS should enhance beneficiary awareness of the complaint process, and to publicly report on the complaints we register, and to not only report those that are resolved by a supplier. The commenter also stated that CMS should establish a patient satisfaction survey/patient-reported outcomes measure for respiratory services that would capture

issues like isolation, reduced services, reduced delivery areas, and other impacts the commenter stated cannot be measured using claims data. The commenter also stated CMS should survey using statistically appropriate method prescribers of respiratory services to evaluate the difficulty of discharging patients who require such therapy, which would provide CMS with information about the delays in obtaining DME and respiratory services.

Another commenter stated that CMS should create an ombudsman position for non-CBAs to monitor and address access, quality, supplier availability and other issues in non-CBAs. A commenter stated that CMS does not capture reports from Medicare beneficiaries and their caregivers going to other resources to get their home medical equipment and supplies (for example, garage/online sales) to get the medical equipment needed, and that this will never show up in CMS' reports unless they reach out to those resources or survey beneficiaries and healthcare providers. The commenter stated CMS should work with DME industry advocates on a survey to healthcare professionals who are responsible for ordering DME and supplies for their patients to determine any access to DME issues.

A commenter provided several comments regarding impact monitoring data for respiratory services, particularly oxygen. They stated to compare the number of Medicare beneficiaries diagnosed with COPD, with the number of beneficiaries receiving home oxygen therapy. The commenter stated that there should be a standard benchmark to assess whether the percentage of patients who require the therapy because of their diagnosis actually receive it. The commenter stated CMS could compare the Medicare population receiving respiratory services with the expected incidence and prevalence of the most common disease indications for the therapy (for example, COPD) in the Medicare population, to determine if the percentage of Medicare patients receiving home respiratory therapy is aligned with the percentage of the population receiving the therapy. The commenter stated that this would help CMS see if there are delays in receiving the therapy, and if the therapy is being utilized by the patients who are likely to have a medical need for it. The commenter stated that CMS should determine whether hospital data (including observation stays), admissions, or readmissions are specific enough to track admissions/readmissions related to complications associated with noncompliance with respiratory services. The commenter stated the analysis should note that if metrics of hospitalizations for other chronic conditions are improving but the metric for COPD patients is flat or declining, there is a problem with access to home therapies. Finally, the commenter stated CMS should find out if skilled nursing facilities (SNF)/long term care (LTC) beneficiaries using home respiratory services is increasing.

A commenter stated that the impact monitoring data does not reflect the companies closing their doors but who are still trying to collect money owed to them to help decrease the debt they owe to vendors. The commenter stated that the data falsely reflects a higher number of providers than are actually available to beneficiaries. Another commenter stated CMS should understand why utilization has decreased in non-CBAs. The commenter stated they do not agree with the conclusion that it is because of CMS efforts to address fraud, abuse and overutilization. The commenter stated it is because beneficiaries are going outside Medicare for DME and access problems. A commenter stated CMS should find out how access to Part B services affect an increase in the use of Part A services.

Response: In the 2019 ESRD PPS DMEPOS proposed rule, we also sought comments on ways to improve our fee schedule adjustment impact monitoring data (83 FR 34380). We summarized and responded to these comments in our CY 2019 ESRD PPS DMEPOS final rule (83 FR 57036). Similarly, and as we indicated in the CY 2019 ESRD PPS DMEPOS final rule, these comments are outside the scope of the proposals in the May 2018 IFC. We will take these comments into consideration going forward.

Comment: Many commenters reiterated their opposition to the budget neutrality requirements discussed in the May 2018 IFC (83 FR 21917), and summarized in section IV.B.3.a. of this final rule. Commenters were disappointed that this requirement resulted in non-CBA area fee schedules for oxygen concentrators being below the SPA in certain CBAs. Some stated the reimbursement for oxygen is not enough and that it makes it harder to supply oxygen services to patients.

A commenter stated that CMS incorrectly applied the oxygen budget neutrality to non-CBAs. The commenter stated that the regulation establishing the offset for E1390 concentrators applies to the unadjusted fee schedules under the fee schedule methodology mandated by Congress under section 1834 (a) of the Act. In contrast, the commenter stated that the 2017 fee schedules for concentrators in rural areas are based on information from competitive bidding programs under the methodology in 42 CFR 414.210 (g). The commenter stated that, §§ 414.226 and 414.210(g), describe different reimbursement methodologies that do not overlap. The commenter noted that while § 414.226 applies to fee schedules based on suppliers' reasonable charges from 1986 to 1987, § 414.210 (g) applies to fee schedules based on regional average special payments amounts (SPAs) from competitive bidding areas (CBAs). Similarly, another commenter stated that CMS has the authority to eliminate the budget neutrality requirement. The commenter stated that in implementing the requirement to adjust the DME Fee Schedule, CMS has replaced the national limited monthly payment amount at § 414.226(c) with the regional price or 110 percent of the national average price at § 414.210(g). By adopting the regional price for non-rural non-CBAs and 110 percent of the national average price for rural non-CBAs, the commenter stated that CMS has eliminated the national limited monthly payment amount, which was prior to this change the methodology for establishing rates under the fee schedule. Since the budget neutrality language applied only to the national limited monthly payment amount, the commenter stated it is not applicable to the new regional price or national average price. Finally, a commenter stated that CMS should change oxygen reimbursement to the 50/50 blended rates at a minimum.

Response: Since the publication of the May 2018 IFC, the Consolidated Appropriations Act of 2021 (Pub. L. 116–260) was signed into law on December 27, 2020. Effective April 1, 2021, section 121 of this Act eliminated the budget neutrality requirement set forth in section 1834(a)(9)(D)(ii) of the Act for separate classes and national limited monthly payment rates established for any item of oxygen and oxygen equipment using the authority in section 1834(a)(9)(D)(i) of the Act. Effective for claims with dates of service on or after April 1, 2021, the fee schedule amounts for HCPCS codes E0424, E0431, E0433, E0434, E0439, E0441, E0442, E0443, E0444, E0447, E1390, E1391, E1392, E1405, E1406, and K0738 are adjusted to remove a percentage reduction necessary to meet the budget neutrality requirement previously mandated by section 1834(a)(9)(D)(ii) of the Act.

After consideration of the public comments we received, we are finalizing the May 2018 IFC provision titled ''Transition Period for Phase-In of Fee Schedule Adjustments'' without

modification. Of note, we published in the **Federal Register** on April 26, 2021 a continuation of effectiveness and extension of timeline for publication for the May 2018 IFC, titled ''Medicare Program; Durable Medical Equipment Fee Schedule Adjustments To Resume the Transitional 50/50 Blended Rates To Provide Relief in Rural Areas and Non-Contiguous Areas; Extension of Timeline for Final Rule Publication'' (86 FR 21949). In accordance with sections 1871(a)(3)(B) and 1871(a)(3)(C) of the Act, we provided a notification of continuation for the May 2018 IFC, announcing the different timeline on which we intended to publish the final rule, and explained why we were unable to publish the final rule on the regular, required 3-year timeline. As a result of the publication of this notification of continuation, the timeline for publication of the final rule was extended until May 11, 2022.

With regard to the May 2018 IFC provision titled ''Transition Period for Phase-In of Fee Schedule Adjustments'', this provision:

- Changed the end date for the initial transition period for the phase in of adjustments to fee schedule amounts for certain items based on information from the DMEPOS CBP from June 30, 2016 to December 31, 2016, as mandated by section 16007(a) of the Cures Act.
- Amended § 414.210(g)(9)(ii) to reflect that fully adjusted fee schedule amounts applied from January 1, 2017 through May 31, 2018, and then on or after January 1, 2019.
- Added § 414.210(g)(9)(iii) to resume the transition period for the phase in of adjustments to fee schedule amounts for certain items furnished in rural and non-contiguous areas from June 1, 2018 through December 31, 2018.
- Added § 414.210(g)(9)(iv) to reflect that fully adjusted fee schedule amounts apply for certain items furnished in non-CBA areas other than rural and noncontiguous areas from June 1, 2018 through December 31, 2018.

2. Technical Changes To Conform the Regulations to Section 5004(b) of the Cures Act: Exclusion of DME Infusion Drugs Under CBPs

We made conforming technical changes to the regulations text consistent with statutory requirements to exclude drugs and biologicals from the CBP. Specifically, we amended § 414.402 to reflect that infusion drugs are not included in the CBP by revising the definition of ''Item'' in paragraph (2) to add the words ''and infusion'' after the words ''other than inhalation''. We also removed a reference to drugs being included in the CBP by deleting the phrase ''or subpart I'' in § 414.412(b)(2). Similarly, we made a conforming technical change to the regulations text on ''expected savings'' so that infusion drugs are not taken into account in § 414.414(f) by deleting the words ''or drug'' and the phrase ''or the same drug under subpart I''.

Comment: Commenters on the technical changes we made in the May 2018 IFC to conform the regulations to section 5004(b) of the Cures Act for the exclusion of DME infusion drugs under CBPs supported this change, saying such changes were consistent with the statute.

Response: After further consideration of the public comments we received, we are finalizing our conforming technical changes to the regulations text consistent with statutory requirements to exclude drugs and biologicals from the CBP. Specifically, we amended § 414.402 to reflect that infusion drugs are not included in the CBP by revising the definition of ''Item'' in paragraph (2) to add the words ''and infusion'' after the words ''other than inhalation''. We also removed a reference to drugs being included in the CBP by deleting the phrase ''or subpart I'' in § 414.412(b)(2). Similarly, we made a conforming technical change to the regulations text on ''expected savings'' so that infusion drugs are not taken into account in § 414.414(f) by deleting the words ''or drug'' and the phrase ''or the same drug under subpart I''.

V. Benefit Category and Payment Determinations for Durable Medical Equipment, Prosthetic Devices, Orthotics and Prosthetics, Therapeutic Shoes and Inserts, Surgical Dressings, Splints, Casts, and Other Devices Used for Reductions of Fractures and Dislocations

A. Background

1. Benefit Category Determinations

Medicare generally covers an item or service that—(1) falls within a statutory benefit category; (2) is not statutorily excluded from coverage; and (3) is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member as described in section 1862(a)(1)(A) of the Act. We make benefit category determinations (BCDs) based on the scope of Part B benefits identified in section 1832 of the Act, as well as certain statutory and regulatory definitions for specific items and services. Section 1832(a)(1) of the Act defines the benefits under Part B to include ''medical and other health services,'' including items and services described in section 1861(s) of the Act such as surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations under paragraph (5), prosthetic devices under paragraph (8), leg, arm, back, and neck braces, artificial legs, arms, and eyes under paragraph (9), therapeutic shoes under paragraph (12), and durable medical equipment (DME) under paragraph (6) and as defined in section 1861(n) of the Act. The words ''orthotic(s)'' or ''orthosis(es)'' are used in various parts of the statute and regulations instead of the word brace(s) but have the same meaning as brace(s). For example, section 1847(a)(2)(C) of the Act refers to ''orthotics described in section 1861(s)(9)'' of the Act. However, section 1861(s)(9) of the Act describes ''leg, arm, neck, and back braces'' and does not use the word ''orthotics.'' Likewise, section 1834(h)(4)(C) of the Act specifies that ''the term 'orthotics and prosthetics has the meaning given such term in section 1861(s)(9)'' of the Act; however, section 1861(s)(9) of the Act describes ''leg, arm, neck, and back braces'' and does not use the word ''orthotics.'' Also, the word ''prosthetic(s)'' is used in various parts of the statute and regulations to describe artificial legs, arms, and eyes referenced in section 1861(s)(9) of the Act, but it is important to note that these items are not the same items as the prosthetic devices referenced in section 1861(s)(8) of the Act.

While the statutory definition of DME in section 1861(n) of this Act sets forth some items with particularity, such as iron lungs, oxygen tents, hospital beds, wheelchairs, and blood glucose monitors, whether other items and services are covered under the Medicare Part B DME benefit is based on our interpretation of the statute, which does not, for example, elaborate on the meaning of the word ''durable'' within the context of ''durable medical equipment.'' Therefore, we further defined DME in the regulation at 42 CFR 414.202 as equipment that: (1) Can withstand repeated use; (2) effective with respect to items classified as DME after January 1, 2012, has an expected life of at least 3 years; (3) is primarily and customarily used to serve a medical purpose; (4) generally is not useful to a person in the absence of an illness or injury; and (5) is appropriate for use in the home. In conducting an analysis of whether an item falls within the DME benefit category, we review the functions and features of the item, as well as other supporting material, where applicable. For example, research and clinical studies may help to demonstrate that the item meets the prongs of the

definition of DME at § 414.202. For items to be considered DME, all requirements of the regulatory definition must be met. Additional details on the Medicare definition of DME are located in section 110.1 of the Medicare Benefit Policy Manual (CMS 100–02). The Medicare definitions for surgical dressings, splints, casts, and other devices used for reductions of fractures and dislocations, prosthetic devices, orthotics and prosthetics, and therapeutic shoes and inserts are located in sections 100, 120, 130, and 140, respectively, of the Medicare Benefit Policy Manual (CMS 100–02).

In situations where CMS has not established a BCD for an item or service, the BCD is made by the MACs on a case-by-case basis as they adjudicate claims. The MACs may have also addressed the benefit category status of an item or service locally in a written policy article. This final rule would apply to BCDs for all items and services described in section 1861(s) of the Act such as surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations under paragraph (5), prosthetic devices under paragraph (8), leg, arm, back, and neck braces, artificial legs, arms, and eyes under paragraph (9), therapeutic shoes under paragraph (12), and DME under paragraph (6) and as defined in section 1861(n) of the Act.

2. Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554)

Section 531(b) of BIPA required the Secretary to establish procedures for coding and payment determinations for new DME under Medicare Part B of the Act that permit public consultation in a manner consistent with the procedures established for implementing coding modifications to ICD–9–CM. Accordingly, we hosted public meetings that provide a forum for interested parties to make oral presentations and to submit written comments in response to preliminary HCPCS coding and Medicare payment determinations for new DME items and services. A payment determination for DME items and services would include a determination regarding which of the paragraphs (2) through (7) of subsection (a) of section 1834 of the Act the items and services are classified under as well as how the fee schedule amounts for the items and services are established so that they are in compliance with the exclusive payment rules under sections 1834(a) and 1847(a) and (b) of the Act. The preliminary HCPCS coding and Medicare payment determinations for new DME items and services are made available to the public via our website prior to the public meetings. In addition, although this type of forum and opportunity for obtaining public consultation on preliminary HCPCS coding and Medicare payment determinations for items and services other than new DME items is not mandated by the statute, we expanded this process for obtaining public consultation on preliminary coding and payment determinations to all HCPCS code requests for items and services in 2005, and since January 2005, we have been holding public meetings to obtain public consultation on preliminary coding and payment determinations for non-drug, non-biological items and services. As discussed in the November 2020 proposed rule (85 FR 70376), we proposed to continue holding these public meetings for non-drug, non-biological items and services and, in limited circumstances, for drug or biological products (85 FR 70410)) that are associated with external requests for HCPCS codes. As indicated in the proposed rule (85 FR 70397), external requests for HCPCS codes are made by submitting a HCPCS application (OMB control number 0938–1042 titled HCPCS Modification to Code Set Form CMS–10224) available on the *CMS.gov* website at the following address: *https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/Application_Form_and_Instructions*.

HCPCS Level II codes are used by Medicare, Medicaid, and other public health insurance programs and private insurers for the purpose of identifying items and services on health insurance claims. A code identifies and describes a category of items and services and the HCPCS Level II coding system and process is not used to make coverage or payment determinations on behalf of any insurer. Once a code describing a category of items and services is established, separate processes and procedures are used by insurers to determine whether payments for the item or service can be made, what method of payment, for example, purchase or rental, will be used to make payment for the item or service, and what amount(s) will be paid for the item or service. Whether or not an item falls under one of the Medicare benefit categories such as DME is a decision made by CMS or the MACs based on statutory and regulatory definitions, separate from the HCPCS Level II coding system and process for identifying items and services. Once a Medicare benefit category is identified, the coverage and payment indicators attached to any new HCPCS code(s) describing the item or service for claims processing purposes would reflect the benefit category and payment determinations made pursuant to the process established by this final rule.

To make a Medicare payment determination for an item or service, that is, to determine the statutory and regulatory payment rules that apply to the item or service and how to establish allowed payment amounts for the item or service, CMS must first determine whether the item or service falls under a benefit category, for example DME, and if so, which benefit category in particular. Therefore, since 2001, the procedures established by CMS to obtain public consultation on national payment determinations for new DME items as mandated by section 531(b) of BIPA have also in effect been procedures for obtaining public consultation on national DME BCDs, or determinations about whether an item or service meets the Medicare definition of DME. Then in 2005, when these procedures were expanded to include requests for HCPCS codes for all items and services, they became in effect procedures for obtaining public consultation on BCDs and payment determinations for all items and services.

B. Current Issues

To increase transparency and structure around the process for obtaining public consultation on benefit category and payment determinations for these items and services, we stated in the November 2020 proposed rule (85 FR 70397) that it would be beneficial to set forth in our regulations the process and procedures that have been used since 2001 for obtaining public consultation on BCDs and payment determinations for new DME and since 2005 for requests for HCPCS codes for items and services other than DME. As further discussed in section IV.A.2. of the 2020 November proposed rule (85 FR 70374 through 70375), we recently revised our coding cycle for requests for HCPCS Level II codes to implement shorter and more frequent coding application cycles.[25] Beginning January 2020, for non-drug, non-biological items and services, we shortened the existing annual coding cycle to conduct more frequent coding cycles on a bi-annual basis and include public meetings to obtain consultation on preliminary coding determinations twice a year

[25] CMS, Announcement of Shorter Coding Cycle Procedures, Applications, and Deadlines for 2020, HCPCS—General Information. Available at: *https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo*.

under these new bi-annual coding cycles. We believe that continuing to establish payment determinations, which, include BCDs, for new DME items and services and the other items and services described previously at these same bi-annual public meetings would be an efficient and effective way to address coding, benefit category, and payment issues for these new items and services and would prevent delays in coverage of new items and services.

In addition, in the past, manufacturers of new products would often ask CMS for guidance on whether or not the product(s) fall under a DMEPOS benefit category. Our informal advice regarding these products were sent directly to the manufacturers, outside of the HCPCS public meeting process. In the future, if a manufacturer requests a BCD for their product(s) outside of the process established in this final rule, we will instead issue a BCD and payment determination for the manufacturer through the BCD and payment determination procedures established by this rule. Such requests would be added as soon as possible to the agenda for an upcoming public meeting, which will be posted on *CMS.gov* two weeks prior to the meeting. Likewise, if CMS decides to address the benefit category for a new item or service that is not identified through the HCPCS editorial process, the benefit category determination and payment determination, if applicable, will be subject to the procedures established by this rule. Any manufacturer or other entity requesting a benefit category determination outside of the HCPCS editorial process) would still need to provide information on the product such as intended use, FDA clearance documents, any clinical studies, etc., that CMS will need to determine whether the product falls under a Medicare benefit category.

C. Proposed Provisions

We proposed in the November 2020 proposed rule (85 FR 70397 through 70398) to set forth in regulations BCD and payment determination procedures for new DME items and services described in sections 1861(n) and (s)(6) of the Act, as well as the items and services described in sections 1861(s)(5), (8), (9), and (12) of the Act, that permit public consultation at public meetings. The payment rules for these items and services are located in 42 CFR part 414, subparts C and D, so we proposed to include these procedures under both subparts C and D. We proposed that the public consultation on BCDs and payment determinations would be heard at the same public meetings where consultation is provided on preliminary coding determinations for new items and services the requestor of the code believes are: DME as described in sections 1861(n) and (s)(6) of the Act; surgical dressings, splints, casts, and other devices as described in section 1861(s)(5) of the Act; prosthetic devices as described in section 1861(s)(8) of the Act; leg, arm, back, and neck braces (orthotics), and artificial legs, arms, and eyes (prosthetics) as described in section 1861(s)(9) of the Act; or therapeutic shoes and inserts as described in section 1861(s)(12) of the Act. The proposal generally reflected the procedures that have been used by CMS since 2005, however, we proposed to specifically solicit or invite consultation on preliminary BCDs for each item or service in addition to the consultation on preliminary payment and coding determinations for new items and services.

Accordingly, we proposed procedures under new § 414.114 for determining whether new items and services meet the Medicare definition of items and services subject to the payment rules at 42 CFR part 414 subpart C (85 FR 70397). This would include determinations regarding whether the items and services are parenteral and enteral nutrition (PEN), which are nutrients, equipment, and supplies that are categorized under the prosthetic device benefit, as defined at section 1861(s)(8) of the Act and covered in accordance with section 180.2 of Chapter 1, Part 3 of the Medicare National Coverage Determinations Manual (Pub 100–03). This would also include determinations regarding whether items and services are intraocular lenses (IOLs) inserted in a physician's office, which are also categorized under the prosthetic device benefit at section 1861(s)(8) of the Act. We stated we would also use the proposed procedures to determine whether items and services are splints, casts, and other devices used for reduction of fractures and dislocations at section 1861(s)(5) of the Act. For purposes of the proposed procedures and § 414.114, we proposed to establish the following definition:

Benefit category determination means a national determination regarding whether an item or service meets the Medicare definition of a prosthetic device at section 1861(s)(8) of the Act or is a splint, cast, or device used for reduction of fractures or dislocations subject to section 1842(s) of the Act and the rules of this subpart and is not otherwise excluded from coverage by statute.

We proposed procedures under new § 414.240 for determining whether new items and services meet the Medicare definition of items and services subject to the payment rules at 42 CFR part 414 subpart D (85 FR 70398). This would include determinations regarding whether the items and services are in the DME benefit category as defined at section 1861(n) of the Act and under 42 CFR 414.202. This would also include determinations regarding whether the items and services are in the benefit category for prosthetic devices that fall under section 1861(s)(8) of the Act other than PEN nutrients, equipment and supplies or IOLs inserted in a physician's office. This would also include determinations regarding whether the items and services are in the benefit category for leg, arm, neck, and back braces (orthotics), and artificial legs, arms, and eyes (prosthetics) under section 1861(s)(9) of the Act. This would also include determinations regarding whether the items and services are in the benefit category for surgical dressings under section 1861(s)(5) of the Act or custom molded shoes or extra-depth shoes with inserts for an individual with diabetes under section 1861(s)(12) of the Act. For purposes of these proposed procedures and new § 414.240, we proposed to establish the following definition:

Benefit category determination means a national determination regarding whether an item or service meets the Medicare definition of durable medical equipment at section 1861(n) of the Act, a prosthetic device at section 1861(s)(8) of the Act, an orthotic or leg, arm, back or neck brace, a prosthetic or artificial leg, arm or eye at section 1861(s)(9) of the Act, is a surgical dressing, or is a therapeutic shoe or insert subject to sections 1834(a), (h), or (i) of the Act and the rules of this subpart and is not otherwise excluded from coverage by statute.

We proposed that if a preliminary determination is made that a new item or service falls under one of the benefit categories for items and services paid in accordance with subpart C or D of 42 CFR part 414, then CMS will make a preliminary payment determination regarding how the fee schedule amounts for the item or services would be established in accordance with these subparts, and, for items and services identified as DME, under which of the payment classes under sections 1834(a)(2) through (7) of the Act the item or service falls (85 FR 70398). We proposed that the procedures for making BCDs and payment determinations for new items and services subject to the payment rules under subpart C or D of

42 CFR part 414 would be made by CMS during each bi-annual coding cycle and the proposed procedures under new §§ 414.114 and 414.240 would include the following steps.

First, at the start of the coding cycle, CMS performs an analysis to determine if the item or service is statutorily excluded from Medicare coverage under any of the provisions at section 1862 of the Act, and, if not excluded by statute, CMS determines if the item or service falls under a Medicare benefit category defined in the statute and regulations for any of the items or services subject to the payment rules under subparts C or D of 42 CFR part 414. Information such as the description of the item or service in the HCPCS application, HCPCS codes used to bill for the item or service in the past, product brochures and literature, information on the manufacturer's website, information related to the FDA clearance or approval of the item or service for marketing or related to items that are exempted from the 510(k) requirements or otherwise approved or cleared by the FDA is considered as part of this analysis. This step could generally take anywhere from 1 week to 2 months. For more complex items or services, the process may take several months, in which case public consultation on the benefit category and payment determinations would slip to a subsequent coding cycle.

Second, if a preliminary determination is made by CMS that the item or service is an item or service falling under a benefit category for items and services paid for in accordance with subpart C or D of 42 CFR part 414, a preliminary payment determination is made by CMS regarding how the fee schedule amounts will be established for the item or service and what payment class the item falls under if the item meets the definition of DME. This step could also generally take anywhere from 1 week to 2 months. For more complex items or services, the process may take several months, in which case public consultation on the benefit category and payment determinations would slip to a subsequent coding cycle.

Third, approximately 4 months into the coding cycle, the preliminary benefit category and payment determinations are posted on *CMS.gov* 2 weeks prior to the public meeting described under proposed § 414.8(d) in which CMS receives consultation from the public on the preliminary benefit category and payment determinations made for the item or service. After consideration of public consultation on any preliminary benefit category and payment determinations made for the item or service, the benefit category and payment determinations are established through program instructions issued to the MACs.

We noted that even though a determination may be made that an item or service meets the Medicare definition of a benefit category, and fee schedule amounts may be established for the item or service, this does not mean that the item or service would be covered for a particular beneficiary. After a BCD and payment determination has been made for an item or service, a determination must still be made by CMS or the relevant local MAC that the item or service is reasonable and necessary for the treatment of illness or injury or to improve the functioning of a malformed body member, as required by section 1862(a)(1)(A) of the Act.

We sought public comment on our proposed process and procedures for making BCDs and payment determinations for new items and services paid for in accordance with subpart C or D of 42 CFR part 414. We noted that our proposed approach does not affect or change our existing process for developing National Coverage Determinations (NCDs), which we can continue to use to develop NCDs both in response to external requests and internally-generated reviews. We further noted that we are not limited to only addressing benefit categories in response to external HCPCS code applications and could decide to use the proposed process to address benefit categories in response to internally generated HCPCS coding changes as well. As aforementioned, requests for BCDs that are not associated with a HCPCS code application will also be addressed through the preliminary benefit category and payment determination process established in this final rule.

Comment: A few commenters supported the codification of formal BCD procedures including stakeholder input, noting this proposal is a step in the right direction.

Response: For the reasons we articulated previously as well as later in this section, we intend to finalize these procedures as proposed with a technical modification. At proposed §§ 414.114(b)(3) and (4), 414.240(b)(3) and (4), we included the language ''a public meeting described under § 414.8(d)'' to identify the existing bi-annual public meetings used to review new DME items and services and the other items and services. We intend to keep using the same public meetings for BCD purposes, but as discussed in section X. of this final rule, we are not finalizing the proposed HCPCS Level II code application process, and we are not finalizing the proposed regulation text for § 414.8(d). Therefore, we are finalizing in the regulation text at §§ 414.114(b)(3) and (4), as well as 414.240(b)(3) and (4), a reference to a ''public meeting'' without a cross-reference to § 414.8(d). We emphasize that this change is technical only, and both the final regulation text and BCD procedures are functionally the same as what we proposed in the November 2020 proposed rule.

Comment: A few commenters from associations and consultants representing manufacturers and suppliers of DMEPOS noted that there was no mention of the minimum qualifications for the individuals who will be making the preliminary determinations, claiming that this differs from the Coverage and Analysis Group (CAG) or by Medicare Administrative Contractors processes that affect both coverage and coding, where the process is either supervised or conducted by individuals with the appropriate professional credentialing and experience, such as licensed health care professionals or individuals with graduate-level training in related fields such as epidemiology. Commenters further stated that as many innovations rely on more complex technology and clinical factors, and rely on clinical trial evidence and interpretation of that evidence, it was incumbent on CMS to ensure that the reviewers making the preliminary determinations are familiar with current developments and have the technical skills necessary to conduct a thorough evaluation of the item and the related clinical information. Commenters recommended either having the applicant indicate the minimum and preferred credentials of a proposed reviewer or lengthening the current 40-page limit to allow relevant technical data and published papers that describe the innovation, its mechanism of action, and how it differs from other items and services that are described in existing HCPCS code.

Response: CMS has years of experience making benefit category determinations and our initial and final determinations are formulated in conjunction with experts such as medical officers, certified orthotists and prosthetists, nurses and other allied health professionals, and biomedical engineers. We are not adopting the commenters' suggestion that we adopt specific qualifications for the specific group of CMS reviewers that makes initial benefit category determinations. Moreover, we note our initial determinations are preliminary, giving the public an opportunity to provide additional feedback at the public

meeting. Accordingly, we find it is unnecessary for the applicant to request preferred or minimal credentials for the group that makes initial benefit category determinations.

We also find it is unnecessary to adjust the HCPCS application because a BCD is a separate process that is not limited to the information in the HCPCS application. For the BCD recommendation, we conduct research, as needed, and also may request information from the manufacturer or industry. We recognize that a HCPCS application often triggers a BCD, but the determination of a BCD can be a separate and distinct process from the HCPCS review.

Comment: Commenters suggested that CMS allow applicants to request either a BCD, a HCPCS code, or both. The rationale being some applicants may need a BCD alone at one stage of commercialization and do not want or need to invest in the costs of a complete HCPCS application. The commenters claimed that many applicants would not invest in the resources needed to apply for a new code if they knew they would receive a determination that the item or service did not fall under a Medicare benefit category.

Response: We want to clarify that the BCD process is separate and distinct from the HCPCS application, and an interested party can make a request for a BCD independent from any associated HCPCS code request. Any party can request a BCD for an item or service without requesting a change to the HCPCS. Once the BCD request is received, we would follow the same process which includes discussing the BCD at a public meeting. We also note that interested parties can request a national BCD through the NCD process or in some cases we could make a BCD through rulemaking; however, we believe these procedures we are finalizing under the regulations will allow us to make BCDs for these new items and services more quickly.

Comment: A few commenters recommended that the BCD coverage and the coding process should remain separate.

Response: We did not propose to integrate the two processes, but we reiterate that a HCPCS code application often triggers a BCD. We proposed to discuss the BCD requests during the bi-annual public meetings for new items and services, as this is an efficient and effective way to address coding, benefit category, and payment issues for these new items and services and will prevent delays in access to new items and services.

With regard to the use of the term ''BCD coverage,'' we want to clarify that BCDs and coverage determinations are two distinct processes with separate statutory authorities. A BCD is a determination regarding whether or not an item or service falls under a Medicare benefit category (for example, DME as defined in section 1861(n) of the Act). A coverage determination, on the other hand, is a decision by a Medicare contractor regarding whether to cover a particular item or service in accordance with section 1862(a)(1)(A) of the Act (see 42 CFR 400.202). We note that stakeholders can still request a BCD through the NCD process, as an alternative to these procedures.

Comment: A few commenters expressed concern that the timeframe of publishing the preliminary BCD decisions 2 weeks prior to a public meeting is too brief. The commenters were concerned that this proposal shortens the time necessary for an applicant to bring forth an expert or health care professional.

Response: We understand commenters' concern on the timing of the preliminary decisions; however, we must balance the time needed to assess and make a preliminary decision and issuing it within the specified timeframes. We believe that giving 2 weeks' notice of the meeting and announcing the dates of the public meetings in advance provides stability to stakeholders on the expected meeting times while also ensuring we have sufficient time necessary to make preliminary determinations for as many new items and services as possible. The HCPCS cycle was shortened from a 12-month cycle to two 6-month cycles to allow for more opportunities for the public to request HCPCS codes, but one tradeoff is that this can compress all stages of the coding process, including the time for developing preliminary coding, benefit category, and payment determinations, as well as the time allowed for the public to react to these preliminary determinations and prepare for the public meetings.

Comment: Some commenters expressed interest in expanding the DME definition in 42 CFR 414.202 to cover items such as software and vision aids or to clarify the definition of prosthetic device in 42 CFR 414.202.

Response: We did not propose to expand the scope of the DME or prosthetic device benefits in these BCD provisions, and therefore these comments fall outside the scope of this section of the rule.

Comment: A commenter requested that CMS allow the HCPCS process to serve as an appeal process for the BCD and payment decisions.

Response: We do not believe a further appeals process is necessary. There is already an appeals process in the claims appeals process under which a party could challenge the amount of payment if the party with standing was dissatisfied with the amount of payment. In light of the available appeal process, there would seem to be no need to establish a further appeals process.

Comment: A commenter recommended that CMS provide details regarding the basis and data used to make any preliminary BCD and payment decision, stating that this information should be included in the letters to the applicants as well as in the information for the relevant public meetings.

Response: We do not agree with the commenter that details on preliminary BCDs need to be included in a letter to the requestor of the HCPCS code. The HCPCS is a coding system for the public in general and is not a coding system for specific manufacturers or specific products. We will provide enough information so the public, which includes the manufacturer, individual, or entity that submitted the HCPCS request, can meaningfully comment on the preliminary BCD and payment decisions and also understand our underlying rationale for such decisions.

Comment: A commenter representing manufacturers and beneficiaries stated that they do not prefer that BCDs be made through public notice and comment rulemaking, which they believe would dramatically reduce the timeliness of approval of benefit category determinations for new devices and technologies, and consequently, access to care.

Response: We agree with the commenter that solely using notice and comment rulemaking would significantly extend the time it takes to make a BCD and could negatively impact beneficiaries' access to new item and services. The BCD procedures we are finalizing allow for multiple determinations within 1 year and build on the statutory process outlined in BIPA. We also note that stakeholders can still request a BCD through the NCD process, as an alternative to these procedures.

Comment: A commenter expressed their opinion that CMS has not been following the BCD process and that CMS did not make these determinations for a number of DME items assigned new HCPCS codes since 2019. The commenter stated their opinion that the lack of BCDs for new items assigned HCPCS codes since 2019 continues to

impede beneficiary access to these new, clinically proven technologies.

Response: We acknowledge BCDs reviews have been slowed down the past few years because this process was not formalized. We believe there is a benefit to finalizing these procedures and anticipate being able to make decisions more quickly and on a consistent timeframe outlined under the final regulation. However, we note that in situations where CMS has not established a BCD for an item or service, the BCD can be made by the MACs on a case-by-case basis as they adjudicate claims.

After consideration of the public comments we received and for the reasons we articulated, we are finalizing at §§ 414.114 and 414.240 the definitions related to and procedures for making BCDs and payment determinations for new items and services subject to the payment rules under subparts C or D of 42 CFR part 414 as proposed with a technical modification to remove a cross-reference to a HCPCS-related regulation we are not finalizing.

VI. Classification and Payment for Continuous Glucose Monitors Under Medicare Part B

This section addresses classification and payment for CGMs under the Medicare Part B benefit for DME. We proposed to replace a CMS Ruling issued in January 12, 2017 titled Classification of Therapeutic Continuous Glucose Monitors as ''Durable Medical Equipment'' under Medicare Part B [Ruling] (CMS–1682–R) with this new rule.

A. General Background

DME is a benefit category under Medicare Part B. Section 1861(n) of the Act defines ''durable medical equipment'' as including ''iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) of this section or section 1819(a)(1)) of the Act, whether furnished on a rental basis or purchased, and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual's use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations) and eye tracking and gaze interaction accessories for speech generating devices furnished to individuals with a demonstrated medical need for such accessories; except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment. With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.''

In addition to this provision, in most cases, an item must also meet the requirements of section 1862(a)(1)(A) of the Act, which precludes payment for an item or service that is not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, and section 1862(a)(6) of the Act, which precludes payment for personal comfort items.

The Medicare program was created as part of the Social Security Amendments of 1965 (Pub. L. 89–97), and the Part B benefit payments for DME were initially limited to ''rental of durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs used in the patient's home (including an institution used as his home)'' in accordance with the definition of DME at section 1861(s)(6) of the Act. The Social Security Amendments of 1967 (Pub. L. 90–248) amended the statute to allow for payment on a purchase basis for DME in lieu of rental for items furnished on or after January 1, 1968. Section 144(d) of the Social Security Amendments of 1967 changed the language under section 1861(s) of the Act to ''durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs used in the patient's home (including an institution used as his home), whether furnished on a rental basis or purchased.'' Payments for purchase of expensive items of DME were limited to monthly installments equivalent to what would have otherwise been made on a rental basis, limited to the period of medical need and not to exceed the purchase price of the equipment.

In 1975, Medicare program instructions in section 2100 of chapter 2 of part 3 of the Medicare Carrier's Manual (HCFA Pub. 14–3) indicated that expenses incurred by a beneficiary for the rental or purchase of DME are reimbursable if the following three requirements are met: The equipment meets the definition of DME in this section; and the equipment is necessary and reasonable for the treatment of the patient's illness or injury or to improve the functioning of his malformed body member; and the equipment is used in the patient's home. The instructions also indicated that payment may also be made under the DME benefit category for repairs and maintenance of equipment owned by the beneficiary as well as expendable and non-reusable supplies and accessories essential to the effective use of the equipment. DME was defined under these program instructions from 1975 as equipment meeting four requirements (quoted later in the section verbatim and with text underscored as in the original instructions):

Durable medical equipment is equipment which (a) can withstand repeated use, *and* (b) is primarily and customarily used to serve a medical purpose, *and* (c) generally is not useful to a person in the absence of an illness or injury; and (d) is appropriate for use in the home.

All requirements of the definition must be met before an item can be considered to be durable medical equipment.

Additional detailed instructions were provided in 1975 describing the underlying policies for determining whether an item meets the definition of DME and specifically addressed what the terms ''durable'' and ''medical equipment'' mean. The instructions indicated that an item is considered durable if it can withstand repeated use, that is, it is the type of item that could normally be rented, and that medical supplies of an expendable nature are not considered ''durable'' within the meaning of the definition. To be considered DME, the item must be able to be rented out to multiple patients and thus withstand repeated use. The instructions indicated that medical equipment is equipment primarily and customarily used for medical purposes and is not generally useful in the absence of illness or injury. The instructions indicated that in some cases information from medical specialists and the manufacturer or supplier of products new to the market may be necessary to determine whether equipment is medical in nature. Additional instructions provide examples of equipment which presumptively constitutes medical equipment, such as canes, crutches, and walkers, and equipment that is

primarily and customarily used for a nonmedical purpose and cannot be considered DME even when the item has some remote medically related use, such as air conditioners. Equipment that basically serves comfort or convenience functions or is primarily for the convenience of a person caring for the patient, such as elevators, and posture chairs, do not constitute medical equipment. Similarly, physical fitness equipment, first-aid or precautionary-type equipment, self-help equipment, and training equipment are considered nonmedical in nature. These program instructions from 1975 are still in effect and are now located in section 110 of chapter 15 of the Medicare Benefits Policy Manual (CMS Pub. 100–02).

The Social Security Amendments of 1977 (Pub. L. 95–142) amended the statute to mandate a ''rent/purchase'' program or payment methodology for DME; CMS would pay for each item furnished to each beneficiary on either a rental or purchase basis depending on which method was considered more economical. The decision regarding whether payment for DME was made on a rental or purchase basis was made by the Medicare Part B carrier (Medicare contractor) processing the claim. The rent/purchase program was implemented from February 1985 through December 1988.

Section 2321 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) moved the definition of DME from section 1861(s)(6) of the Act to section 1861(n) of the Act and included a more detailed definition of DME.

Section 4062(b) of the Omnibus Budget Reconciliation Act (OBRA) of 1987 (Pub. L. 100–203) amended the statute to terminate the rent/purchase program and add section 1834(a) to the Act with special payment rules for DME furnished on or after January 1, 1989. DME items were to be classified into different classes under paragraphs (2) through (7) of section 1834(a) of the Act, with specific payment rules for each class of DME. Section 1834(a) of the Act still governs payment for items and services furnished in areas that are not included in the competitive bidding program mandated by section 1847(a) of the Act. Section 1834(a)(2) of Act indicates that payment is made on a rental basis or in a lump sum amount for the purchase of an item the purchase price of which does not exceed $150 (inexpensive equipment) or which the Secretary determines is acquired at least 75 percent of the time by purchase (routinely purchased equipment) or which is an item specified under sections 1834(a)(2)(A)(iii) and (iv) of the Act. The term ''routinely purchased equipment'' is defined in regulations at 42 CFR 414.220(a)(2) as equipment that was acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987.

Medicare began covering blood glucose monitors under the DME benefit in the early 1980s and the test strips and other supplies essential for the effective use of the glucose monitor were also covered. Blood glucose monitors were expensive equipment within the meaning of section 1834(a)(2) of the Act but were routinely purchased (more than 75 percent of the time on a national basis) during the period July 1986 through June 1987. Therefore, payment was made on a fee schedule basis for blood glucose monitors based on the lower of the supplier's actual charge for the item or a statewide fee schedule amount calculated for the item based on the average rental or purchase payment for the item in the State for the 12-month period ending on June 30, 1987. The rental and purchase fee schedule amounts are increased on an annual basis based on the provisions set forth in section 1834(a)(14) of the Act.

The special payment rules for DME mandated by section 1834(a) of the Act were implemented via program instructions for all DME items other than oxygen and oxygen equipment on January 1, 1989. CMS established and implemented fee schedule amounts for inexpensive or routinely purchased items, for payment on a rental basis, payment on a lump sum purchase basis when the item is new, and payment on a lump sum purchase basis when the item is used. We also promulgated rules implementing the special payment rules for DME mandated by section 1834(a) of the Act. For more information, see the October 9, 1991 and December 7, 1992 **Federal Registers** (56 FR 50821 and 57 FR 57675, respectively), and a July 10, 1995, final rule (60 FR 35492).

We established a definition for DME items and services during this time at 42 CFR 414.202, which simply mirrored the general definition of DME established in 1975 via program instructions.

Section 1861(n) of the Act was revised by section 4105(b)(1) of the Balanced Budget Act of 1997 (Pub. L. 105–33) to expand coverage of blood glucose monitors and test strips to patients with type II diabetes. As noted, these items had already been covered as DME (glucose monitoring equipment) and disposable supplies (test strips) since the early 1980s, but coverage was limited to patients with type I diabetes.

We added to the definition of DME at 42 CFR 414.202 effective for items furnished after January 1, 2012, to require that the item have a minimum lifetime of 3 years to be considered DME. This 3-year minimum lifetime requirement was established in a final rule published in the November 10, 2011 **Federal Register** titled ''Medicare Program; End-Stage Renal Disease Prospective Payment System and Quality Incentive Program; Ambulance Fee Schedule; Durable Medical Equipment; and Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies'' (76 FR 70228 and 70314). This final rule included a discussion of how the 3-year minimum lifetime requirement (MLR) is applied to multicomponent devices or systems consisting of durable and nondurable components (76 FR 70291). In this rule, we noted that a device may be a system consisting of durable and nondurable components that together serve a medical purpose, and that we consider a multicomponent device consisting of durable and nondurable components nondurable if the component that performs the medically necessary function of the device is nondurable, even if other components of the device are durable. In regards to the 3-year MLR, the component(s) of a multicomponent device that performs the medically necessary function of the device must meet the 3-year MLR (76 FR 70291).

In summary, DME is covered under Medicare Part B. DME is defined under section 1861(n) of the Act and Medicare claims for DME are paid in accordance with the special payment rules under section 1834(a) of the Act or under the competitive bidding program mandated by sections 1847(a) and (b) of the Act. Rules related to the scope and conditions of the benefit are addressed at 42 CFR 410.38. Under § 414.202, durable medical equipment means equipment which—

- Can withstand repeated use;
- Effective with respect to items classified as DME after January 1, 2012, has an expected life of at least 3years;
- Is primarily and customarily used to serve a medical purpose;
- Generally is not useful to a person in the absence of an illness or injury; and
- Is appropriate for use in the home.

All requirements of the definition must be met before an item can be considered to be DME.

B. Continuous Glucose Monitors

On January 12, 2017, we issued a CMS Ruling (CMS–1682–R) articulating the CMS policy concerning the classification of therapeutic continuous

glucose monitoring systems as DME under Part B of the Medicare program. CMS–1682–R is available on the *CMS.gov* website at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/CMS-Rulings.*

CMS–1682–R classified continuous glucose monitoring systems as ''therapeutic continuous glucose monitors (CGMs)'' that meet the definition of DME if the equipment—

- Is approved [or cleared] by the FDA for use in place of a blood glucose monitor for making diabetes treatment decisions (for example, changes in diet and insulin dosage);
- Generally is not useful to the individual in the absence of an illness or injury;
- Is appropriate for use in the home; and
- Includes a durable component (a component that CMS determines can withstand repeated use and has an expected lifetime of at least 3 years) that is capable of displaying the trending of the continuous glucose measurements.

Under CMS–1682–R, in all other cases in which a CGM does not replace a blood glucose monitor for making diabetes treatment decisions, a CGM is not considered DME. We reasoned that enabling a beneficiary to make diabetes treatment decisions was the medical purpose of a glucose monitor, that non-therapeutic CGMs did not serve that medical purpose, and that non-therapeutic CGMs therefore were not DME. CMS–1682–R also addressed the calculation of the fee schedule amounts for therapeutic CGMs in accordance with the rules at section 1834(a) of the Act and under regulations at 42 CFR part 414, subpart D.

CGMs are systems that use disposable glucose sensors attached to the patient to monitor a patient's interstitial fluid glucose level on a continuous basis by either automatically transmitting the glucose readings from the sensor via a transmitter to a device that displays the readings (''automatic'' CGMs), or by displaying the glucose readings from the sensor on a device that the patient manually holds over the sensor (''manual'' CGMs). Some CGMs are class III devices and require premarket approval by the FDA, while some newer CGM models are class II devices that do not require premarket approval and may go through FDA's 510(k) premarket process, whereby devices can obtain clearance by demonstrating substantial equivalence to a predicate device. The glucose sensor continuously measures glucose values in the interstitial fluid, the fluid around the cells (in contrast to blood glucose monitors which measure glucose values using fingertip blood samples). The sensor is a small flexible metal probe or wire that is inserted under the skin and has a coating that prevents the body's immune system from detecting and attacking the foreign probe. Once the coating wears off, which in current models takes place in 7 to 14 days, the sensor must be replaced for safety reasons. The glucose sensor generates small electrical signal in response to the amount of sugar that is present (interstitial glucose). This electrical signal is converted into a glucose reading that is received/displayed on a dedicated continuous glucose monitor (the CGM). Insulin pumps covered as DME or a compatible mobile device (smart phone, smart watch, tablet, etc.) and app that are not covered as DME may also perform the function of a CGM, which receives and displays the glucose measurements in the form of a graph so that the patient can visualize how their glucose measurements are trending. CMS–1682–R only addressed whether CGMs meet the Medicare definition of DME and did not address whether insulin pumps that can also perform the function of a CGM are DME since insulin pumps are already classified as DME under an NCD (section 280.14 of Chapter 1, Part 4 of the Medicare National Coverage Determinations Manual, Pub. 100–03).

CMS–1682–R classifies CGM display devices as DME if they have been approved [or cleared] by the FDA for use in making diabetes treatment decisions, such as changing one's diet or insulin dosage based solely on the readings of the CGM, that is, without verifying the CGM readings with readings from a blood glucose monitor. These CGMs are referred to as ''non-adjunctive'' or ''therapeutic'' CGMs in CMS–1682–R. In contrast, CGMs that patients use to check their glucose levels and trends that must be verified by use of a blood glucose monitor to make diabetes treatment decisions are not currently classified as DME. These CGMs are referred to as ''adjunctive'' or ''non-therapeutic'' CGMs in CMS–1682–R. It is important to note that there were no ''adjunctive'' or ''non-therapeutic'' CGM receivers being manufactured and sold on the market as of the time this rule was drafted. This fact was brought to light by comments submitted on the proposed rule and discussed in more detail later in this final rule.

C. Current Issues

As indicated previously, there are currently no adjunctive CGM receivers being manufactured and sold on the market. However, beneficiaries are currently using disposable continuous glucose sensors and transmitters that have not been approved or cleared by the FDA to replace a blood glucose monitor for use in making diabetes treatment decisions with insulin infusion pumps that also function as ''adjunctive'' or ''non-therapeutic'' CGM receivers. Beneficiaries are using the readings from these disposable sensors that are received and displayed by the insulin pump to help manage their diabetes. Claims submitted for CGM sensors and transmitters used with insulin pumps are being denied inappropriately based on CMS–1682–R even though this Ruling only addressed the classification of CGM receivers as DME and did not address coverage of CGM sensors and transmitters used with insulin pumps. This final rule addresses whether adjunctive or ''non-therapeutic'' CGMs meet the five requirements or prongs of the definition of DME at 42 CFR 414.202 and how the fee schedule amounts should be calculated for CGM supplies and accessories.

1. Requirements of DME Definition

(a) Ability To Withstand Repeated Use

This criterion under 42 CFR 414.202 addresses the issue of whether an item of medical equipment can withstand repeated use, which means it is an item that can be rented and used by successive patients. Equipment must be able to withstand repeated use to fall within the scope of the Medicare Part B benefit for DME. The continuous glucose monitor's receiver component is durable equipment that can be rented and used by successive patients to monitor the trending of glucose levels that are either transmitted to the device using disposable sensors or are read or received by the device when the patient holds the device near the sensor. Therefore, we believe this equipment meets the requirement to withstand repeated use; that is, equipment that could normally be rented and used by successive patients.

(b) Expected Life of at Least 3 Years

This criterion under 42 CFR 414.202 further addresses the issue of ''durability'' and provides a clear minimum timeframe for how long an item must last to meet the definition of DME. We believe the continuous glucose monitor or receiver meets the 3-year minimum lifetime requirement. In the case of one manufacturer, reliability analysis data from an engineering firm that evaluated their CGM product predicted a lifetime of greater than 3 years for the receiver. Because the CGM sensors and transmitters only have a

predicted life of days (for the sensors) or several months (for the transmitters), the receiver is the only durable component of a CGM system.

(c) Primarily and Customarily Used To Serve a Medical Purpose

We proposed that CGMs that have not been approved or cleared by the FDA for use in making diabetes treatment decisions without the use of a blood glucose monitor but can be used to alert the patient about potentially dangerous glucose levels while they sleep, are primarily and customarily used to serve a medical purpose. Likewise, we believe that disposable continuous glucose sensors and transmitters that work in conjunction with an insulin pump that also operates as a continuous glucose monitor's receiver component to alert the patient about potentially dangerous glucose levels while they sleep are primarily and customarily used to serve a medical purpose. We now believe that because adjunctive CGMs or adjunctive continuous glucose sensors and transmitters used with insulin pumps can provide information about potential changes in glucose levels while a beneficiary is sleeping and is not using a blood glucose monitor, these CGMs or CGM functions on insulin pumps are primarily and customarily used to serve a medical purpose.

(d) Generally Not Useful to a Person in the Absence of an Illness or Injury

CMS has determined that both adjunctive and non-adjunctive/therapeutic CGM systems are generally not useful to a person in the absence of an illness or injury because people who do not have diabetes generally would not find a monitor that tracks their glucose levels to be useful. Thus far, Medicare's coverage policy for CGMs has supported the use of therapeutic CGMs in conjunction with a smartphone (with the durable receiver as backup), including the important data sharing function they provide for patients and their families.[26] CMS previously concluded that therapeutic CGMs, when used in conjunction with a smartphone, still satisfied the definition of DME because the durable receiver, used as a backup, was generally not useful to a person in the absence of an illness or injury, even if the smartphone might be. We are not changing this policy. We proposed that both therapeutic and non-therapeutic CGMs, when used in conjunction with a smartphone, satisfy the definition of DME because the durable receiver, used as a backup, is not generally useful to a person in the absence of an illness or injury. Medicare does not cover or provide payment for smartphones under the DME benefit. In order for Medicare to cover disposable glucose sensors, transmitters and other non-durable components of a CGM system, these disposable items must be used with durable CGM equipment that meets the Medicare definition of DME, which smartphones do not. If a Medicare beneficiary is using durable CGM equipment or an insulin pump with a CGM feature that meets the Medicare definition of DME as a backup, but primarily uses a smartphone or other non-DME device to display their glucose readings in conjunction with the covered DME item as described previously, Medicare will cover the disposable items since the beneficiary is using their covered DME item as a backup to display their glucose readings. However, if the beneficiary is exclusively using a non-DME item like a smartphone to display glucose readings from disposable sensors, transmitters or other disposable CGM supplies, these disposable supplies cannot be covered since there is no covered item of DME in this scenario, even as a backup.

(e) Appropriate for Use in the Home

The FDA has cleared or approved CGM systems as safe and effective for use by the patient in their homes similar to how blood glucose monitoring systems have been used in the home for many years. Both adjunctive and non-adjunctive CGMs are appropriate for use in the home for the same purpose that a blood glucose monitor is used in the home.

Comment: With regard to the proposal to expand classification of durable medical equipment (DME) to all types of CGMs (''adjunctive'' as well as ''non-adjunctive''), most commenters agreed with the proposal but multiple commenters pointed out that the only adjunctive CGM system on the market today does not include a dedicated durable CGM receiver. Some commenters recommended classifying the software application (App) that allows smart phones to function as CGM receivers as DME.

Response: We have confirmed with the FDA that the one adjunctive CGM product on the market today, the Guardian™ Connect System, consists of disposable glucose sensors and transmitters that work in conjunction with the patient's smart phone and App or with certain MiniMed insulin infusion pumps instead of a dedicated durable receiver. Software applications do not meet the definition of DME, nor do phones or computers. To cover the software application under the Medicare Part B benefit for DME, the equipment that the software is added to, or some part of the CGM system used with the software, must meet the Medicare definition of DME at 42 CFR 414.202, including the requirement that the equipment or system component not be useful in the absence of illness or injury. Smart phones are useful in the absence of illness or injury and therefore do not meet the definition of DME. Therefore, a CGM system that consists of a software application added to a smart phone and disposable supplies is not covered under the Medicare Part B benefit for DME. However, smart devices (watch, smartphone, tablet, laptop computer, etc.) can be used in conjunction with a continuous glucose monitor.

In contrast, durable insulin infusion pumps have been classified and covered as DME since the mid-1990s. Therefore, in accordance with this final rule, an insulin pump that also performs the functions of an adjunctive CGM would also be classified and covered as DME.

After consideration of the public comments we received, we are finalizing the proposed rule to expand classification of DME to both adjunctive and non-adjunctive CGMs as long as all requirements of the definition of DME at 42 CFR 414.202 are met. There are adjunctive continuous glucose monitoring sensors and transmitters that do not meet the durability requirement and are used exclusively in conjunction with devices such as smart phones, which are not DME for the previously stated reasons; neither the sensors and transmitters nor the smart phones meet the Medicare definition of DME. In situations where these adjunctive continuous glucose monitoring sensors and transmitters are used in conjunction with an insulin infusion pump that also functions as a CGM receiver, the sensors and transmitters can be covered under the DME benefit, subject to other requirements and criteria. We note that if the beneficiary does not meet the medical necessity criteria for an insulin pump, then the insulin pump would not be covered and therefore any supplies used with the insulin pump would also not be covered.

2. Fee Schedule Amounts for CGM Receivers/Monitors and Related Accessories

Medicare payment for DME was made on a reasonable charge basis prior to 1989. The regulations related to implementation of the reasonable charge payment methodology are found at 42 CFR part 405, subpart E. The current Medicare payment rules for glucose

[26] *https://www.cms.gov/Center/Provider-Type/Durable-Medical-Equipment-DME-Center.*

monitors and other DME are located at section 1834(a) of the Act and mandate payment on the basis of fee schedule amounts beginning in 1989. Blood glucose monitors are classified as routinely purchased items subject to the payment rules for inexpensive and routinely purchased DME at section 1834(a)(2) of the Act, which mandate payment for routinely purchased items on a purchase or rental basis using fee schedule amounts based on average reasonable charges for the purchase or rental of the item for the 12-month period ending on June 30, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987. These base fee schedule amounts are increased on an annual basis based on the update factors located in section 1834(a)(14) of the Act, which includes specific update factors for 2004 through 2008 for class III devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act. Routinely purchased equipment is defined in the regulations at 42 CFR 414.220(a)(2) as equipment that was acquired by purchase on a national basis at least 75 percent of the time during the period July 1986 through June 1987. Section 1834(a)(1)(C) of the Act states that subject to subparagraph (F)(ii), this subsection must constitute the exclusive provision of this title [Title XVIII of the Act] for payment for covered items under this part [Medicare Part B] or under Part A to a home health agency. The fee schedule amounts for blood glucose monitors were revised in 1995 using special payment limits established in accordance with the ''inherent reasonableness'' authority at section 1842(s)(8) of the Act. The final notice (BPD–778–FN) establishing special payment limits for blood glucose monitors was published in the January 17, 1995 **Federal Register** (60 FR 3405), with the payment limits updated on an annual basis using the DME fee schedule update factors in section 1834(a)(14) of the Act.

Because certain CGMs have been approved or cleared by the FDA to replace blood glucose monitors for use in making diabetes treatment decisions, we believe that CGMs represent a newer technology version of glucose monitors paid for by Medicare in 1986 and 1987. In addition, the CGM systems function similar to the blood glucose monitors in using disposable supplies or accessories, such as test strips or sensors, to measure glucose levels in a patient's body, either from the patient's blood or interstitial fluid, and using durable equipment to convert these glucose measurements in a way that they can be displayed on a screen on the equipment. Therefore, we believe that the CGM receivers/monitors must be classified as routinely purchased DME since they are a technological refinement of glucose monitors routinely purchased from July 1986 through June 1987. The alternative would be to classify CGM receivers/monitors as other items of DME under section 1834(a)(7) of the Act and pay for the equipment on a capped rental basis. We also believe the average reasonable charge data for blood glucose monitors from 1986 and 1987 can be used to establish the fee schedule amounts for CGM receivers/monitors in accordance with our regulations 42 CFR 414.238(b) since CGM receivers/monitors are comparable to blood glucose monitors.

We do not believe that the special payment limits established in 1995 for blood glucose monitors must apply to CGM receivers/monitors because these special payment limits were based on specific pricing information on the cost of blood glucose monitors. We therefore proposed to continue using the fee schedule amounts established in CMS–1682–R based on the updated 1986/87 average reasonable charges for blood glucose monitors as the fee schedule amounts for CGM receivers/monitors. As noted, section 1834(a)(14) of the Act provides different annual update factors for class III DME versus other DME items and so the fee schedule amounts for class III CGM receivers are slightly higher (from $231.77 to $272.63 in 2020) than the fee schedule amounts for class II CGM receivers (from $208.76 to $245.59 in 2020).

With regard to the fee schedule amounts for supplies and accessories for CGMs, we proposed to separate payment for CGM supplies and accessories into three separate categories of supplies and accessories with different fee schedule amounts for each category. The current 2020 monthly fee schedule amounts of $222.77 and $259.20 for supplies and accessories for CGM systems apply to all types of class II or class III therapeutic CGMs, respectively, but were established based on supplier price lists for only one type of CGM system approved by FDA for use in making diabetes treatment decisions without the need to use a blood glucose monitor to verify the results (non-adjunctive CGMs). The supplier prices used to establish these fee schedule amounts were for non-adjunctive CGM systems that use a combination of sensors and transmitters to automatically send glucose measurements to the CGM receiver without manual intervention by the patient. We refer to this type of CGM system as a non-adjunctive system, or a system that both replaces a blood glucose monitor for use in making diabetes treatment decisions, and can alert the patient about dangerous glucose levels while they sleep based on the automatic transmission of the glucose readings to the receiver on a 24-hour basis. The fee schedule amounts of $222.77 and $259.20 for supplies and accessories for class II and class III CGMs, respectively, increased by the fee schedule update factor for 2021, would continue to apply to the supplies and accessories for automatic, non-adjunctive CGMs effective the effective date specified in the **DATES** section of this final rule.

If a beneficiary uses disposable ''adjunctive'' or ''non-therapeutic'' continuous glucose sensors and transmitters with an insulin infusion pump, the beneficiary and Medicare program would still incur expenses associated with use of blood glucose monitors and supplies. To avoid a situation where the beneficiary and program would pay twice for glucose monitoring supplies needed to accurately assess glucose levels, we proposed to establish the fee schedule amounts for supplies and accessories for adjunctive CGMs based on supplier prices for the sensors and transmitters minus the fee schedule amounts for the average quantity and types of blood glucose monitoring supplies used by insulin-treated beneficiaries who would be more likely to qualify for coverage of a CGM system based on a need to more closely monitor changes in their glucose levels. The adjunctive CGM system is not replacing the function of the blood glucose monitor and related supplies and therefore only provides an adjunctive or added benefit of alerting the beneficiary when their glucose levels might be dangerously high or low. Since the adjunctive CGM system cannot function alone as a glucose monitor for use in making diabetes treatment decisions, we proposed to reduce the payment for the adjunctive CGM system by the amount that is paid separately for the blood glucose monitor and supplies that are needed in addition to the adjunctive CGM system and are not needed in addition to the non-adjunctive CGM systems. Currently, Medicare is allowing coverage and payment for 135 test strips and lancets per month for insulin-treated beneficiaries using blood glucose monitors. Using the 2020 mail order fee schedule amounts for 50 test strips, divided by 50 and multiplied by 135,

plus the 2020 mail order fee schedule amounts for 100 lancets, divided by 100 and multiplied by 135, plus the 2020 mail order fee schedule amounts for a monthly supply of batteries, calibration solution, and lancet device, plus the 2020 fee schedule amount for the blood glucose monitor divided by 60 months (5-year lifetime) results in a 2020 monthly allowance of $34.35, which reflects what Medicare currently pays per month for an insulin-treated diabetic beneficiary. Based on supplier invoices and other prices, a 2020 monthly price for supplies and accessories used with class II or class III adjunctive CGMs would be calculated to be $209.97 and $233.12 respectively. Subtracting the monthly cost of the blood glucose monitor and supplies of $34.35 from the monthly cost of the supplies and accessories for class II adjunctive CGMs results in a net price of $175.62 ($209.97 − $34.35 = $175.62) for the monthly supplies and accessories used with a class II adjunctive CGM after backing out the cost of the separately paid blood glucose supplies. Subtracting the monthly cost of the blood glucose monitor and supplies of $34.35 from the monthly cost of the supplies and accessories for class III adjunctive CGMs results in a net price of $198.77 ($233.12 − $34.35 = $198.77) for the monthly supplies and accessories used with a class III adjunctive CGM after backing out the cost of the separately paid blood glucose supplies. Thus, we proposed 2020 fee schedule amounts of $175.62 and $198.77 (to be increased by the 2021 fee schedule update factor yet to be determined) for use in paying claims in 2021 for the monthly supplies and accessories for use with class II and class III adjunctive CGMs respectively. Reducing the payment amount for supplies and accessories used with adjunctive CGMs by the average monthly payment for the blood glucose monitor and supplies that Medicare and the beneficiary will still have to pay for avoids a situation where the beneficiary and the program pay twice for glucose testing supplies and equipment.

Finally, a third type of CGM system currently on the market is non-adjunctive but does not automatically transmit glucose readings to the CGM receiver and therefore does not alert the patient about dangerous glucose levels while they sleep. We refer to this as a manual, non-adjunctive CGM system. We proposed to establish 2020 fee schedule amounts of $46.86 (for class II devices) and $52.01 (for class III devices) for the monthly supplies and accessories for this third category, which only uses disposable batteries and sensors, based on supplier prices for the supplies and accessories for this category of CGMs.

Comment: Many commenters did not agree with the proposal to establish separate codes and pricing for supplies for three types of CGM systems on the market today. They strongly believe that linking coding and payment to the specific types of CGMs on the market today was not wise given the rapid pace in changes in technology for CGMs and diabetic equipment in general. Many commenters specifically objected to establishing separate codes and fee schedule amounts for automatic versus manual non-adjunctive CGMs. They recommended that the continuity of pricing regulations should be observed and that the initial prices established based on automatic non-adjunctive CGMs alone should apply to manual non-adjunctive CGMs as well. The manufacturer of the manual non-adjunctive CGM pointed out that their new product line for CGMs offers continuous data transmission from sensor to receiver, enabling customizable, real-time alarms and alerts that can automatically alert users when their glucose is high or low, including while they sleep, without any patient intervention. Therefore, it appears that the manual non-adjunctive CGM systems and classification are already becoming obsolete.

Response: We agree with the commenters that glucose monitoring technology is changing rapidly, and the Medicare fee schedule amounts for this equipment should not be limited solely to the technology that is currently on the market. We believe that the existing fee schedule amounts for non-adjunctive CGMs and supplies and accessories necessary for the effective use of non-adjunctive CGMs should continue to be used in paying claims for these items. However, the utility offered by adjunctive CGMs is not the same as the utility offered by non-adjunctive CGMs and so we do not believe that the existing fee schedule amounts established for the non-adjunctive CGMs and supplies and accessories necessary for the effective use of non-adjunctive CGMs should be used in paying claims for adjunctive CGMs and supplies and accessories necessary for the effective use of adjunctive CGMs, which clearly are different types of CGMs because they cannot be used in place of a blood glucose monitor. As explained further later in this section, we believe that separate fee schedule amounts are needed for adjunctive CGMs and supplies and related accessories versus non-adjunctive CGMs and related supplies and accessories.

Comment: Many commenters stated that more details were needed on how the proposed fee schedule amounts were established for the separate codes for supplies used with the three types of CGM systems on the market today.

Response: We are not finalizing the proposed fee schedule amounts for the monthly supplies and accessories associated with three different types of CGMs. Although we will continue using existing fee schedule amounts established for non-adjunctive CGMs, these are not fee schedule amounts for adjunctive CGMs and therefore do not apply to adjunctive CGMs.

Comment: Many commenters believe the proposed fee schedule amounts for supplies for CGMs were not sufficient to cover the cost of these items. A commenter stated that the proposed fee schedule amounts are below internet retail prices while other commenters simply stated that the proposed fee schedule amounts are below the cost of the products.

Response: The fee schedule amounts for supplies necessary for the effective use of CGMs is required to be established in accordance with the rules of the statute at section 1834(a) of the Act. In establishing Medicare fee schedule amounts for DME items, section 1834(a) of the Act requires that CMS base payment amounts on average reasonable charges in 1986 and 1987.

After consideration of the public comments we received, we are not finalizing the proposed fee schedule amounts for supplies and accessories used in conjunction with three types of CGMs. We believe the technology associated with the manual, non-adjunctive category is already becoming obsolete as more CGM products that automatically transmit sensor readings to the receiver and provide night time alarms come on the market. As the commenters pointed out, the technology is evolving quickly and establishing categories based on the different variations of CGMs on the market at any one time does not seem prudent or necessary. However, we do note that there is a substantial difference in the utility and capabilities of adjunctive CGMs versus non-adjunctive CGMs in that while both are able to alert the patient about dangerous or potentially dangerous glucose levels while they sleep, the non-adjunctive CGMs are also able to replace the use of a blood glucose monitor for accurate glucose measuring/testing purposes, while the adjunctive CGMs are not.

A blood glucose monitor and related supplies are necessary for patients using

adjunctive CGMs for accurate glucose measuring/testing purposes, while patients using a non-adjunctive CGM do not also need a blood glucose monitor. Existing fee schedule amounts for therapeutic or non-adjunctive CGMs and related supplies and accessories were specifically established for those types of CGMs and do not apply to adjunctive CGMs and related supplies and accessories. Therefore, fee schedule amounts for adjunctive CGMs and related supplies and accessories will be established in accordance with existing regulations for gap-filling under 42 CFR 414.238(b).

Summary of final provisions:

- We are finalizing our proposal to expand the classification of DME to a larger swath of CGMs, regardless of whether they are non-adjunctive (can alert patients when glucose levels are approaching dangerous levels, including while they sleep and also replace blood glucose monitors) or adjunctive (can alert patients when glucose levels are approaching dangerous levels, including while they sleep but do not replace blood glucose monitors), as long as such CGMs satisfy the regulatory definition of DME. For example, to be classified under the Medicare Part B benefit for DME, a potential CGM would need to have a durable component performing the medically necessary function of the device that can withstand repeated use for at least 3 years, and is not useful in the absence of illness or injury, in accordance with 42 CFR 414.202.
- We are not finalizing the proposed fee schedule amounts for CGMs and related supplies and accessories.
- Therefore, the fee schedule amounts for adjunctive CGM and related supplies and accessories will be established in accordance with existing regulations for gap-filling under 42 CFR 414.238(b).

VII. DME Interim Pricing in the CARES Act

In this final rule, we are finalizing the DME provisions of an IFC (May 2020 COVID–19 IFC) which made conforming changes to the DME payment regulations to reflect the CARES Act. The CARES Act (Pub. L. 116–136) was enacted on March 27, 2020. Section 3712 of the CARES Act specifies the payment rates for certain DME and enteral nutrients, supplies, and equipment furnished in non-CBAs through the duration of the emergency period described in section 1135(g)(1)(B) of the Act. Section 3712(a) of the CARES Act continues our policy of paying the 50/50 blended rates for items furnished in rural and non-contiguous non-CBAs through December 31, 2020, or through the duration of the emergency period, if longer. Section 3712(b) of the CARES Act increased the payment rates for DME and enteral nutrients, supplies, and equipment furnished in areas other than rural and non-contiguous non-CBAs through the duration of the emergency period. Beginning March 6, 2020, the payment rates for DME and enteral nutrients, supplies, and equipment furnished in these areas are based on 75 percent of the adjusted fee schedule amount and 25 percent of the historic, unadjusted fee schedule amount, which results in higher payment rates as compared to the full fee schedule adjustments that were previously required under § 414.210(g)(9)(iv). We made changes to the regulation text at § 414.210(g)(9), consistent with section 3712 of the CARES Act, in an IFC that we published in the May 8, 2020 **Federal Register** titled ''Medicare and Medicaid Programs; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency.''

We received six timely pieces of correspondence in response to the May 2020 COVID–19 IFC provision titled ''DME Interim Pricing in the CARES Act''.

Comment: Many of the commenters appreciated that CMS modified the regulations consistent with section 3712 of the CARES Act.

Response: We thank the commenters for their support.

Comment: Many of the commenters cited reasons why the increased payments rates for DME are needed during the PHE. A commenter stated that ensuring access to personal protective equipment (PPE) and other DME for beneficiaries is essential to preventing the spread of COVID–19. Another commenter stated that this provision is in the overall interest to everyone—suppliers, health care professionals and beneficiaries—as suppliers will be able to maintain their inventory and be paid for items when there may be lags in care and beneficiaries may not be able to meet required visits due to the current PHE. Another commenter stated that there have been broad-based increases in the acquisition costs of certain home medical equipment (for example, ventilators, oxygen concentrators) as well as an increase in various overhead expenses (for example, requisite personal protective equipment and a more labor-intensive delivery/instruction methodology). The commenter stated that this has created financial hardships for many suppliers servicing the PHE patients.

Response: We believe that section 3712 of the CARES Act addresses these concerns about the need for payment increases during the PHE.

Comment: A commenter suggested that the adjustment for the 75/25 blend in the non-rural and contiguous non-CBAs should be maintained—at a minimum—to the end of 2020. The commenter also stated that if Round 2021 of the CBP is delayed, then the 75/25 blended rates should be extended from 2020 and subsequent years and maintained until the program is implemented. The commenter also stated that if Round 2021 is delayed, the 75/25 blended rates should be extended to all non-rural providers, including the former CBAs, until the next CBP can be implemented. The commenter then stated that if there is a delay in Round 2021, the 50/50 blended rates for rural areas should be extended until the next Round of the CBP is implemented.

Response: This provision implements section 3712 of the CARES Act. Section 3712(a) of the CARES Act continues our policy of paying the 50/50 blended rates for items furnished in rural and non-contiguous non-CBAs through December 31, 2020, or through the duration of the emergency period, if longer. Section 3712(b) of the CARES Act increased the payment rates for DME and enteral nutrients, supplies, and equipment furnished in areas other than rural and non-contiguous non-CBAs through the duration of the emergency period. As such, and because the PHE has continued into 2021, the 50/50 blended rates in rural and non-contiguous non-CBAs and the 75/25 blended rates in the non-rural contiguous non-CBAs have remained in effect. This provision does not address fee schedule adjustments after the PHE. We proposed a fee schedule adjustment rule for after the PHE in the November 2020 proposed rule.

After consideration of the public comments received, we are finalizing the following changes to § 414.210(g)(9):

- We are finalizing conforming changes to § 414.210(g)(9) as proposed, consistent with section 3712(a) and (b) of the CARES Act, but we are omitting the language in section 3712(b) of the CARES Act that references an effective date that is 30 days after the date of enactment of the law.
- We are finalizing our proposed revision to § 414.210(g)(9)(iii), which describes the 50/50 fee schedule adjustment blend for items and services furnished in rural and non-contiguous areas, to address dates of service from June 1, 2018, through December 31, 2020, or through the duration of the emergency period described in section

1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later.

- We are finalizing our proposed addition to § 414.210(g)(9)(v) which states that, for items and services furnished in areas other than rural or noncontiguous areas with dates of service from March 6, 2020, through the remainder of the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), based on the fee schedule amount for the area is equal to 75 percent of the adjusted payment amount established under ''this section'' (by which we mean § 414.210(g)(1) through (8)), and 25 percent of the unadjusted fee schedule amount. For items and services furnished in areas other than rural or noncontiguous areas with dates of service from the expiration date of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)) through December 31, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (referred to as ''this section'' in the regulation text).
- Finally, we are finalizing our revision of § 414.210(g)(9)(iv) to specify for items and services furnished in areas other than rural and noncontiguous areas with dates of service from June 1, 2018 through March 5, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (''this section'' in the regulation text).

VIII. Collection of Information Requirements

This document does not impose information collection requirements for reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by OMB under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IX. Regulatory Impact Analysis

A. Statement of Need

We are finalizing provisions that were included in the November 2020 proposed rule, as well as provisions that were in two IFCs—the May 2018 IFC and the May 2020 COVID–19 IFC.

The May 2018 IFC, finalized in this rule, with the exception of the wheelchair provisions, amended the regulations to revise the date that the initial fee schedule adjustment transition period ended and resumed the fee schedule adjustment transition period for certain DME items and services and enteral nutrition furnished in rural and non-contiguous areas not subject to the DMEPOS CBP from June 1, 2018 through December 31, 2018 (83 FR 21912). The May 2018 IFC also made technical amendments to existing regulations for DMEPOS items and services to note the exclusion of infusion drugs used with DME from the DMEPOS CBP and reflected the extension of the transition period for phasing in fee schedule adjustments for certain durable medical equipment (DME) and enteral nutrition paid in areas not subject to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) through December 31, 2016. Additionally, on April 26, 2021, we announced the continuation of effectiveness of the 2018 IFC and the extension of the timeline for publication of the final rule (86 FR 21949).

Specifically, this IFC resumed the blended adjusted Medicare fee schedule amounts for certain items and services that were furnished in rural and non-contiguous areas not subject to the CBP beginning June 1, 2018 in response to input from suppliers that the fully adjusted fee schedule amounts were not sufficient to cover the cost of furnishing items and services in remote areas of the country. Stakeholders and others posited that the increased fee schedule adjustments would ensure access to items and services in these areas to protect the health, safety, and well being of beneficiaries who needed these items and services. It was estimated that these adjustments cost $290 million in Medicare benefit payments and $70 million in Medicare beneficiary cost sharing for the period beginning June 1, 2018 and ending December 31, 2018. The goal of this IFC was to ensure beneficiary access to DME items and services in rural and non-contiguous areas not subject to the CBP during the transition period. CMS continued to study the impact of these change in payment rates on access to items and services in these areas. We believed that resuming the fee schedule adjustment transition period in rural and non-contiguous areas will promote stability in the DMEPOS market, and will enable CMS to work with stakeholders to preserve beneficiary access to DMEPOS.

The DMEPOS provisions included in the May 2020 COVID–19 IFC amended § 414.210 to temporarily increase the DME fee schedule amounts in certain areas during the PHE, as required by section 3712 of the CARES Act (85 FR 27569). The May 2020 IFC made several changes to payment and coverage policies, in an effort to allow health care providers maximum flexibility to minimize the spread of COVID–19 among Medicare and Medicaid beneficiaries, health care personnel, and the community at large, and increased their capacity to address the needs of their patients. The estimated Medicare gross benefit costs against the FY 2021 President's Budget baseline for the May 2020 IFC provision was $140 million (85 FR 27614). We also estimated that the May 2020 IFC provision also costs $30 million in Medicare beneficiary cost sharing at that time.

In addition, we are finalizing certain provisions that were included in the November 2020 proposed rule (85 FR 70358). This final rule establishes a fee schedule adjustment methodology for certain DMEPOS items and services furnished in non-competitive bidding areas (non-CBAs) on or after the effective date specified in the **DATES** section of this final rule, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later. This policy continues higher fee schedule amounts for certain items and services furnished in rural and non-contiguous areas of the country. This fee schedule adjustment methodology is responsive to stakeholders such as DMEPOS suppliers, who are of the view that fully adjusted fee schedule amounts are not sufficient to cover the costs of furnishing DMEPOS items and services in remote areas of the country.

Section 1834(a)(1)(G) of the Act specifically mandates that we take into account the average volume of items and services furnished by suppliers in CBAs compared to the average volume of items and services furnished by suppliers in non-CBAs when adjusting fee schedule amounts for DMEPOS items and services. As noted elsewhere in this rule, the average volume of items and services furnished by suppliers in many non-CBAs that are rural and non-contiguous areas is lower than the average volume of items and services furnished by suppliers in many CBAs. We believe that different payments are necessary to ensure access to items and services for beneficiaries in these rural and non-contiguous areas to protect their health, safety, and well-being.

This final rule also establishes procedures for making benefit category and payment determinations for new items and services that are durable medical equipment (DME), prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations under Medicare Part B.

This policy would help to prevent delays in making benefit category and payment determinations for new and innovative DMEPOS technologies that could improve the health and safety of Medicare beneficiaries. This final rule also classifies continuous glucose monitors (CGMs) as DME under Medicare Part B. This policy increases the number and types of CGMs classified under the Medicare Part B benefit for DME, so that beneficiaries and their physicians have more treatment options available.

B. Overall Impact

We have examined the impact of the three provisions covered in this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 801–808).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with economically significant effects ($100 million or more in any 1 year). This rule is economically significant. The aggregated transfer costs are estimated to be approximately $6.030 billion during the period CY 2022 through CY 2026. This aggregate transfer cost is the sum of transfers from the Federal Government, the beneficiaries, and the State governments to the DME suppliers. Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed these proposed regulations, and the Departments have provided the following assessment of their impact.

C. Detailed Economic Analysis

Our baseline assumption assumes that in the absence of this final rule, the fee schedule amounts for certain DMEPOS items furnished in non-CBAs on the effective date specified in the **DATES** section of this final rule or after the end of the PHE, whichever is later, would be fully adjusted based on information from the CBP. In addition, our baseline assumption assumes that in the absence of this final rule, benefit category determinations would continue to only be made through the NCD process, notice and comment rulemaking, or by the MACs on an individual, claim-by-claim basis. Also, the baseline assumption assumes that in the absence of this final rule, adjunctive CGMs would continue to be considered items that are not primarily and customarily used to serve a medical purpose and would not be classified as DME. Finally, it assumes that in the absence of this final rule, the DMEPOS provisions included in the 2018 and 2020 IFCs would not be finalized, and CMS would need to finalize these provisions at some other time. CMS has calculated a baseline based on predicted Medicare costs if CMS were to not finalize the provisions of this final rule noted previously.

For purposes of this detailed economic analysis, CMS established a baseline, as described previously, to measure the impacts of certain provisions of this final rule. CMS makes certain assumptions as part of this analysis. For example, this analysis assumes that nothing would arise or occur (for example, new legislation) to prevent CMS from fully adjusting the fee schedule amounts for certain DME items and services furnished in non-competitive bidding areas on or after the effective date of this final rule. Note that for the economic analysis in the November 2020 proposed rule, CMS used the FY 2021 President's budget as a baseline, which resulted in a proposed rule that was deemed primarily designated as not economically significant. However, as a result of the new baseline described previously, we have determined that this final rule is economically significant. We have determined the following impacts on benefits, costs, and transfers for this economically significant rule as follows:

1. Benefits

a. May 2018 IFC

This rule finalizes certain provisions of the May 2018 IFC, thereby benefitting DMEPOS suppliers. We assume that certain suppliers might have chosen not to furnish items and services in rural and non-contiguous areas in the absence of these higher payments.

b. May 2020 COVID–19 IFC

This rule finalizes certain provisions of May 2020 COVID–19 IFC, thereby benefitting DMEPOS suppliers that furnish items in certain non-CBAs. Such suppliers receive higher payments for furnishing DMEPOS items and services.

c. November 2020 Proposed Rule

This rule finalizes certain provisions of the November 2020 proposed rule. As a result of this final rule, access to DMEPOS items and services in rural and non-contiguous areas will be improved. In addition, this final rule establishes a BCD and payment determination process for DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations and classifies adjunctive CGMs as DME. These provisions will benefit Medicare beneficiaries and the DMEPOS industry by providing a clear, predictable process for benefit category and payment determinations, and will make more CGMs eligible for coverage and payment under the Medicare Part B benefit for DME.

2. Costs

The only cost that will be incurred is a one-time cost to private entities for reviewing and reading this final rule.

3. Transfers

a. May 2018 IFC

As a result of the provisions of this IFC, DME suppliers received increased payments for furnishing items in remote rural and non-contiguous areas in 2018. Medicare beneficiaries, on the other hand, incurred higher copayments, which resulted in higher transfer costs from the Federal Government and Medicare beneficiaries to DMEPOS suppliers. The provisions of the May 2018 IFC that CMS is finalizing in this final rule affected payment rates for DMEPOS items and services furnished from June through December of 2018. Therefore, finalizing these provisions of this IFC in this rule has no economic impact on payment or cost sharing for these items.

The May 2018 IFC resumed the transitional adjusted Medicare fee schedule amounts for certain items and services that were furnished in rural and non-contiguous non-competitive bidding areas beginning June 1, 2018 through December 31, 2018. The May 2018 IFC also made technical amendments to the regulation to reflect the extension of the fee schedule adjustment transition period from June 30, 2016 to December 31, 2016 that was mandated by the CURES Act. In addition, the May 2018 IFC also made technical amendments to existing regulations for DMEPOS items and services to reflect the exclusion of infusion drugs used with DME from the DMEPOS CBP. The May 2018 IFC also contained provisions related to wheelchair payment, which we further discuss in the FY 2022 IRF final rule (86 FR 42362).

In the May 2018 IFC, CMS estimated that the transitional adjusted Medicare fee schedule amounts for certain items and services that were furnished in rural and non-contiguous areas beginning June 1, 2018 through December 31, 2018, cost over $290 million in Medicare Part B benefit payments and $70 million in Medicare beneficiary cost sharing (83 FR 21923). These fee schedule adjustment costs—both to the Medicare program and to beneficiaries—were incurred during 2018 and will have no further financial impact at this time. Similarly, for dually eligible beneficiaries, the Medicaid Federal and States' costs for this May 2018 IFC were $10 million and $10 million, respectively. The portions of the May 2018 IFC that CMS is finalizing in this final rule are estimated to have no impact after the effective date of the final rule because all of the costs and financial impacts of the IFC happened in the past, and this IFC will not have an impact going forward.

Comment: A few commenters did not agree with CMS using the cost of the rule to determine how extensive the payment increases should have been. The commenters stated CMS used the budget implications as a primary determinant in choosing to extend payment increases only to the rural and non-contiguous non-CBAs. The commenters recommended that CMS instead base its policy decision primarily on ensuring appropriate beneficiary access, and that any budgetary impacts should be secondary to CMS establishing a policy that ensures that beneficiaries have appropriate access to medically necessary DMEPOS items. Another commenter stated that the cost of the rule is far less than costs to other health care entities and Medicare beneficiaries due to the lack of access to DME. Finally, a commenter stated the rule will increase costs for certain Medicare beneficiaries, potentially impacting those on the margin, but they believe increased access to quality DME and supplier/brand name choice is a reasonable trade-off. The commenter claimed that the true impact of the forecasted cost-sharing is unclear due to secondary insurance. The commenter also stated that for beneficiaries who are dually eligible for both Medicare and Medicaid, Medicaid will typically pay the cost sharing, offsetting this total amount. The commenter stated that many beneficiaries who do not qualify for Medicaid but cannot afford secondary insurance do not end up paying for DME cost sharing out of pocket, and that it is common for DME suppliers to write off co-payments when beneficiaries cannot afford to pay after the supplier has made reasonable attempts to collect the balance. The commenter encouraged CMS to monitor how this cost increase impacts beneficiaries.

Response: We believe that we considered beneficiary access to DMEPOS items in our analysis and that the policy was implemented, to a large degree, based on improved access.

In the May 2018 IFC, we summarized the feedback we received from the March 23, 2017 stakeholder call and related written comments (83 FR 21916). The majority of these comments were from the DMEPOS industry and focused on rural and non-contiguous areas of the country. For instance, commenters stressed that rural and non-contiguous areas of the country face unique costs, that the average volume of allowed services for suppliers serving CBAs is significantly higher than the average volume of allowed services for suppliers serving non-CBAs, particularly in rural and non-contiguous areas, and that the adjusted fees are not sufficient to cover the costs of furnishing items and services in rural and non-contiguous areas and that this is having an impact on access to items and services in these areas. These comments factored into our decision to only apply the 50/50 blended rates to rural and non-contiguous non-CBAs. We also further explain in our CY 2019 ESRD PPS DMEPOS final rule our reasons for only applying the 50/50 blended rates to rural and non-contiguous areas (83 FR 57030).

b. May 2020 COVID–19 IFC

As a result of the provisions of this finalized May 2020 COVID–19 IFC, even though DME suppliers received increased payments for furnishing items in remote rural and non-contiguous areas, Medicare beneficiaries, on the other hand, incurred higher cost-sharing, which resulted in higher transfer costs from the Federal Government and Medicare beneficiaries to the DMEPOS suppliers. The provisions of the May 2020 COVID–19 IFC that CMS is finalizing in this final rule affect payment rates for DMEPOS items and services furnished from March 6, 2020 through the end of the PHE, which is assumed to end after the effective date of this rule in April 2022. Finalizing these provisions of this IFC in this rule has a negligible economic impact on payment or cost sharing for these items.

CMS's Office of the Actuary determined that this provision against the FY 2021 President's Budget baseline increased payments in the estimated amount of $140 million from the Federal Government to DMEPOS suppliers (85 FR 27614). Additionally, the Medicare beneficiary transfer was $30 million to DME suppliers. This provision also impacts the federal portion of the Medicaid increased payments: The federal cost is $5 million for dually eligible beneficiaries, while the State portion of the Medicaid increased payments is $5 million.

This section finalizes a temporary increase to certain DME payment rates, as required by section 3712 of the CARES Act. Section 3712 of the CARES Act increases Medicare expenditures, as well as beneficiary cost-sharing by increasing Medicare payment rates for certain DMEPOS items furnished in non-rural and contiguous non-competitively bid areas. The increase is a result of paying a blend of 75 percent of the fully adjusted payment rates and 25 percent of the unadjusted payment

rates for items and services furnished in non-rural and contiguous non-CBAs throughout the United States and is estimated to increase affected rates, averaging 33 percent.

Comment: A commenter referenced the impact of this provision, which states that ''this change may also affect the federal financial participation limit for DMEPOS items and services furnished to Medicaid beneficiaries, but we are unable to quantify the effect.'' The commenter stated that despite the potential effects this provision may have on the federal financial participation limit, they strongly believe that these DMEPOS items and services remain critical for beneficiaries. Therefore, they expressed their support for this provision.

Response: We agree Medicaid rates are affected due to the interaction between the federal financial participation limit and Medicare rate changes, although the amount of the change is currently not quantifiable.

c. November 2020 Proposed Rule

The fee schedule adjustment methodology that CMS is finalizing in this final rule involves three transfers of monies: (1) Federal Government to DMEPOS suppliers; (2) beneficiaries to DME suppliers; and (3) State governments to DME suppliers. The amounts of these transfers are explained later in this section. CMS's Office of the Actuary has determined that the fee schedule adjustment methodology will increase Medicare gross benefit payments in the estimated amount of $4.55 billion from CY 2022 to CY 2026 as compared to the baseline discussed previously. During the years CY 2022 to CY 2026, the estimated gross payments will be as follows: $200 million, $770 million, $1.110 billion, $1.190 billion and $1.280 billion, respectively.

TABLE 3—IMPACT OF CHANGING THE ADJUSTED FEE METHODOLOGY

CY	Impact on benefit gross payments (in dollars to the nearest 10 million)	Impact on beneficiary cost sharing (in dollars to the nearest 10 million)
2022	200	50
2023	770	190
2024	1,110	280
2025	1.190	300
2026	1,280	320

Payments increase each year as a result of annual fee schedule updates and increases in utilization of items and services. As stated before, the increased payments result from paying a 50/50 blended rate for certain DME items furnished in rural and non-contiguous non-competitive bidding areas. This will increase the beneficiary copayments by $1.14 billion from CY 2022 to CY 2026. In addition, the federal portion of the Medicaid increased payments during this period is $195 million for the dually eligible beneficiaries, and the State portion of the Medicaid increased payments is $145 million during CY 2022 to CY 2026 ($10 million, $25 million, $35 million, $40 million, and $40 million, respectively, during CY 2022 through CY 2026). Note, the federal financial participation limit for DME in Medicaid, as discussed in section 1903(i)(27) of the Act, adds an indeterminable cost to the federal share of the Medicaid payments to States.

Comment: A commenter stated that a blind spot is the impact of the trickle down of rates to Medicaid, Medicare Advantage, and private insurances who base their rates on Medicare rates.

Response: We thank the commenter for commenting on the impact of this particular provision. Impact analyses consider the impact of policies on the MA rates and on private insurances (as they provide supplemental insurance that pays copayments on behalf of Medicare beneficiaries). So, supplemental insurers pay more or less depending on whether fees increase or decrease. Regarding Medicaid, we note that we provided details regarding the impact this particular provision has on Medicaid in the November 2020 proposed rule (85 FR 70406) and this final rule.

d. Benefit Category and Payment Determinations for DME, Prosthetic Devices, Orthotics and Prosthetics, Therapeutic Shoes and Inserts, Surgical Dressings, Splints, Casts, and Other Devices Used for Reductions of Fractures and Dislocations

We are finalizing the procedures for BCDs and payment determinations for new items and services that are DME, prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations with no additional administrative costs to CMS and no fiscal impact when measured against the baseline. We do not expect that the BCD and payment determination procedures that CMS is finalizing in this rule will affect the ability of manufacturers to make new items and services. We note that this final rule continues our use of an already established process (public meetings) to make BCD and payment determinations for new items and services that are durable medical equipment (DME), prosthetic devices, orthotics and prosthetics, therapeutic shoes and inserts, surgical dressings, or splints, casts, and other devices used for reductions of fractures and dislocations.

e. Classification and Payment for Continuous Glucose Monitors Under Medicare Part B

This final rule classifies certain CGMs as DME. This will result in an increase in the number of CGM products beneficiaries and physicians can choose that would be classified as DME. We do not anticipate that this change will impact overall utilization of CGMs covered under the DME benefit and Medicare payment because beneficiaries have had access to some types of CGMs since 2017. Because we do not anticipate changes in CGM utilization or payments for glucose monitoring equipment as a result of this final rule, this final rule will not result in any transfers.

4. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with regulatory review. Thus, using the 2020 wage information from the Bureau of Labor Statistics (BLS) *https://www.bls.gov/oes/current/oes119111.htm* for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this

rule is $114.24 per hour, including overhead and fringe benefits. For manufacturers of DMEPOS products, DMEPOS suppliers, and other DMEPOS industry representatives, we assume the same cost for reviewing this rule. Assuming an average reading speed for those very familiar with the topic matter, we estimate that it would take approximately 5 hours for the medical and health service managers or industry representatives to review this final rule. For each entity that reviews this final rule, the estimated cost is $571.20 (5 hours x $114.24 per hour). Therefore, we estimate that the total cost of closely reviewing this final rule is a one-time cost of $1,005,312 ($571.20 × 1,760 reviewers). Note the 1,760 reviewers represent about 2 percent of the current number of DME suppliers. Two percent was chosen based on the assumption that most entities would use trade industry summaries to inform themselves on the contents of the rule.

D. Alternatives Considered

This section addresses the alternatives considered only for the fee schedule adjustment methodology provisions from the November 2020 proposed rule. This section does not consider alternatives to the BCD provisions, CGM provisions, May 2020 COVID–19 IFC DMEPOS provisions (no alternatives were contained in the IFC) or the May 2018 IFC (the effects of which were limited to 2018). In the case of the CGM provisions, we are not finalizing the proposed fee schedule amounts for CGMs and related accessories and supplies. We do not believe that the decision not to finalize the proposed fee schedule amounts results in any costs or savings for the program or beneficiaries since one of the proposed categories of CGM supplies and accessories is being phased out and the fee schedule amounts for another category of adjunctive CGMs and supplies and accessories will be established in accordance with 42 CFR 414.238, which reflects our longstanding policies and procedures for gap-filling fee schedule amounts in accordance with the rules of the statute. Therefore, the impacts of all three alternatives for the November 2020 proposed rule discussed later in this section, are considered against the previously discussed baseline (that is, the baseline calculations assume that CMS would fully adjust the fee schedule amounts for DME items and services furnished all non-CBAs, including rural and non-contiguous non-CBAs).

Therefore, in regards to the November 2020 proposed rule, the first alternative was to pay fully adjusted fee schedule rates in all areas except super rural areas or non-contiguous areas and pay 120 percent of national average of the single payment amounts in super rural areas and non-contiguous areas. The Office of the Actuary estimated that this alternative would increase Medicare gross payments from CY 2022 to CY 2026 by $380 million. This would increase beneficiary copayments by $80 million from CY 2022 to CY 2026. In addition, the federal portion of the Medicaid would increase payments during this period to $20 million for the dually eligible beneficiaries, and the State portion of the Medicaid would also increase payments to $20 million.

The second alternative was to adjust fee schedule amounts for items and services furnished in non-CBAs between 2022 and 2023 based on a 75/25 blend of adjusted and unadjusted rates and phase in the full fee schedule adjustments beginning January 1, 2024. The Office of the Actuary estimates that this alternative would increase Medicare gross payments by $1.13 billion and increase beneficiary copayments by $280 million from CY 2022 to CY 2026. In addition, the federal portion of the Medicaid would increase payments during this period to $50 million for the dually eligible beneficiaries, and the State portion of the Medicaid would increase payments to $35 million.

Finally, the third alternative was to extend the transition period for phasing in fully adjusted fee schedule rates at 42 CFR 414.210(g)(9), which would result in the same payment amounts as the proposed rule for just a 2-year period. The Office of the Actuary estimated that this alternative would increase Medicare gross payments from CY 2022 to CY 2026 by $1.41 billion for items and services furnished in non-CBAs between 2022 and 2023. As a result, this would increase beneficiary copayments by $350 million from CY 2022 to CY 2026. In addition, the federal portion of Medicaid payments would increase during this period from CY 2022 to CY 2026 by $60 million for dually eligible beneficiaries, and the State portion of Medicaid payments would increase by $45 million.

The three alternatives, which were estimated to cost less than the policy that CMS is finalizing in this rule, were not considered primarily due to the assumption that maintaining the current fee schedule adjustment methodology would provide for better access to DMEPOS items and services in rural and non-contiguous areas than two of the alternatives, and would provide such access for a longer period of time than the three alternatives.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), we have prepared an accounting statement in Table 4, showing the classification of the impacts associated with the fee schedule adjustment methodologies included in the November 2020 proposed rule in this final rule. The November 2020 proposed rule, which is being finalized in this rule, is estimated to increase payments ($912 million annualized at 7 percent) from the Federal Government to DMEPOS suppliers by $4.550 billion from CY 2022 to CY 2026, as compared to a baseline that assumes that as of the effective date, CMS would pay fully adjusted fee schedule amounts in all non-competitive bidding areas for DMEPOS items subject to competitive bidding. In addition, the accounting statement considers the transfer amounts from beneficiaries to DME suppliers of $1.14 billion ($219 million annualized at 7 percent) from CY 2022 to CY 2026. Finally, the accounting statement accounts for the cost of the States' portion of the Medicaid payments for dually eligible beneficiaries, costing approximately $150 million from CY 2022 to CY 2026 ($28 million annualized at 7 percent. The annual costs increase over time because of annual updates to adjusted fee schedule amounts and Medicare enrollment increases.

TABLE 4—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Costs:				

TABLE 4—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS—Continued

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Annualized Monetized ($million/year)	0.20	2021	7	2022–2026
	0.20	2021	3	2022–2026
Regulatory Review Costs				
Transfers:				
Annualized Monetized ($million/year)	912	2021	7	2022–2026
	933	2021	3	2022–2026
From Whom to Whom	Transfers from Federal Government to DME Suppliers			
Annualized Monetized($million/year)	219	2021	7	2022–2026
	224	2021	3	2022–2026
From Whom to Whom	Transfers from Medicare Beneficiaries to DME Suppliers			
Annualized Monetized ($million/year)	28	2021	7	2022–2026
	28	2021	3	2022–2026
From Whom to Whom	Transfers from State Government to Beneficiaries			

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) imposes certain requirements with respect to federal rules that are (1) required to be published as a notice of proposed rulemaking subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)); and (2) likely to have a significant economic impact on a substantial number of small entities.

Note that the finalized provisions of the May 2018 IFC and the finalized May 2020 COVID–19 IFC impose no burden on a substantial number of small entities. However, the provisions of this final rule that were proposed in the November 2020 proposed rule will have a positive impact on DMEPOS suppliers. This rule will increase DMEPOS supplier revenues for furnishing DMEPOS items and services subject to the fee schedule adjustments in rural and non-contiguous areas. As compared to the baseline, the revenues for DMEPOS suppliers will be higher due to the 50/50 blended fee schedule adjustments in rural and non-contiguous areas.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that almost all DMEPOS suppliers are small entities, as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration (SBA) definition of a small business (having revenues of less than $8.0 million to $41.5 million in any 1 year).

According to the SBA's website at *http://www.sba.gov/content/small-business-size-standards,* DME suppliers may fall into either the North American Industrial Classification System (NAICS) code 532291 and Home Health Equipment Rental code 44610, Pharmacies and Drug Stores. The SBA defines Pharmacies and Drug Stores as businesses having less than $30 million and Home Health Equipment Rental as businesses having less than $35 million in annual receipts.

TABLE 5—DMEPOS SUPPLIERS SIZE STANDARDS

NAICS (6-digit)	Industry subsector description	SBA size standard/small entity threshold (million)	Total small businesses
446110 ...	Pharmacies and Drug Stores	$30	18,503
532291 ...	Home Health Equipment Rental	35	673

Source: 2012 Economic Census.

Since we are uncertain of the DMEPOS suppliers' composition, we sought comments from the public to aid in understanding the various industries that supply DMEPOS products. So far, we have identified only the two industries in Table 5.

TABLE 6—DMEPOS SUPPLIERS CONCENTRATION RATIOS

[(NAICS 532292) home health equipment rental]

Firm size (by receipts)	Firm count	% of small firms (%)	Total average revenue	Average revenue per firm to total average revenue (%)
SMALL FIRMS	673	100.0	$42,468,578	100
<100,000	57	8.47	$45,912	0.11
100,000–499,999	207	30.76	$287,647	0.68
500,000–999,999	137	20.36	$722,080	1.70
1,000,000–2,499,999	148	21.99	$1,599,811	3.77
2,500,000–4,999,999	64	9.51	$3,430,781	8.08
5,000,000–7,499,999	16	2.38	$5,599,563	13.19
7,500,000–9,999,999	15	2.23	$8,909,267	20.98
10,000,000–14,999,999	12	1.78	$10,715,917	25.23
15,000,000–19,999,999	10	1.49	$11,157,600	26.27
20,000,000–24,999,999	3	0.45	NA	NA
25,000,000–29,999,999	2	0.30	NA	NA
30,000,000–34,999,999	2	0.30	NA	NA
LARGE FIRMS:				
Receipts >$35 Million	46	NA	NA	NA

Source: 2012 County Business Patterns and 2012 Economic Census.

Average revenue data are not included for the Home Health Equipment Rentals (NAICS 532291) for firms greater than 20,000,000 in receipts. Moreover, no revenue data are available for large firms in Home Heath Equipment Rentals Industry.

TABLE 7—DMEPOS SUPPLIERS CONCENTRATION RATIOS

[NAICS 446110 pharmacies and drug stores]

Firm size (by receipts)	Firm count	% of small firms (%)	Total average revenue	Average revenue per firm to total average revenue (%)
SMALL FIRMS	18,503	100.0	$89,692,509.68	100
<100,000	751	0.04	$48,023.97	0.05
100,000–499,999	2,060	0.11	$283,085.44	0.32
500,000–999,999	1,919	0.10	$740,942.68	0.83
1,000,000–2,499,999	5,767	0.31	$1,742,084.10	1.94
2,500,000–4,999,999	5,094	0.27	$3,556,077.54	3.96
5,000,000–7,499,999	1,638	0.09	$6,068,161.78	6.77
7,500,000–9,999,999	583	0.03	$8,544,548.89	9.53
10,000,000–14,999,999	432	0.02	$11,705,081.02	13.05
15,000,000–19,999,999	147	0.01	$16,415,476.19	18.30
20,000,000–24,999,999	68	0.00	$20,211,073.53	22.53
25,000,000–29,999,999	44	0.00	$20,377,954.55	22.72
LARGE FIRMS:				
Receipts >$30 Million	349	NA	NA	NA

Source: 2012 County Business Patterns and 2012 Economic Census.

Tables 6 and 7 show that the economic impacts are disproportionate for small firms. Moreover, these tables show the revenues for each of the size categories, and the revenue impact per small entity. For example, in table 6, 57 of the smallest firms earn only 0.11 percent of the revenue in its industry; while, in table 7, 751 of the smallest firm earn only 0.05 percent of the revenue in its industry.

Therefore, as can be seen in Tables 6 and 7, almost all DMEPOS suppliers are small entities as that term is used in the RFA.[27] Additionally, Tables 6 and 7 show the disproportionate impacts among firms, and between small and large firms. In Table 6 and 7, each industry, Pharmacies and Drug Stores and Home Health Equipment, Rental firm size (by receipts), firm count, percentage of small firms, total average revenue, and percentage of average revenue to total revenue of small firms were estimated separately to determine the DMEPOS concentration ratios. Note, there are missing data. See footnotes in Table 6.

For purposes of the RFA, approximately 98.15 percent of pharmacies and drugs stores (18,503/18,852) and 93.60 percent of home health equipment rental (673/719) firms are considered small businesses according to the SBA's size standards with total revenues of $30 and $35 million or less respectively in any 1 year. Individuals and states are not included in the definition of a small entity.

This rule does not affect health care enterprises operated by small government entities such as counties or towns with populations 50,000 or less. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. The RFA threshold analysis, therefore, indicates

[27] Note, the entire population of DMEPOS suppliers is not known at this time. However, based on our experience, the majority of DMEPOS suppliers are covered in the two industries identified.

that there is not a significant economic impact on a substantial number of small entities. As shown in Table 6, the average total revenue earned by the DMEPOS Home Health Equipment Rental industry is approximately $42,468,578 million and the total transfer costs amount to approximately $6.261 billion, which is only 0.67 percent. Additionally, as shown in Table 7, the average total revenue earned by DMEPOS Pharmacies and Drugs Stores is approximately $89,692,509.68 million and the total transfer costs amount to approximately $6.030 billion, which is 1.49 percent. As a result, we believe that this 3 percent threshold (the threshold used by the Department of Health and Human Services to determine a significance threshold under the RFA) will not be reached for both the Home Health Equipment Rental industry and the Pharmacies and Drugs Stores industry mentioned in this rule. Furthermore, the regulation review costs mentioned previously, is *de minimis* and will not impose any additional burden on these small businesses.

Even though a substantial number of small suppliers will benefit from the 50/50 blended fee schedule amounts in rural and non-contiguous non-CBAs, we do not believe that this regulation will result in a significant economic impact on a substantial number of small entities. Therefore, the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandates Reform Act (UMRA)

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995, updated annually for inflation. In 2021, that threshold is approximately $158 million. This final rule imposes mandates that will result in anticipated costs to state, local and Tribal governments or private sector, but the transfer costs will be less than the threshold. As a result, this final rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $158 million in any one year.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Since this regulation does impose costs on state or local governments, the requirements of Executive Order 13132 are applicable.

The State governments' Medicaid payments in aggregate for dual eligible beneficiaries will increase by an estimated $150 million from CY 2022 to CY 2026.

I. Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on November 22, 2021.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 414 as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

■ 2. Section 414.114 is added to subpart C to read as follows:

§ 414.114 Procedures for making benefit category determinations and payment determinations for new PEN items and services covered under the prosthetic device benefit; splints and casts; and IOLs inserted in a physician's office covered under the prosthetic device benefit.

(a) *Definitions.* For the purpose of this subpart:

Benefit category determination means a national determination regarding whether an item or service meets the Medicare definition of a prosthetic device at section 1861(s)(8) of the Act or is a splint, cast, or device used for reduction of fractures or dislocations subject to section 1842(s) of the Act and the rules of this subpart and is not otherwise excluded from coverage by statute.

(b) *General rule.* The procedures for determining whether new items and services addressed in a request for a HCPCS Level II code(s) or by other means meet the definition of items and services that may be covered and paid for in accordance with this subpart are as follows:

(1) At the start of a HCPCS coding cycle, CMS performs an analysis to determine if the item or service is statutorily excluded from coverage under Medicare under section 1862 of the Act, and, if not excluded by statute, whether the item or service is parenteral or enteral nutrients, supplies, and equipment covered under the prosthetic device benefit, splints and casts or other devices used for reductions of fractures or dislocations, or IOLs inserted in a physician's office covered under the prosthetic device benefit.

(2) If a preliminary determination is made that the item or service is parenteral or enteral nutrients, supplies, and equipment covered under the prosthetic device benefit, splints and casts or other devices used for reductions of fractures or dislocations, or IOLs inserted in a physician's office covered under the prosthetic device benefit, CMS makes a preliminary payment determination for the item or service.

(3) CMS posts preliminary benefit category determinations and payment determinations on *CMS.gov* approximately 2 weeks prior to a public meeting.

(4) After consideration of public consultation provided at a public meeting on preliminary benefit category determinations and payment determinations for items and services, CMS establishes the benefit category determinations and payment determinations for items and services through program instructions.

■ 3. Section 414.210 is amended by revising paragraphs (g)(1)(v) and (g)(2) and adding paragraph (g)(9)(vi) to read as follows:

§ 414.210 General payment rules.

* * * * *

(g) * * *

(1) * * *

(v) For items and services furnished before February 28, 2022, the fee schedule amount for all areas within a state that are defined as rural areas for the purposes of this subpart is adjusted to 110 percent of the national average price determined under paragraph (g)(1)(ii) of this section.

(2) Payment adjustments for areas outside the contiguous United States and for items furnished on or after February 28, 2022 in rural areas within the contiguous United States using information from competitive bidding programs.

(i) For an item or service subject to the programs under subpart F, the fee schedule amounts for areas outside the contiguous United States (Alaska, Hawaii, and U.S. territories) for items and services furnished from January 1, 2016, through December 31, 2020 are reduced to the greater of—

(A) The average of the single payment amounts for the item or service for CBAs outside the contiguous United States.

(B) 110 percent of the national average price for the item or service determined under paragraph (g)(1)(ii) of this section.

(ii) For an item or service subject to the programs under subpart F of this part, the fee schedule amounts for areas outside the contiguous United States for items and services furnished on or after February 28, 2022, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, is adjusted to equal the sum of—

(A) Fifty percent of the greater of the average of the single payment amounts for the item or service for CBAs outside the contiguous United States or 110 percent of the national average price for the item or service determined under paragraph (g)(1)(ii) of this section; and

(B) Fifty percent of the fee schedule amount for the area in effect on December 31, 2015, increased for each subsequent year beginning in 2016 by the annual update factors specified in sections 1834(a)(14), 1834(h)(4), and 1842(s)(1)(B) of the Act, respectively, for durable medical equipment and supplies, off-the-shelf orthotics, and enteral nutrients, supplies, and equipment.

(iii) For an item or service subject to the programs under subpart F of this part, the fee schedule amounts for rural areas within the contiguous United States for items and services furnished on or after <AMDPAR>, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later, is adjusted to equal the sum of—

(A) Fifty percent of 110 percent of the national average price for the item or service determined under paragraph (g)(1)(ii) of this section; and

(B) Fifty percent of the fee schedule amount for the area in effect on December 31, 2015, increased for each subsequent year beginning in 2016 by the annual update factors specified in sections 1834(a)(14), 1834(h)(4), and 1842(s)(1)(B) of the Act, respectively, for durable medical equipment and supplies, off-the-shelf orthotics, and enteral nutrients, supplies, and equipment.

* * * * *

(9) * * *

(vi) For items and services furnished in all areas with dates of service on or after February 28, 2022, or the date immediately following the duration of the emergency period described in section 1135(g)(1)(B) of the Act, whichever is later, based on the fee schedule amount for the area is equal to the adjusted payment amount established under paragraph (g) of this section.

* * * * *

■ 4. Section 414.240 is added to subpart D to read as follows:

§ 414.240 Procedures for making benefit category determinations and payment determinations for new durable medical equipment, prosthetic devices, orthotics and prosthetics, surgical dressings, and therapeutic shoes and inserts.

(a) *Definitions.* For the purpose of this subpart—

Benefit category determination means a national determination regarding whether an item or service meets the Medicare definition of durable medical equipment at section 1861(n) of the Act, a prosthetic device at section 1861(s)(8) of the Act and further defined under section 1834(h)(4) of the Act, an orthotic or leg, arm, back or neck brace, a prosthetic or artificial leg, arm or eye at section 1861(s)(9) of the Act, is a surgical dressing, or is a therapeutic shoe or insert subject to sections 1834(a), (h), or (i) of the Act and the rules of this subpart and is not otherwise excluded from coverage by statute.

(b) *General rule.* The procedures for determining whether new items and services addressed in a request for a HCPCS Level II code(s) or by other means meet the definition of items and services paid for in accordance with this subpart are as follows:

(1) At the start of a HCPCS coding cycle, CMS performs an analysis to determine if the item or service is statutorily excluded from coverage under Medicare under section 1862 of the Act, and, if not excluded by statute, whether the item or service is durable medical equipment, a prosthetic device as further defined under section 1834(h)(4) of the Act, an orthotic or prosthetic, a surgical dressing, or a therapeutic shoe or insert.

(2) If a preliminary determination is made that the item or service is durable medical equipment, a prosthetic device, an orthotic or prosthetic, a surgical dressing, or a therapeutic shoe or insert, CMS makes a preliminary payment determination for the item or service.

(3) CMS posts preliminary benefit category determinations and payment determinations on *CMS.gov* approximately 2 weeks prior to a public meeting.

(4) After consideration of public consultation provided at a public meeting on preliminary benefit category determinations and payment determinations for items and services, CMS establishes the benefit category determinations and payment determinations for items and services through program instructions.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–27763 Filed 12–21–21; 4:15 pm]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Foothill Yellow-Legged Frog; Threatened Status With Section 4(d) Rule for Two Distinct Population Segments and Endangered Status for Two Distinct Population Segments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2021–0108; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE90

Endangered and Threatened Wildlife and Plants; Foothill Yellow-Legged Frog; Threatened Status With Section 4(d) Rule for Two Distinct Population Segments and Endangered Status for Two Distinct Population Segments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list four of six distinct population segments (DPSs) of the foothill yellow-legged frog (*Rana boylii*), a stream dwelling amphibian from Oregon and California, under the Endangered Species Act of 1973 (Act), as amended. This determination also serves as our 12-month finding on a petition to list the foothill yellow-legged frog. After a review of the best scientific and commercial information available, we find that listing the South Sierra and South Coast DPSs as endangered and the North Feather and Central Coast DPSs as threatened is warranted. Accordingly, we propose to list these four DPSs under the Act, with the South Sierra and South Coast DPSs listed as endangered species, and the North Feather and Central Coast DPSs listed as threatened species. Our proposal to list the North Feather and Central Coast DPSs as threatened species also includes a rule issued under section 4(d) of the Act for each of these two DPSs. If we finalize this proposed rule for these four DPSs, we will then add them to the List of Endangered and Threatened Wildlife and extend the Act's protections to them. We have determined that designation of critical habitat for these four DPSs is not determinable at this time. We have also determined that the North Coast DPS (in Oregon and northern California) and the North Sierra DPS (in Yuba, Sierra, Nevada, and Placer Counties, California) of the foothill yellow-legged frog do not warrant listing at this time.

DATES: We will accept comments received or postmarked on or before February 28, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 11, 2022.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2021–0108, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Michael Fris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825; telephone 916–414–6700. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the South Sierra and South Coast DPSs meet the definition of an endangered species and the North Feather and Central Coast DPSs meet the definition of threatened species; therefore, we are proposing to list them as such. We have determined that designation of critical habitat for these four DPSs is not determinable at this time. We have determined that listing the North Coast and North Sierra DPSs is not warranted at this time. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. We propose to list two DPSs as endangered species (South Sierra and South Coast DPSs) and two DPSs as threatened species (North Feather and Central Coast DPSs) under the Act. We also propose a rule under section 4(d) of the Act for each of those DPSs we are proposing to list as threatened species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the following threats are driving the status of the foothill yellow-legged frog: Altered hydrology (largely attributable to dams, water diversions, channel modifications), nonnative species, and the effects of climate change (exacerbating drought, high-severity wildfire, extreme flood conditions). Other threats currently impacting the species include disease and parasites, agriculture (including pesticide drift), mining, urbanization (including development and roads) and recreation.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Due to a court-ordered settlement agreement for completing our 12-month finding for the species, we have not been able to obtain the necessary economic information needed to develop a proposed critical habitat designation for the foothill yellow-legged frog. Therefore, we find that designation of critical habitat for this species is currently not determinable. Once we obtain the necessary economic information, we will propose a critical habitat designation for the species.

Information Requested

We intend that any final action resulting from this proposed rule will be

based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns, and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected population trends; and

(e) Past and ongoing conservation measures for the species and its habitat and their effectiveness.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Information on regulations that are necessary and advisable to provide for the conservation of the foothill yellow-legged frog and that the Service can consider in developing a 4(d) rule for the species. In particular, we seek information concerning the extent to which we should include any of the Act's section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(6) Specific information on:

(a) The amount and distribution of foothill yellow-legged frog habitat; and

(b) What areas, which are either (i) occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection; or (ii) unoccupied at the time of listing and are essential for the conservation of the species, and would, with reasonable certainty, contribute to the conservation of the species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the appropriate listing status for any of the four DPSs is different than our determinations identified in this proposal, including the possibility that one or more of the DPSs may not warrant listing as either endangered or threatened. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information we receive. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act (16 U.S.C. 1531 *et seq.*) provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On July 11, 2012, we received a petition from the Center for Biological Diversity to list 53 species of reptiles and amphibians, including the foothill yellow-legged frog, as endangered or threatened under the Act. On July 1, 2015, we published our finding that the petition presented substantial scientific or commercial information indicating that listing the foothill yellow-legged frog may be warranted based on impacts to the species' habitat (Factor A) and other natural or humanmade factors (Factor E) (80 FR 37568).

On August 30, 2016, we entered into a settlement agreement with the Center

for Biological Diversity to complete our 12-month finding on the foothill yellow-legged frog by September 30, 2020. We subsequently requested and received an extension of our deadline to submit the 12-month finding on the species to the **Federal Register** by December 15, 2021. This document fulfills our obligation under the settlement agreement to complete a 12-month finding on the foothill yellow-legged frog.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the foothill yellow-legged frog (Service 2021, entire). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought and received the expert opinions of three appropriate specialists regarding the SSA. We also sent the SSA report to numerous Federal, State, Tribal, and private partners and stakeholders, including scientists with expertise in foothill yellow-legged frog ecology, river ecology, amphibian genetics, population modeling, and public land management, for review. We received comments from 12 of these partners including representatives from the U.S. Department of Agriculture's U.S. Forest Service (Forest Service), U.S. Geological Survey (USGS), Bureau of Land Management (BLM), National Park Service, Oregon Department of Fish and Wildlife (ODFW), California Department of Forestry and Fire Protection (CalFire), and researchers from the University of California at Los Angeles. We did not receive comments from any Tribal entities. Comments and feedback from partners and peer reviewers were incorporated into the SSA report as appropriate and have informed this proposed rule. A copy of the SSA report can be found on *www.regulations.gov* at Docket No. FWS–R8–ES–2021–0108.

I. Proposed Listing Determination

Background

Below is a brief description of the foothill yellow-legged frog, its habitat, distribution, and taxonomy; for a thorough discussion of the ecology and life history of the species, please see the SSA report (Service 2021, Chapter 2, pp. 14–33).

The foothill yellow-legged frog is a small- to medium-sized stream-dwelling frog with fully webbed feet and rough pebbly skin. Coloring of the species is highly variable but is usually light and dark mottled gray, olive, or brown, with variable amounts of brick red. The foothill yellow-legged frog is a stream-obligate species. Stream habitat for the species is highly variable and keyed on flow regimes. The historical range of the foothill yellow-legged frog extended from the Willamette River drainage in Oregon south through the Sierra Nevada Mountains to the Transverse Range, and down along the California Coast Range to at least the Upper San Gabriel River in Los Angeles County, California. The current distribution of the foothill yellow-legged frog generally follows the historical distribution of the species except with range contractions in the southern and, to a lesser extent, northern parts of the species' range.

Taxonomy

The foothill yellow-legged frog currently retains its classification as *Rana boylii,* ascribed in 1854 by S. F. Baird (Baird 1854, p. 62; Frost 2019, unpaginated). Prior to1955, the foothill yellow-legged frog was part of a grouping of two Ranid subtaxa that occurred in Oregon and California. The two subtaxa were subsequently revised as two separate individual taxa in 1955 and identified as *Rana boylii* (foothill yellow-legged frog) and *Rana muscosa* (mountain yellow-legged frog) (Zweifel 1955, pp. 210, 273). The foothill yellow-legged frog is now the only entity classified as *Rana boylii* (Zweifel 1968, pp. 71.1–71.2).

Genetic Information

Subsequent to receipt of the petition to list the foothill yellow-legged frog as a singular species, investigations into genetic differences among populations of the foothill yellow-legged frog have delineated the species into six currently identified genetic clades (Peek 2018, entire). A clade is a group of organisms that includes a common biological ancestor and all the lineal descendants. Two rangewide assessments of foothill yellow-legged frog genomic datasets revealed that the species is extremely differentiated following biogeographical boundaries (McCartney-Melstad *et al.* 2018, p. 112; Peek 2018, p. 76). The foothill yellow-legged frog has deeper population structure (stratification or separation between populations) than that observed in any other anuran (*i.e.,* frogs, toads, and tree frogs) with similar data (McCartney-Melstad *et al.* 2018, p. 112). The California Department of Fish and Wildlife (CDFW) in their recent status determination classified the foothill yellow-legged frog as having six unique, genetic clades (*i.e.,* lineages) (CDFW 2019b, pp. 4, 13). Additional information regarding the genetic clades can be found in the SSA report (Service 2021, pp. 19–21). The six separate genetic clades are identified as the North Coast, North Feather, North Sierra, South Sierra, Central Coast, and South Coast clades in our analysis.

Distinct Population Segment Evaluation

Under the Act, the term species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). To guide the implementation of the distinct population segment (DPS) provisions of the Act, we and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment's discreteness from the remainder of the species to which it belongs, and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted.

Under the Act, we have the authority to consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. Based on the information available regarding potential discreteness and significance for the species, we determined it was appropriate to review the status of the foothill yellow-legged frog by first conducting a DPS analysis for the species.

Discreteness

Under our DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following conditions: (1) It is markedly separated from other

populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

For the foothill yellow-legged frog, we examined recent genetic information and distribution of the species' populations as our means of determining discreteness for potential DPSs.

There is substantial evidence that the foothill yellow-legged frog is biogeographically divided into multiple clades with little or no gene flow between the clades. Earlier studies provided strong evidence that there are deep genetic divisions in this taxon (Dever 2007, pp. 168–173; Lind *et al.* 2011, pp. 269–284; Peek 2010, entire). Subsequent, more in-depth and larger-scale genetic studies (McCartney-Melstead *et al.* 2018, entire; Peek 2018, entire) confirmed the certainty and depth of the phylogenetic (evolutionary history) structural divisions of the foothill yellow-legged frog using population genomics (comparison of DNA sequences of populations).

The results of the first study (McCartney-Melstead *et al.* 2018, entire), which used several different analytical approaches, all supported extremely differentiated clades in a spatially cohesive pattern, and identified five reciprocally monophyletic clades (where each clade shares more-recent common ancestors from one clade than it shares with any other clade) associated with five different geographic regions (identified herein as the North Coast, Central Coast, South Coast, North Sierra, and South Sierra clades) (McCartney-Melstead *et al.* 2018, p. 112).

The second genomic study (Peek 2018, entire) provided additional geographic and genetic resolution to clade divisions by examining genetic samples from 1,103 individual foothill yellow-legged frogs across the extant range of the species and provided greater coverage of localities in the northern Sierra Nevada range (Peek 2018, pp. 52–53). Like the earlier study, multiple analytical methods were used to quantify genetic structure. The study largely confirmed the five clades described by previous research (McCartney-Melstead *et al.* 2018, entire), but also identified another discrete group between the North Sierra and North Coast clade that is identified herein as the North Feather clade (Peek 2018, pp. 63–64). The extensive genomic data available for this species, which are both more reliable and more informative than morphological data, demonstrate discrete patterns of biogeographical discontinuity across the taxon's range.

Some of the geographical boundaries that delineate the foothill yellow-legged frog clades are fairly certain because of clear physical barriers, such as the separation between the Sierra Nevada and Coastal clades due to the Central Valley of California, the San Francisco Bay between the North Coast and the Central Coast clades, or the separation of the Central Coast and South Coast clades due to the Salinas Valley. However, physical separation between clades in the Sierra Nevada and separation of the Sierra Nevada clades from the North Coast clade were not as physically apparent and were informed by continuous sampling efforts in neighboring watersheds between clades. Where continuous landscape-level sampling was unavailable, the clade boundaries were estimated or inferred. Information is currently lacking for the precise boundary separating the North Coast clade and the North Feather clade, and the Central Coast clade from the South Coast clade. Therefore, we relied upon the genetic information for assessment of discreteness in this DPS analysis.

Meeting the first condition for discreteness, there are six statistically-supported discrete genetic entities (Central Coast, South Coast, South Sierra, North Sierra, North Feather, and North Coast) within the range of the foothill yellow-legged frog (see figure below). Two rangewide assessments of foothill yellow-legged frog genomic datasets revealed that this taxon is extremely differentiated by biogeographical boundaries (McCartney-Melstead *et al.* 2018, p. 112; Peek 2018, p. 76). All six entities, or clades, are markedly separate from each other, as evidenced by quantitative measures of genetic discontinuity, and at least five of the clades are monophyletic groups (McCartney-Melstead *et al.* 2018, p. 116). As a result, we have determined that the foothill yellow-legged frog is comprised of six discrete entities (North Coast, Central Coast, South Coast, North Feather, North Sierra, and South Sierra) meeting the condition of discreteness under our DPS policy.

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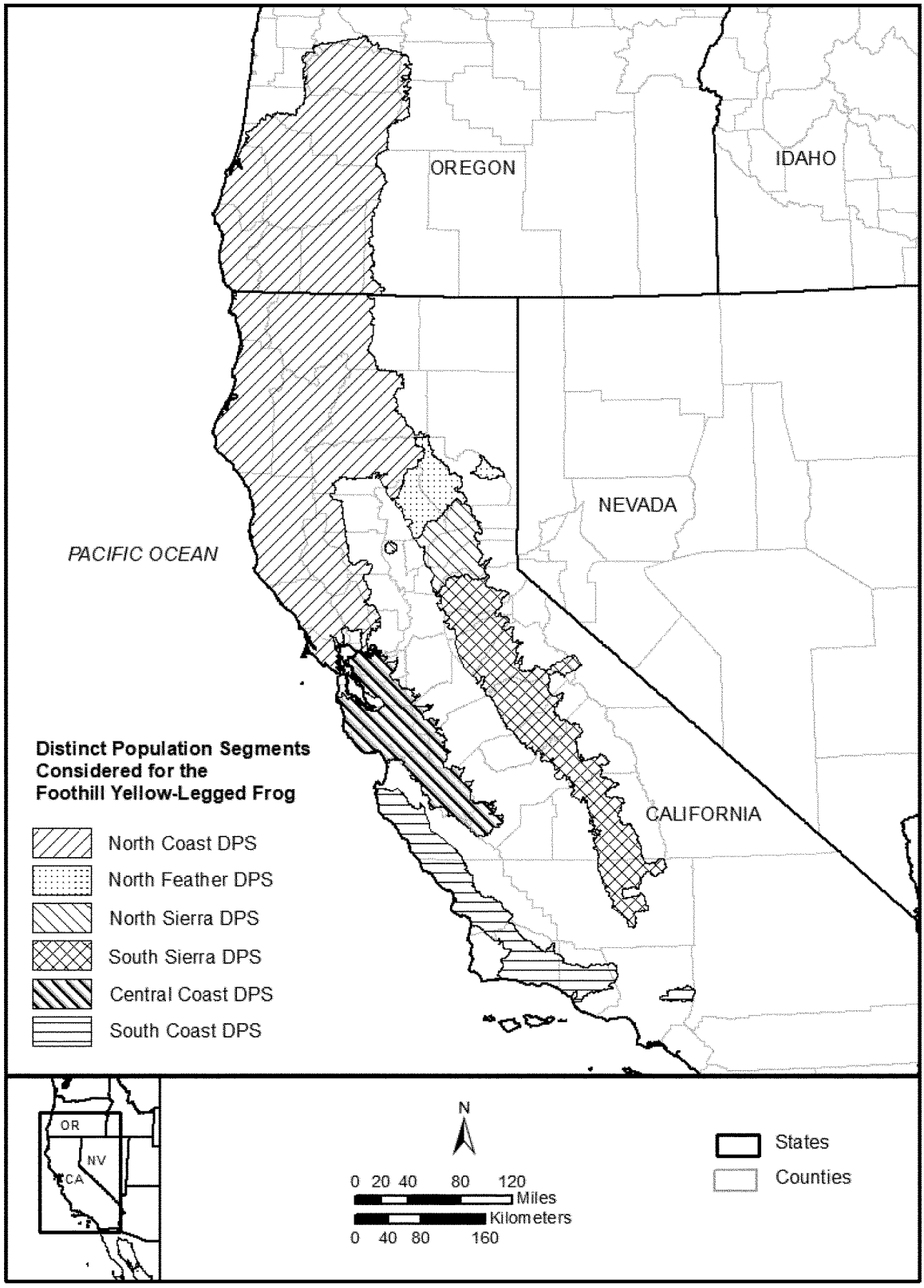

Figure of the Distinct Population Segments Considered for the Foothill Yellow-Legged Frog

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Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon, (2)

evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We evaluated each discrete population segment to see if it met the conditions of significance under our DPS policy, and we have determined that the six entities are significant to the foothill yellow-legged frog.

The support for significance of the six DPSs is based, in part, upon evidence that loss of any of these population segments would result in a significant gap in the range of the taxon. The loss of either the Central Coast or South Coast DPS would result in a substantial change in the overall range and distribution of the taxon. The loss of the South Coast DPS would shift the taxon's southwestern range boundary northward by approximately 150–200 kilometers (km) (93–125 miles (mi)). The loss of the Central Coast DPS would leave an extensive separation of approximately 300 km (186 mi) and be a significant gap in the species' range. The loss of the South Sierra DPS would result in a considerable contraction of the taxon's range, making the species' range shift approximately 180 km (112 mi) west and 340 km (211 mi) north. The loss of the North Coast DPS would result in the loss of more than half of the taxon's current range. The North Sierra and North Feather DPSs occupy much smaller areas than the other DPSs. However, based on the current range of each of these DPSs, the loss of either would result in a 50–75 km (31–47 mi) gap in the range of the taxon. Due to the species' limited dispersal ability from occupied stream habitats, this gap would effectively prevent any potential future gene flow between the DPSs remaining on either side of the gap.

The support for significance of the six DPSs is also based upon evidence that each discrete population segment differs markedly from all the others in its genetic characteristics. The loss of any of the six DPSs would result in the loss of a discrete genetic clade. The DPSs that are most genetically divergent, and thus contribute most to the overall adaptive capacity of this taxon, are the Central Coast, South Coast, and South Sierra DPSs (Peek 2018, p. 77). The North Feather and North Sierra DPSs likely have unique adaptive potential in the face of climate change because of their admixture history (interbreeding of isolated populations) and intermediacy to the South Sierra and North Coast DPSs. The North Coast DPS is also genetically valuable to the taxon because it contains the greatest genetic diversity and is the only DPS that shows a trajectory of increasing genetic diversity (Peek 2018, p. 74).

Distinct Population Segment Conclusion

Our DPS Policy directs us to evaluate whether populations of a species are separate from each other to the degree they qualify as discrete segments and whether those segments are significant to the remainder of the species to which it belongs. Based on an analysis of the best available scientific and commercial data, we conclude that the North Coast, North Feather, North Sierra, South Sierra, Central Coast, and South Coast clades of the foothill yellow-legged frog's range are each discrete due to their marked genetic separation. Furthermore, we conclude that each of the six clades of the foothill yellow-legged frog's range is significant, based on evidence that a loss of any of the population segments would result in a significant gap in the range of the taxon and on evidence that the discrete population segments differ markedly from other populations of the species in their genetic characteristics. Therefore, we conclude that the six clades within the foothill yellow-legged frog's range are both discrete and significant under our DPS Policy and are, therefore, uniquely listable entities under the Act.

Based on our DPS Policy (61 FR 4722; February 7, 1996), if a population segment of a vertebrate species is both discrete and significant relative to the taxon as a whole (*i.e.,* it is a distinct population segment), its evaluation for endangered or threatened status will be based on the Act's definition of those terms and a review of the factors enumerated in section 4(a) of the Act. Having found that each of the six clades of the foothill yellow-legged frog's range meet the definition of a distinct population segment, we then evaluated the status of the six clades of the foothill yellow-legged frog to determine whether any met the definition of an endangered or threatened species under the Act. The figure below identifies the areas within the foothill yellow-legged frog's historical range encompassed by the six DPSs for the foothill yellow-legged frog.

Description of Foothill Yellow-Legged Frog Distinct Population Segments

Below is a general description of environmental and ecological conditions for each DPS.

North Coast DPS: The North Coast DPS includes the range of the foothill yellow-legged frog in northern California and central and southwestern Oregon. This DPS occupies parts of the Cascade Range, Klamath Mountains, central and southwest Oregon (including the Willamette Valley), northern California Coast Range north of San Francisco Bay, and a portion of the Sierra Nevada Mountains and foothills to the borders of Plumas and Butte Counties, California. This DPS covers the largest geographic area and has the greatest amount of genetic diversity of the species, suggesting that habitat conditions allow for populations within the DPS to be interconnected (McCartney-Melstad *et al.* 2018, p. 121; Peek 2018, p. 76). In Oregon, the area has the greatest precipitation and coolest temperatures within the species' range (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36). In California, the DPS is cooler and wetter on average than the DPSs to the south but is about equal to that of the North Sierra DPS (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36). The DPS also contains the most Level IV ecoregions (finest down-scaled ecosystems boundaries based on biotic and abiotic factors as defined by Omerick and Griffith 2014, entire), as well as several ecoregions that are not found anywhere else in the foothill yellow-legged frog's range, suggesting that the environmental conditions for habitat within this DPS are variable and not likely to be subject to rangewide environmental influences.

North Feather DPS: The North Feather DPS is located primarily in Plumas and Butte Counties, California. This DPS occupies the transition zone between the northern Sierra Nevada, Southern Cascades Foothills, and Tuscan Flows ecoregions. The DPS averages cooler and wetter conditions than the DPSs to the south (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36). The North Feather DPS differs from the surrounding watersheds outside the areas in terms of geology and aspect (Peek *et al.* 2019, p. 4638), and is the only known area where the foothill yellow-legged frog and the endangered Sierra Nevada yellow-legged frog (*Rana sierrae*) currently coexist (Peek *et al.* 2019, p. 4637).

North Sierra DPS: The North Sierra DPS is located primarily in Yuba, Sierra, Nevada, and Placer Counties, California. This DPS occupies the transition zone between the northern and central ecoregions of the Sierra Nevada Range. This transition zone is characterized by a southward decrease in annual

precipitation, decrease in Douglas and white firs (*Pseudotsuga menziesii* and *Abies concolor*), increase in ponderosa pine (*Pinus ponderosa*), and geological shift from metamorphic rocks to volcanic and granitic rocks (Environmental Protection Agency Level IV Ecoregions, Griffith *et al.* (2016, entire)). Like the North Feather DPS, the North Sierra DPS receives notably more precipitation than the South Sierra DPS; however, the mean annual temperature in the North Sierra DPS is more similar to that of the South Sierra DPS than that of the North Feather DPS (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36).

South Sierra DPS: The South Sierra DPS extends from the South Fork American River sub-basin to the transition zone between the Sierra Nevada and the Tehachapi Mountains that border the south end of the California Central Valley. This DPS largely includes ecoregions that are unique to the southern and central Sierra Nevada Range (Environmental Protection Agency Level IV Ecoregions, Griffith *et al.* (2016, entire)). The South Sierra DPS also shares an ecoregion transition zone with the North Sierra DPS. In terms of average precipitation and temperature, the South Sierra DPS is fairly dry and warm, but it falls intermediately among the northern DPSs and the DPSs south of San Francisco Bay (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36).

Central Coast DPS: The Central Coast DPS extends south from the San Francisco Bay through the Diablo Range and Coast Range (Santa Cruz Mountains and Gabilan Mountains) east of the Salinas Valley, California. On average, the Central Coast DPS receives the least amount of annual precipitation of all the DPSs (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36). The DPS contains several unique ecoregions associated with the Diablo and Coast Ranges. Although the mountain ranges of the Central Coast DPS are geologically unique and separated from those of the South Coast DPS by the Salinas Valley, there are several attributes such as overall elevation, elevation grade, and some vegetation types (Environmental Protection Agency Level IV Ecoregions, Griffith *et al.* (2016, entire)) which they share in common with the South Coast DPS mountain ranges. Climatic and habitat conditions of the DPS are drier than all other DPSs except for the South Coast DPS, which has conditions similar to the Central Coast DPS, being warm and dry and containing waterways similar in size and hydrological properties (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36).

South Coast DPS: The South Coast DPS extends along the coastal Santa Lucia Range and the Sierra Madre Mountains in California. Ecoregions that are unique to the South Coast DPS include those associated with the Santa Lucia Range, Western Transverse Range, and Southern California Lower Montane Shrub and Woodland (Environmental Protection Agency Level IV Ecoregions, Griffith *et al.* (2016, entire)). As stated above, the streams and rivers in the South Coast DPS share similarities to many waterways in the Central Coast DPS. Waterways in the South Coast and Central Coast DPSs tend to have flashier flows, more ephemeral channels, and a higher degree of intermittency because of the region's more variable, and lower amount of, precipitation (Storer 1925, pp. 257–258; Gonsolin 2010, p. 54; Adams *et al.* 2017b, p. 10227). The South Coast and Central Coast DPSs receive the least amount of annual precipitation and average the warmest temperatures within the species' range (PRISM Climate Group 2012, 30-year climate dataset, entire; Service 2021, table 3, p. 36).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an endangered species or a threatened species only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a

prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors. For information regarding the foreseeable future for the foothill yellow-legged frog, see Current and Future Condition Analysis, below.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R8–ES–2021–0108 on *http://www.regulations.gov* and from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Our review of the foothill yellow-legged frog has determined that it is made up of six DPSs; therefore, we assessed the biological viability and regulatory status of each DPS separately. Because the North Coast DPS of the foothill yellow-legged frog occurs in Oregon and California, we split the North Coast DPS into a California and an Oregon analysis unit due to varying levels of information and to better understand if any management actions or habitat conditions may differ between the two areas (Service 2021, Chapter 3, pp. 35–36). We later combine the two analysis units to determine the status of the North Coast DPS as a whole. When we discuss general biological or other information regarding the species as a whole we use the term species. When we discuss information pertaining to one of the six DPSs we use the term DPS.

To assess the biological viability of each DPS of the foothill yellow-legged frog, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the DPS to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the DPS to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the DPS to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a DPS is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions.

Using these principles, we identified each DPS's ecological requirements for survival and reproduction at the individual, population, and DPS levels, and described the beneficial and risk factors influencing the DPS's viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision. In our development of the SSA and analysis of information, we divided our analysis into separate analysis units due to the varying degree of information throughout the species' range and other factors. The analysis units coincide with those areas we are considering as DPSs for the species except for the North Coast DPS which has been split into two analysis units. In California, the analysis units match those considered in the CDFW's evaluation for their status review and listing under the California Endangered Species Act.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of each DPS and its resources, and the threats that influence each DPS's current and future condition, in order to assess each DPS's overall viability and the risks to that viability.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on each DPS, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of each DPS. To assess the current and future condition of each DPS, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing each DPS, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire DPS, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Species Needs

Stream Habitat

The foothill yellow-legged frog is a stream-obligate species and is primarily observed in or along the edges of streams (Zweifel 1955, p. 221; Kupferberg 1996a, p. 1339). Most foothill yellow-legged frogs breed along mainstem water channels and overwinter along smaller tributaries of the mainstem channel (Kupferberg 1996a, p. 1339; GANDA 2008, p. 20). Habitat within the stream includes rocky substrate mostly free of sediments with interstitial spaces to allow for predator avoidance. Stream morphology is a strong predictor of breeding habitat because it creates the microhabitat conditions required for successful oviposition (*i.e.,* egg-laying), hatching, growth, and metamorphosis. Foothill yellow-legged frogs that overwinter along tributaries often congregate at the same breeding locations along the mainstem each year (Kupferberg 1996a, p. 1334; Wheeler and Welsh 2008, p. 128). During the nonbreeding season, the smaller tributaries, some of which may only flow during the wet winter season, provide refuge while the larger breeding channels may experience overbank flooding and high flows (Kupferberg 1996a, p. 1339). Habitat elements that provide both refuge from winter peak flows and adequate moisture for foothill yellow-legged frogs include pools, springs, seeps, submerged root wads, undercut banks,

and large boulders or debris at high-water lines (van Wagner 1996, pp. 74–75, 111; Rombough 2006b, p. 159).

The streams occupied by foothill yellow-legged frogs occur in a wide variety of vegetation types including valley-foothill hardwood, valley-foothill hardwood-conifer, valley-foothill riparian, ponderosa pine, mixed conifer, mixed chaparral, and wet meadow (Hayes *et al.* 2016, p. 5). The extensive range of habitat types used by the foothill yellow-legged frog demonstrates the species' non-specificity in regard to vegetation type and macroclimate of the species' terrestrial habitat component. While habitat conditions can be vastly different among these stream sizes, and across the species' geographic range, only a narrow range of abiotic conditions are tolerated by early life stages (*i.e.,* eggs, tadpoles, and metamorphs) (Kupferberg 1996a, p. 1336; Bondi *et al.* 2013, p. 101; Lind *et al.* 2016, p. 263; Catenazzi and Kupferberg 2018, pp. 1044–1045). The abiotic conditions that directly influence the success of early life stages are those associated with stream velocity, water depth, water temperature, and streambed substrate. Foothill yellow-legged frogs also require stream flow regimes to have or mimic natural flow patterns which includes high winter flows with a slowly diminishing hydrograph with increasing water temperature and decreasing flows into the spring and summer. Higher winter flows can maintain and or increase breeding habitat by widening and diversifying channel morphology, improving rocky substrate conditions, and increasing sunlight (Lind *et al.* 1996, pp. 64–65; Lind *et al.* 2016, p. 269; Power *et al.* 2016, p. 719). The reduction in flows and increasing water temperatures are also cues to initiate breeding. As a result, foothill yellow-legged frogs rely on natural, predictable changes during the hydrological cycle to optimize early life-stage growth and survival (Kupferberg 1996a, p. 1332; Bondi *et al.* 2013, p. 100).

Food Resources

During their lifecycle foothill yellow-legged frogs feed on a variety of plant and animals. During early development food sources include algae, diatoms, and detritus that are scraped from submerged rocks and vegetation (Ashton *et al.* 1997, p. 7; Fellers 2005, p. 535). Juvenile and adult foothill yellow-legged frogs prey upon many types of aquatic and terrestrial invertebrates including snails, moths, flies, water striders, beetles, grasshoppers, hornets, and ants (Nussbaum *et al.* 1983, p. 165).

Migration/Dispersal Routes and Connectivity

Adult foothill yellow-legged frogs primarily use waterway corridors to migrate or disperse (Bourque 2008, p. 70) and make their movements over multiple days (GANDA 2008, p. 22). While most foothill yellow-legged frogs are found in, or very close to, water, juveniles and an adult have also been observed moving through upland areas outside of riparian corridors. The habitat characteristics needed by foothill yellow-legged frogs for migration and dispersal are largely the same as they are for upland and tributary habitat. However, movement routes do not need to be moist for extended periods. Routes need to connect breeding areas and overwintering habitat without exposing frogs to large physical barriers (*e.g.,* roads, development, reservoirs) or high risk of predation. These migration and dispersal routes provide for metapopulation connectivity and allows for ease of mobility (for post-metamorphic frogs) within a metapopulation and between different metapopulations. Both breeding/rearing and overwintering sites need to be distributed across the metapopulation area. Foothill yellow-legged frog occupancy (*i.e.,* presence of breeding adults in a given area) must also be well distributed, such that dispersers are able to repopulate extirpated areas of the metapopulation. A resilient foothill yellow-legged frog metapopulation should have a network of quality breeding/rearing sites (often on or near the mainstem channel) and overwintering sites (often on tributaries of the mainstem) that are connected by habitat suitable for migration and dispersal (Section 4.9 Migration and Dispersal Routes). An in-depth discussion of habitat and population elements required for the foothill yellow-legged frog is in the SSA report (Service 2021, Chapter 4 and Chapter 5).

Threats Influencing Current and Future Condition

Following are summary evaluations of the threats analyzed in the SSA report for the foothill yellow-legged frog. The discussion focuses on general threats impacting all DPSs, with some anecdotal evidence regarding threats operating in particular DPSs. The specific threats associated with each DPS are identified in the status discussion for each DPS below and in the SSA report (Service 2021, Chapter 7, pp. 73–122).

Those threats having the greatest impacts on the species or its habitat include: Altered stream hydrology and flow regimes (Factor A) associated with dams, surface water diversions, and channel modifications and their impact on the species and its habitat; predation and resource competition from nonnative species (Factor C and Factor E, respectively), such as American bullfrogs (*Lithobates catesbeianus*), smallmouth bass (*Micropterus dolomieu*), and crayfish species (*Pacifastacus* spp.); disease (Factor C); habitat degradation, loss, and fragmentation associated with wildfire (Factor A); the effects of climate change, including increased temperatures, drying and drought, and extreme flood events (Factor E); habitat modification and altered hydrology as a result of conservation efforts for salmonid species (colder water temperatures, timing and intensity of water flows) (Factor E); habitat loss, degradation, and fragmentation (Factor A), and direct negative effects to individuals (Factor E) from other anthropogenic activities such as agriculture, mining, urbanization, roads, and recreation. Within our threat discussion, we also evaluate existing regulatory mechanisms (Factor D) and ongoing conservation measures that may ameliorate threat impacts on the species.

Livestock grazing and timber harvest were discussed as potential threats and potential beneficial influences in the recent status assessment for the foothill yellow-legged frog in California (CDFW 2019b, pp. 64–65, 67). These activities were also considered in the conservation assessment developed by the Forest Service and BLM as part of their sensitive species program for the species in Oregon (Olson and Davis 2009, pp. 18–20). While there is potential for harm to the species (*e.g.,* when grazing and timber practices cause excessive erosion and sedimentation into streams), there are also potential positive benefits to foothill yellow-legged frog habitat from these practices (Olson and Davis 2009, pp. 18–20; CDFW 2019b, pp. 64–65, 67). We captured and evaluated the potential negative impacts associated with grazing and timber harvest (*e.g.,* water impoundments for cattle, erosion, logging roads) in our assessment of altered hydrology, sedimentation, and roads. For full descriptions of all threats and how they impact the species, please see the SSA report (Service 2021, pp. 72–121).

Altered Stream Hydrology and Flow Regimes

Foothill yellow-legged frog ecology and habitat needs are closely tied to the natural hydrological cycle of the streams

they inhabit. Foothill yellow-legged frog breeding and recruitment are dependent upon specific stream morphologies and upon predictable hydrological patterns that are synchronized with other climatic cues for foothill yellow-frog populations to be successful (Kupferberg 1996a, p. 1337). Strong stream flow events typical during winter under natural flow regimes help maintain and create foothill yellow-legged frog breeding habitat by widening and diversifying channel morphology, improving rocky substrate conditions, removing sediment, and increasing sunlight by limiting vegetation encroachment (Lind *et al.* 1996, pp. 64–65; Lind *et al.* 2016, p. 269; Power *et al.* 2016, p. 719; GANDA 2018, pp. 37–38). Dams, water management, and other waterway modifications alter the hydrology, timing, temperature, and morphology of foothill yellow-legged frog stream habitat (Service 2021, pp. 74–79). Alterations to flow regimes also occur for hydropeaking (for energy production) and recreational activities, such as spring and summer releases for whitewater boating (Kupferberg *et al.* 2012, p. 518) (see ''Recreation,'' below). These pulse flows are generally much greater in frequency and intensity as compared to other flow fluctuations and, during spring and summer, can detrimentally affect early life stages of foothill yellow-legged frog during breeding and rearing season (Greimel *et al.* 2018, p. 92, Kupferburg *et al.* 2009c, Kupferburg *et al.,* 2011b, p.144). Therefore, alterations of stream hydrology and flows can have a large influence on foothill yellow-legged frog distribution and metapopulation dynamics (Hayes *et al.* 2016, pp. 24–25; Service 2021, figure 21, p. 25).

The effects of altered streams also impede foothill yellow-legged frog dispersal and metapopulation connectivity, which can prevent recolonization of extirpated areas and cause genetic bottlenecks (Peek 2010, p. 44; Peek 2012, p. 15). Genetic comparisons among subpopulations demonstrated that gene flow is decreased in regulated river systems, even when the amount of regulation is low (Peek 2012, p. 15; Peek *et al.* 2021, p. 14).

Many population declines across the foothill yellow-legged frog's range have been attributed to the altered flow regimes and habitat fragmentation associated with water storage and hydropower dams (Kupferberg *et al.* 2009c, p. ix). Where populations of foothill yellow-legged frogs persist in these areas, breeding population densities were more than five times smaller below dams than in free-flowing rivers (based on breeding populations in the North Coast DPS, North Feather DPS, and Central Coast DPS) (Kupferberg *et al.* 2012, p. 520). Dams and impoundments, as well as historical use of splash dams (temporary wooden dams created to facilitate transport of logs downstream) in the North Coast DPS in Oregon, have also presumably caused extirpations of the species and altered stream characteristics in some locations (Miller 2010, pp. 14, 61–63, 70–71, table 2.9; Linnell and Davis 2021, not paginated, figures 6 and 7).

Altered flow regimes and water diversions (as well as several anthropogenic activities, such as mining, agriculture, overgrazing, timber harvest, and poorly constructed roads), as described in greater detail below, can cause or increase sedimentation in breeding habitat for the foothill yellow-legged frog (Moyle and Randall 1998, pp. 1324–1325). Increased sedimentation can increase turbidity, impact algae and other food resources or impede foothill yellow-legged frog egg mass attachment to substrate (Cordone and Kelley 1961, pp. 191–192; Ashton *et al.* 1997, p. 13). Fine sediments can also fill interstitial spaces between rocks, which provide shelter from high velocity flows, cover from predators, and sources of aquatic invertebrate prey (Harvey and Lisle 1998, pp. 12–14; Olson and Davis 2009, p. 11; Kupferberg *et al.* 2011b, pp. 147–149).

Predation

Foothill yellow-legged frogs can be negatively affected by several native and nonnative animal species. The American bullfrog, native and nonnative fish, and nonnative crayfish have all been linked to impacting populations of foothill yellow-legged frogs (Olson and Davis 2009, pp. 17–18; Hayes *et al.* 2016, pp. 49–51). The following discussion provides details on how these predatory species affect the foothill yellow-legged frog at various life stages through predation and competition.

American bullfrogs: American bullfrogs are considered a threat to all six DPSs. Bullfrogs affect foothill yellow-legged frog populations in several ways because they are simultaneously competitors, predators, and disease vectors, and they impact life stages from tadpoles to adults (see figure 23 in the SSA report, Service 2021, p. 80). Bullfrogs impact foothill yellow-legged frogs by direct predation (Crayon 1998, p. 232; Hothem *et al.* 2009, pp. 279–280) and indirectly by reducing survival. In one experiment, the presence of bullfrog tadpoles reduced foothill yellow-legged frog tadpole survival by 48 percent and mass at metamorphosis by 24 percent (Kupferberg 1997a, p. 1736). Additionally, the algal and macroinvertebrate assemblages available to foothill yellow-legged frogs were significantly reduced due to the presence of bullfrog tadpoles (Kupferberg 1996b, p. 2; Kupferberg 1997a, p. 1736), which would negatively affect food sources for foothill yellow-legged frog tadpoles, juveniles, and adults. The spread of bullfrogs is facilitated by altered hydrology, land-use change, drought, and increasing water temperatures (Moyle 1973, p. 21; Fuller *et al.* 2011, pp. 210–211; Adams *et al.* 2017a, p. 13). Regulatory mechanisms to manage importation and distribution of bullfrogs are currently ineffective due to an inability to adequately enforce regulations (CDFW 2014, pp. 11–12).

Fish: Fish such as smallmouth bass, green sunfish (*Lepomis cyanellus*), mosquitofish (*Gambusia affinis*), and trout (*Oncorhynchus, Salmo,* and *Salvelinus* spp.) are predators of foothill yellow-legged frogs and may also potentially compete with them for invertebrate food resources (Hayes *et al.* 2016, p. 51). However, of these fish, smallmouth bass are the greatest threat to foothill yellow-legged frogs. Adult smallmouth bass consume amphibian tadpoles (Kiesecker and Blaustein 1998, pp. 776–787), as well as foothill yellow-legged frog tadpoles and adults (Rombough 2006a, unpaginated; Paoletti *et al.* 2011, p. 166). Smallmouth bass have been identified as a potential cause of foothill yellow-legged frog declines and extirpations in Oregon (Rombough 2006a, unpaginated; Olson and Davis 2009, pp. 13, 17).

The distribution of smallmouth bass in California includes the entire South Coast DPS and lower elevation areas of the South Sierra, North Sierra, and North Feather DPSs. Areas in the foothill yellow-legged frog's range in the Salinas, Santa Clara, Central, and Sacramento Valleys are also within the range of the smallmouth bass. For the North Coast DPS, smallmouth bass occupy the Russian River, Trinity, and Eel River drainages (Conservation Biology Institute 2011, entire). In Oregon, smallmouth bass can be found in the entire range of the North Coast DPS except the extreme southeastern portion near the Klamath basin (Carey *et al.* 2011, p. 306).

Nonnative crayfish: Several nonnative crayfish species prey upon early life stages of foothill yellow-legged frog. While the signal crayfish (*Pacifastacus leniusculus*) is native to part of the

North Coast DPS (*i.e.,* Oregon and northwestern corner of California), it has been introduced into several areas within the coast ranges of northern California and the Sierra Nevada (Wiseman *et al.* 2005, p. 162; Pintor *et al.* 2009, p. 582; CDFW 2019b, p. 56). In both the native and introduced range of the signal crayfish, the species preys upon foothill yellow-legged frog egg masses, and likely contributes to dislodging egg masses from substrate, potentially allowing them to be transported to unsuitable habitat (Rombough and Hayes 2005, p. 163; Wiseman *et al.* 2005, p. 162). Signal crayfish are prey upon foothill yellow-legged frog tadpoles in laboratory settings (Kerby and Sih 2015, p. 266), and observations of tail injuries in wild tadpoles suggest crayfish predation also occurs in the wild (Rombough and Hayes 2005, p. 163; Wiseman *et al.* 2005, p. 162).

Disease

Foothill yellow-legged frogs can be negatively affected by amphibian chytrid fungus (*Batrachochytrium dendrobatidis* (Bd)), parasitic copepods, and *Saprolegnia* fungus (see figure 24 in the SSA report, Service 2021, p. 83).

Bd is implicated in the declines or presumed extinctions of hundreds of amphibian species (Scheele *et al.* 2019, p. 1). The spread of Bd in the range of the foothill yellow-legged frog is presumably linked to increased human use of habitat and the introduction of nonnative bullfrogs, which are Bd reservoir hosts (Huss *et al.* 2013, p. 341; Adams *et al.* 2017b, pp. 10225–10226; Yap *et al.* 2018, pp. 1–2; Byrne *et al.* 2019, p. 20386). The southern California precipitation regime (*i.e.,* alternation of extreme droughts and floods) may increase the likelihood of disease outbreaks by causing favorable habitat conditions for bullfrogs, warmer water temperatures, and increased stress on foothill yellow-legged frogs (Adams *et al.* 2017b, p. 10228). Bullfrog presence is a positive predictor of Bd prevalence and load in foothill yellow-legged frogs (Adams *et al.* 2017a, p, 1). The Bd pathogen has been documented within all DPSs (Yap *et al.* 2018, p. 5, figure 1), and evidence of Bd prevalence suggests that Bd played a role in the precipitous decline of the foothill yellow-legged frog in southern California. Bd has been implicated in the decline of the foothill yellow-legged frog in both the Central Coast DPS and South Coast DPS (Adams *et al.* 2017b, p. 10224). Bd may also have sublethal effects on foothill yellow-legged frogs. Foothill yellow-legged frogs that tested positive for Bd had lower body mass to length ratios, although the frogs showed no other signs of infection (Lowe 2009, pp. 180–181). Tadpole susceptibility experiments with other western anurans documented species-specific effects of Bd exposure such as tadpole lethargy (motionless at bottom of tank), disorientation, weak response to prodding, and increased incidence of tadpole mouthpart deformities (Blaustein *et al.* 2005, pp. 1464–1466).

Parasitism of foothill yellow-legged frogs by the Eurasian copepod, *Lernaea cyprinacea,* is linked to malformations in tadpole and juvenile foothill yellow-legged frogs (Kupferberg *et al.* 2009a, p. 529). In addition to malformations, this parasite likely has other sublethal effects on foothill yellow-legged frogs, such as stunted growth (Kupferberg *et al.* 2009a, p. 529). Although direct foothill yellow-legged frog mortality from this parasite has not been documented in the wild, copepod parasitism may be responsible for mortality of tadpoles in captivity (Kupferberg 2019, entire; Oakland Zoo 2019, p. 1; Rousser 2019, entire). The changes predicted by climate change models (*i.e.,* increased summer water temperatures and decreased daily discharge) may promote outbreaks of this parasite throughout the foothill yellow-legged frog's range (Kupferberg *et al.* 2009a, p. 529).

The water fungus (*Saprolegnia* sp.) causes egg mortality in amphibians of the Pacific Northwest (Blaustein *et al.* 1994, p. 251). Fungal infections of foothill yellow-legged frog egg masses, potentially from *Saprolegnia* but not confirmed, have been observed in the mainstem Trinity River (North Coast DPS) (Ashton *et al.* 1997, pp. 13–14), in approximately 25 percent of egg masses during a study in the South Fork Eel River (North Coast DPS) (Kupferberg 1996a, p. 1337), and in 14 percent of egg masses during 2002 and nearly 50 percent of egg masses during 2003 in the Cresta reach of the North Fork Feather River (North Feather DPS) (GANDA 2004, p. 55). While fungal infections are not a major source of mortality for foothill yellow-legged frogs, this threat has had a strong effect in other amphibian populations (Blaustein *et al.* 1994, pp. 251–253).

Habitat Loss, Degradation, and Fragmentation

Habitat loss, degradation, and fragmentation occurs throughout the species' range and is attributed to numerous factors including agricultural activities, mining, urbanization, roads, recreation, and wildfire.

Agriculture/Pesticides: Agriculture is a source of threats to the foothill yellow-legged frog because of agriculture's role in habitat degradation, the contribution of pesticides and pollutants to the environment, and its role as a driver of other threats such as altered hydrology and spread of nonnative species (see figure 26 in the SSA report, Service 2021, p. 88). Agricultural land uses have been linked to declines in foothill yellow-legged frog populations due to the impacts described above (Davidson *et al.* 2002, p. 1597; Lind 2005, pp. 19, 51, 62, table 2.2; CDFW 2019, p. 58). Foothill yellow-legged frog presence is negatively associated with agriculture within 5 km (3.1 mi) (Olson and Davis 2009, pp. 15, 22; Linnell and Davis 2021, not paginated, figures 6 and 7).

The proximity of foothill yellow-legged frog habitat downwind of the San Joaquin Valley (greatest use of airborne pesticides) suggests that foothill yellow-legged frog declines in the South Sierra unit may be linked to agricultural pesticide use (Davidson *et al.* 2002, p. 1594; Davidson 2004, pp. 1900–1901; Bradford *et al.* 2011, p. 690). Water samples from low elevations in the Sierra Nevada have had concentrations of pesticides that were within the lethal range for foothill yellow-legged frogs (Bradford *et al.* 2011, p. 690). Foothill yellow-legged frog tadpoles are especially vulnerable to pesticides, especially if pesticide exposure occurs in the presence of other threats, such as competition or predation (Davidson *et al.* 2007, entire; Sparling and Fellers 2007, entire; Sparling and Fellers 2009, entire; Kerby and Sih 2015, entire). Impacts from pesticides include reduced body size, slower development rate, and increased time to metamorphosis as well as decreased development of natural anti-microbial skin peptides (presumably a defense against the disease, chytridiomycosis) (Davidson *et al.* 2007, p. 1774; Sparling and Fellers 2009, pp. 1698, 1701; Kerby and Sih 2015, pp. 255, 260).

Trespass Cannabis Cultivation: Trespass cannabis cultivation (illegally establishing largescale cannabis farms) occurs throughout the species' range, but the North Coast (California), Central Coast, and South Coast DPSs may be most at risk from this threat (CDFW 2019b, pp. 61–62). These unregulated activities impact the foothill yellow-legged frog by destroying or degrading habitat, increasing water diversion, increasing sedimentation, and introducing pesticides and other chemicals that reduce water quality and impact the species (Bauer *et al.* 2015, entire).

Mining Activities: Mining activities, including aggregate, hard-rock, and suction-dredge mining, are sources of

threats to the foothill yellow-legged frog habitat because of their role in habitat destruction and degradation, pollution, and expansion of nonnative species (Hayes *et al.* 2016, pp. 52–54; Service 2021, figure 29, p. 94). Hydraulic mining, although outlawed, has had and continues to have long-lasting legacy effects and is still affecting aquatic ecosystems in California, with the North Feather DPS and North Sierra DPS being the most impacted (Hayes *et al.* 2016, pp. 52–54; CDFW 2019b, pp. 57–58). The immediate and legacy effects and extent of mining practices are outlined in Table 8 of the SSA report (Service 2021, table 8, pp. 92–93), and include habitat destruction and alteration, sedimentation, changes in stream morphology, decreased stream heterogeneity, creation of ponded habitat (that supports nonnative species), decreased water quality, and contamination. A moratorium of suction-dredging in streams has currently been put in place for California. However, the State is currently developing new guidance and permitting processes for potentially reinitiating suction-dredging activities (State Water Resources Control Board 2020, entire). Oregon has restricted suction-dredging in the foothill yellow-legged frog's range (National Genomics Center for Wildlife and Fish Conservation 2021, entire).

Urbanization: Urbanization (development and roads) can affect foothill yellow-legged frogs and their habitat through direct mortality and from habitat destruction, degradation, and fragmentation. Urbanization can also contribute to increased occurrence of pesticides and pollutants being introduced to the environment and increases in other threats such as altered hydrology, introduction and spread of nonnative species, and assist in disease transmission (see figure 30 in the SSA report, Service 2021, p. 95). Conversion or alteration of natural habitats for urban land uses has been linked to declines in foothill yellow-legged frog populations (Davidson *et al.* 2002, p. 1597; Lind 2005, pp. 19, 51, 62, table 2.2). Foothill yellow-legged frog presence is negatively associated with cities and road density (Davidson *et al.* 2002, p. 1594; Olson and Davis 2009, p. 22). Increases in urbanization and roads have been reportedly associated with foothill yellow-legged frog extirpations in the South Coast DPS, possibly by facilitating the spread of Bd and nonnative species (Adams *et al.* 2017b, p. 10227).

Recreational Activities: Some recreational activities can affect foothill yellow-legged frogs in a variety of ways, depending on the region and type of recreation. Impacts from recreation can be localized, such as trampling or dislodging of egg masses, while others are greater in extent or contribute to other threats. These greater threats include off-highway vehicle use causing habitat degradation and increased sedimentation (Olson and Davis 2009, p. 23), nonnative sportfish stocking of smallmouth bass (see Predation) (ODFW 2009, pp. 8, 11; CDFW 2019a, entire), and altered hydrology due to whitewater boating (Borisenko and Hayes 1999, pp. 18, 28; Kupferberg *et al.* 2012, p. 518). Some dam operations include planned, short pulse flows during the spring and summer to specifically provide recreation opportunities for whitewater boaters (Kupferberg *et al.* 2012, p. 518). As with other impacts associated with water management, the timing of these strong unseasonal flows has coincided with the foothill yellow-legged frog breeding and rearing season, leading to negative population-level impacts in the North Feather DPS (Kupferberg *et al.* 2012, pp. 518, 520–521, figure 3b).

Wildfire: Wildfire is a natural phenomenon throughout the range of the foothill yellow-legged frog, and its occurrence and severity are positively influenced by urbanization, roads, recreation, and the effects of climate change. The effects on foothill yellow-legged frogs from wildfire and its suppression are not well understood and have not been directly studied (Hayes *et al.* 2016, p. 35, table 6; CDFW 2019b, p. 71). The impacts of wildfire are also a function of the severity and intensity of the wildfire, which can be extremely variable across the landscape depending on topography and vegetation. Anecdotally, foothill yellow-legged frog populations have survived low- to moderate-severity wildfires (Lind *et al.* 2003, p. 27; CDFW 2019b, p. 71), and it is suspected that low-severity fires do not have adverse effects on the foothill yellow-legged frog (Olson and Davis 2009, p. 24). In fact, wildfires may benefit habitat quality by decreasing canopy cover and increasing habitat heterogeneity (Pilliod *et al.* 2003, pp. 171, 173; Olson and Davis 2009, p. 24). Direct mortality from scorching is unlikely, given the species' aquatic nature and the sightings of foothill yellow-legged frogs immediately after wildfires (CDFW 2019b, p. 71). In contrast, high-severity wildfires can greatly alter water and habitat quality, remove all vegetative canopy, and reduce habitat heterogeneity by burning vegetative and woody debris that foothill yellow-legged frogs use for shelter. Short- and long-term effects of severe wildfires include potentially harmful changes in water chemistry and increased erosion and sedimentation from flooding (CDFW 2019b, pp. 71–72), which can destroy or degrade breeding habitat and interstitial spaces. Furthermore, the use of fire retardants and suppressants during wildland firefighting can affect amphibians by harming water quality and by direct toxicity to amphibians and their food sources (Pilliod *et al.* 2003, pp. 174–175; Service 2018, pp. 42–44). See the SSA report for additional information regarding trends and impacts of wildfire (Service 2021, section 7.9, pp. 100–109).

Effects of Climate Change

The effects of climate change are already having statewide impacts in California and Oregon (Bedsworth *et al.* 2018, p. 13; Mote *et al.* 2019, p. ii, summary). Overall trends in climate conditions across the foothill yellow-legged frog's range include increasing temperatures, greater proportion of precipitation falling as rain instead of snow, earlier snowmelt (influencing streamflow), and increased frequency, duration, and severity of extreme events such as droughts, heat waves, wildfires, and floods (OCCRI 2019, pp. 5–7, tables 2 and 3; Public Policy Institute of California 2020, not paginated). A rangewide study of occupancy found that foothill yellow-legged frog presence is negatively related to the frequency of dry years and to precipitation variability, suggesting that the species may already be declining due to the effects from climate change (Lind 2005, p. 20).

Projected increases in temperature are likely to affect foothill yellow-legged frogs differently in different parts of the range. Warming temperatures are likely to have some positive effects in areas where stream temperatures are typically colder, allowing for greater foothill yellow-legged frog population growth rates and early life stage survival (Kupferberg *et al.* 2011a, p. 72; Rose *et al.* 2020, p. 41). However, researchers observed an unexpected die-off (unknown cause) of late-stage tadpoles that coincided with maximum daily temperatures exceeding 25 degrees Celsius (°C) (77 degrees Fahrenheit (°F)) (Kupferberg *et al.* 2011a, pp. 14, 58; Catenazzi and Kupferberg 2018, pp. 43–44, figure 2). Temperatures greater than the preferred thermal range may also have lethal or sublethal effects on tadpoles and metamorphs from parasites (Kupferberg *et al.* 2009a, p. 529; Kupferberg *et al.* 2011a, p. 15). There may be additional negative consequences to rising stream

temperatures, even where temperatures are currently cold. Increasing temperatures may facilitate colonization by nonnative species (Fuller *et al.* 2011, pp. 210–211; Kiernan *et al.* 2012, pp. 1480–1481). Bd prevalence in bullfrogs was also found to be greater when water temperature was warmer than 17 °C (63 °F) (Adams *et al.* 2017a, pp. 12–13).

In California, a 25 to 100 percent increase in the frequency of extreme dry-to-wet precipitation events (such as that of the 2012–2016 drought followed by the extremely wet winter of 2016–2017) is projected during the 21st century (Swain *et al.* 2018, p. 427). This information indicates that the threats of drought and extreme flood events may increase by 25 to 100 percent in California. Increased frequency of extreme heat events, drought, and extreme precipitation and floods events are also projected to increase in Oregon (OCCRI 2019, pp. 5, 6, 13–14, tables 2 and 3). In order to assess future conditions, including future climatic conditions for the foothill yellow-legged frog, we developed a population viability analysis (PVA) (Rose *et al.* 2020, entire) that used climate and habitat change information consistent with current emission estimates such as those identified as Representative Concentration Pathway (RCP) 4.5 and RCP 8.5 (see Population Viability Analysis, below).

The projected changes in temperature, precipitation, and climate variability may exacerbate the effects of other threats on the foothill yellow-legged frog (Service 2021, figure 46, p. 11). The potential interactions (between climate change effects and other threats) that can negatively affect the foothill yellow-legged frog include:

- An increased risk to human safety from flooding and increased risk of water shortages may necessitate more hydrological alterations (*e.g.,* dams, surface-water diversions, changes to water releases, and channel modifications). While the effect of climate change is only projected to increase surface water stress by up to 5 percent in the Oregon portion of the North Coast DPS's range by mid-century, projected increases range from 5 to 30 percent in California watersheds (Averyt *et al.* 2013, p. 7, figure 7). In California, climate-induced surface water stress is projected to increase the most in the South Sierra DPS and the least in the North Coast DPS (Averyt *et al.* 2013, p. 7, figure 7).
- Increased frequency of drought, decreased spring/summer streamflow, and warmer water temperature may benefit nonnative predators and competitors such as bullfrogs and nonnative fish (Brown and Ford 2002, pp. 332, 338–340, figure 3; Fuller *et al.* 2011, pp. 210–211; Adams *et al.* 2017a, p. 13).
- Increased summer water temperatures and/or decreased daily stream discharge and other increases in climate variability are expected to increase copepod parasitism in foothill yellow-legged frogs (Kupferberg *et al.* 2009a, p. 529) or exacerbate the effects of disease outbreaks (Raffel *et al.* 2013, p. 147; Adams *et al.* 2017b, p. 10228).
- Observed and projected trends toward warmer and drier wildfire seasons in the western United States are likely to continue the trend toward higher-severity wildfires and larger burn areas (Parks and Abatzoglou 2020, pp. 1, 5–6). This would result in additional loss, degradation, fragmentation, and alteration of habitat, and secondary impacts from increased sedimentation and flooding for the foothill yellow-legged frog across its range.

Competing Conservation Interests

Many of the conservation activities that support native salmonid fishes (*e.g.,* natural flow management, prevention of sedimentation) have positive influences on foothill yellow-legged frog habitat, connectivity, and juvenile and adult survival (Service 2021, section 7.12, figure 45, p. 113). However, some measures that are taken to improve habitat for cold-water salmonid fishes reduce habitat quality for the foothill yellow-legged frog by decreasing stream temperature and increasing tree canopy cover over streams. One of the management techniques used to support salmonid recruitment is to release high volumes of cold water from dams in the spring (to trigger spawning runs or to flush smolts out to the ocean) (Kupferberg 1996a, p. 1342; Kiernan *et al.* 2012, p. 1474). The timing of such flow events can negatively affect foothill yellow-legged frog breeding and recruitment (Kupferberg 1996a, pp. 1336–1337, 1342).

Current and Future Condition Analysis

In our analysis of the current and future condition, we assessed resiliency for each DPS of the foothill yellow-legged frog by evaluating the health and number of metapopulations for each DPS. A healthy metapopulation is defined in terms of its abundance, level of reproduction and recruitment, juvenile and adult survival, and connectivity between populations. To assess the current representation for the foothill yellow-legged frog, we considered the current diversity of ecological conditions and the genetic makeup of each DPS as a proxy for the DPS's adaptive capacity. Redundancy for the foothill yellow-legged frog was measured by the quantity and spatial distribution of resilient metapopulations across each DPS's range. Generally speaking, the greater the number of healthy metapopulations that are distributed (and connected) across the landscape, the greater the DPS's ability to withstand catastrophic events and, thus, the greater the DPS's overall viability.

Population Structure

Foothill yellow-legged frog distributions and movements across the species' range and within each DPS exhibit the characteristics of metapopulations (Lind 2005, p. 49; Kupferberg *et al.* 2009b, p. 132). A metapopulation consists of a network of spatially separated population units, or subpopulations, that interact at some level. Subpopulations are subject to periodic extirpation from demographic or environmental stochasticity, but then are naturally repopulated via colonization from nearby subpopulations. Numerous metapopulations may occur within a single stream reach or watershed depending on whether the subpopulations are interacting with each other. Each DPS is made up of numerous metapopulations. In our analysis for determining the range of each DPS, we considered this metapopulation structure when determining whether certain populations or segments interacted with each other and helped define boundaries for the DPSs, especially where some other natural or manmade barrier was not evident.

Historical Distribution

The historical distribution, as identified once the species was established as a single taxon of the foothill yellow-legged frog (Zweifel 1955, pp. 210, 273), extended from west of the crest of the Cascade Mountains in the Willamette River drainage to the coast in Oregon, south through the Coast Range to Los Angeles County, California, and down the Sierra Nevada foothills and mountains to 5,000 feet (1,524 meters) (CDFW 2019, pp. 7–8; Service 2021, p. 16, Figure 2). Isolated populations or individuals had been identified in the Sacramento (at Sutter Buttes) and Central Valleys (Mokelumne River drainage) of California and in Baja California Norte, Mexico (San Pedro Martir), but these locations were either isolated individuals or have not been found again (Loomis 1965, pp. 78–79; Stebbins 2003, pp. 231–233, 479). Based on our knowledge of foothill yellow-

legged frog genetic divergence at much smaller spatial scales of isolation (McCartney-Melstad *et al.* 2018, p. 121; Peek 2018, p. 76), the distant Mexico population once identified as foothill yellow-legged frog, now considered extirpated, most likely was a different taxon.

In Oregon, past impacts from timber operations resulting in stream alteration have reduced the historical range of the species in the Willamette Valley and in the southeast portion (portions of Jackson County) of the State (Olson and Davis 2009, p. 9–11). In California, the historical range has also been reduced most likely from hydrological alteration of habitat associated with water management (Lind 2005, pp. 65, 68, figures 2.1 and 2.4).

Current Distribution, Occupancy, Abundance, and Population Trends

The current distribution of the foothill yellow-legged frog generally follows the historical distribution of the species except with range contractions in the southern and, to a lesser extent, northern parts of the species' range as discussed above. Within areas currently occupied, foothill yellow-legged frog distribution is currently in a declining trend in several parts of the species' range with the species having disappeared from more than half of its historically-occupied locations (Lind 2005, pp. 38, 61, table 2.1). Some areas in Oregon, especially in the northern and northwestern portion of the species' range, have shown declines; however, recent survey efforts have identified additional populations of the species in some of these areas (National Genomics Center for Wildlife and Fish Conservation 2021, entire).

There has not been any rangewide occupancy or population abundance survey effort for the species, and some areas are more heavily surveyed than others. Because of this variation in the available data, we use presence in stream segments as an indicator of occupancy and spatial connectivity of populations. In our review of occupancy, distribution, and abundance, we used information from the California Natural Diversity Database (CNDDB 2020, foothill yellow-legged frog information) and other survey information obtained from Federal and other academic and private resource entities throughout the species' range. The factors we analyzed to determine the condition of a population are (1) spatial and temporal trends in occupancy and reports of population abundance where available, (2) connectivity and isolation among occupied areas, (3) modeled risk of population decline that incorporates demographic and environmental information, and (4) status of threats and their effects (see chapter 8 of the SSA report, Service 2021, pp. 122–166).

Foothill yellow-legged frog occupancy varies widely among the DPSs, with generally greater occupancy in the northern half of the range. The North Sierra DPS has the greatest proportion of presumed occupied stream segments (relative to the number of potential stream segments), followed by the North Coast (in California) and North Feather DPSs. Proportions of presumed occupied stream segments were much lower in the rest of the DPSs with the South Coast DPS having the lowest proportion of presumed occupied segments, followed by the South Sierra DPS (see table 10 in the SSA report, Service 2021, p. 125).

Based on historical and current occurrence data (Element Occurrences) for California (CDFW 2020, entire), 67–70 percent of all known occurrence locations are presumed to be occupied by the foothill yellow-legged frog in the North Coast DPS (in California), North Feather DPS, and North Sierra DPS (Service 2021, Table 10, p. 125). In contrast, less than 45 percent of known occurrence locations are presumed occupied in the South Sierra DPS, Central Coast DPS, and South Coast DPS (Service 2021, Table 10, p. 125). Based on patterns of current occupancy by decade of most recent detections (Service 2021, figures 47–53, pp. 127–139), occupied area appears to be declining in parts of each of the DPSs but less so in the northern California and southern Oregon portions of the taxon's range (North Coast DPS). There are large regions in both the northern part of the range (northern Oregon) (North Coast DPS in Oregon) and in the southern half of the species' range (South Sierra DPS, Central Coast DPS, and South Coast DPS) that have not had any reported observations of foothill yellow-legged frogs for two or more decades. Foothill yellow-legged frogs are mostly extirpated in the South Coast DPS and currently occur only in two streams. Table 1 below identifies the percentage of occurrence records considered occupied (2000–2020) in California. Comparable Element Occurrence data are not available for the North Coast Oregon analysis unit. For our analysis of Oregon, we looked to other sources of information on occurrences (Service 2021, pp. 127–144).

TABLE 1—PERCENTAGE OF EXTANT OCCURRENCE RECORDS (CDFW 2020) BY ANALYSIS UNIT

Analysis unit	2000–2020 (percent)
North Coast, Oregon	Not Available.
North Coast, California	67.
North Feather	70.
North Sierra	70.
South Sierra	43.
Central Coast	42.
South Coast	8.

Population Viability Analysis

In addition to our assessments of occupancy, abundance, and trends, using occurrence information, we worked with USGS researchers to complete a rangewide population viability analysis (PVA) for the foothill yellow-legged frog (Rose *et al.* 2020, entire). We used the information from the PVA to inform both the species' current condition (Service 2021, chapter 8, pp. 122–166) and potential future condition (Service 2021, chapter 9, pp. 167–193). The methods and information used for developing the models used in the PVA are described in section 8.4 of the SSA report (Service 2021, pp. 146–152). The results of the PVA focus on identifying patterns in risk attributed to areas having a greater than or equal to 50 percent decline within and between analysis units and characterize this as the 'risk of decline.'

The 'risk of decline' results from the PVA reflect many of the geographical patterns that we described above for occupancy data (Service 2021, section 8.2, pp. 123–139). A summary of the PVA results for the current condition of foothill yellow-legged frog populations within the boundaries of the DPSs combined with our analysis of occupancy information is discussed below.

The North Sierra DPS has both the lowest average relative risk of decline and the greatest proportion of presumed occupied stream segments (relative to stream segments that have the potential to be occupied). The North Feather DPS has a medium-high average relative risk of decline and an intermediate proportion of occupied stream segments (relative to potential stream segments). Within the North Coast DPS, stream segments in northern California and southwestern Oregon have lower risks of decline, compared to streams near the San Francisco Bay area and the northern and eastern extents of the species' range in Oregon. The southern analysis units (Central Coast DPS, South Coast DPS, and South Sierra DPS) exhibit the strongest patterns of declining occupancy, with all stream segments

within each DPS having either a medium or high relative risk of decline.

Chapter 9 of the SSA report (Service 2021, pp. 167–193) discusses the potential change in magnitude and extent of threats and the species' response to those threats into the future. We have determined that the effects of climate change and its impact on increasing temperatures, changes to precipitation and hydrology, and influence on wildfire and drought, as well as the continued regulated flows from managed streams, will drive threats on the species and affect its status into the future. The timeframe of our analysis for these threats is approximately 40 years. This period represents our best understanding of the projected future environmental conditions related to threats associated with climate change that would impact the species (increasing temperatures, greater proportion of precipitation falling as rain instead of snow, earlier snowmelt (influencing streamflow), and increased frequency, duration, and severity of extreme events such as droughts, heat waves, wildfires, and floods). The 40-year timeframe was also used in our PVA as part of its analysis on determining risk for the species into the future (Rose *et al.* 2020, entire). Although we possess climate and habitat change projections that go out beyond 40 years, there is greater uncertainty between these model projections in the latter half of the 21st century and how the effects of the modeled changes will affect the species' response when projected past 40 years. Accordingly, we determined that the foreseeable future extends only 40 years for the purpose of this analysis and we rely upon projections out to approximately 2060 for predicting changes in the species' conditions. This timeframe allows us to be more confident in assessing the impact of climate and habitat changes on the species. Therefore, based on the available climate and modeling projections and information we have on the species, we have determined 2060 as the foreseeable future timeframe for the foothill yellow-legged frog.

Our assessment of future condition interprets the effects that the future changes to threats would potentially have on foothill yellow-legged frog resiliency, representation, and redundancy. In order to accomplish our review, three plausible future scenarios were considered and each DPS's future resiliency, redundancy, and representation under each scenario was assessed. As discussed above, we used information from a PVA (Rose *et al.* 2020, pp. 22–27) to assist us in determining the potential condition of foothill yellow-frog populations into the future. Although there are an infinite number of possible future scenarios, the chosen scenarios (*i.e.,* lower change scenario, mean change scenario, and higher change scenario) reflect a range of reasonable scenarios based on the current understanding of climate change models, threats, and foothill yellow-legged frog ecology. The environmental conditions in each future scenario are plausible in that they are not meant to represent the lowest and highest projections of what is possible. Rather, the lower change and higher change scenarios are at the lower and upper ends of confidence intervals from climate change projections, land cover models, and stream temperature models (Rose *et al.* 2020, pp. 22–23). Environmental conditions for the three future scenarios are based on published studies that used ensembles of global climate models (Isaak *et al.* 2017, p. 9188; Swain *et al.* 2018, p. 427; Sleeter *et al.* 2019, p. 3336). For the projections of spatially explicit covariates (*i.e.,* land cover and stream temperature), downscaled regional climate model data were used (Isaak *et al.* 2017, p. 9186; Sleeter *et al.* 2019, p. 3339). The information from these studies reflects the best scientific and commercial information available for projections of land cover (Sleeter *et al.* 2019; Sleeter and Kreitler 2020, unpublished data), stream temperature (Isaak *et al.* 2017), and climate variability (Swain *et al.* 2018) within the range of the foothill yellow-legged frog.

Descriptions of each scenario and the anticipated effects of each scenario on resiliency, representation, and redundancy for each foothill yellow-legged frog DPS is in the SSA report (Service 2021, Table 17, sections 9.3–9.5, pp. 171, 174–193) and is summarized below.

Resiliency

Resiliency is having sufficiently robust populations for the species to withstand stochastic events (*i.e.,* events arising from random factors). For the foothill yellow-legged frog, we determined that resiliency is a function of metapopulation health and the distribution and connectivity among metapopulations and subpopulations. To determine if foothill yellow-legged frog populations were resilient, we first assessed spatial and temporal trends in occupancy and abundance. We then assessed structural and functional connectivity among occupied areas. We also evaluated results from a study that modeled the risk of ≥50 percent decline in occupied stream segments using demographic and environmental information. Finally, we related our results to information from scientific literature, reports, and species experts. Table 2 below summarizes the current condition and future conditions of resiliency for each of the foothill yellow-legged frog DPSs. In the SSA report and the table below, we split the North Coast DPS into a California and an Oregon analysis unit. These two analysis units are later combined for determination of the status of this DPS as a whole. The current condition column reflects the current resiliency of the analysis unit. The current resiliency of each DPS was characterized as having an intact, reduced, substantially reduced, or extensively reduced condition. Under each future scenario, we assessed how the following resiliency measures would change from current condition: (1) Occupancy and abundance, (2) connectivity, (3) modeled risk of population decline, and (4) status of threats. Because changes to environmental conditions under the future scenarios were reflected by environmental covariates in the PVA (see Service 2021, section 9.2 (Scenarios); Table 17), we were able to forecast the magnitudes of changes in resiliency by comparing the modeled risk of decline (Rose *et al.* 2020, entire) under current conditions to modeled risk under the three future scenarios. The lower, mean, and higher change scenario columns represent any changes from each DPS's current resiliency. For this analysis, ''functional extirpation'' is defined as such extensive reduction in condition that extirpation of the entire unit is likely to eventually occur as remnant populations experience normal environmental and demographic fluctuations. For additional detail on current and future conditions of the DPSs, see the SSA report (Service 2021, chapters 8 and 9, pp. 122–193).

TABLE 2—RESILIENCY OF THE SEVEN FOOTHILL YELLOW-LEGGED FROG ANALYSIS UNITS

Analysis unit	Current condition	Lower change scenario	Mean change scenario	Higher change scenario
North Coast DPS (Oregon).	Intact Resiliency	Slightly reduced from current	Slightly reduced from current	Markedly reduced from current.
North Coast DPS (California).	Intact Resiliency	Slightly reduced from current	Markedly reduced from current	Greatly reduced from current. *Risk of functional extirpation.*
North Feather DPS	Reduced Resiliency	No change	Markedly reduced from current. *Risk of functional extirpation.*	Greatly reduced from current. *Risk of functional extirpation or extirpation.*
North Sierra DPS	Intact Resiliency	Slightly reduced from current	Markedly reduced from current	Greatly reduced from current.
South Sierra DPS	Substantially Reduced Resiliency.	Slightly reduced from current	Markedly reduced from current. *Risk of functional extirpation or extirpation.*	Greatly reduced from current. *Risk of functional extirpation or extirpation.*
Central Coast DPS	Substantially Reduced Resiliency.	Slightly reduced from current	Markedly reduced from current. *Risk of functional extirpation or extirpation.*	Greatly reduced from current. *Risk of functional extirpation or extirpation.*
South Coast DPS	Extensively Reduced Resiliency	Slightly reduced from current. *Risk of extirpation.*	Markedly reduced from current. *Risk of extirpation.*	Greatly reduced from current. *Risk of extirpation.*

Representation

Representation describes the ability of a species to adapt to changing environmental conditions. This includes both near-term and long-term changes in its physical (*e.g.,* climate conditions, habitat conditions, habitat structure, etc.) and biological (*e.g.,* pathogens, competitors, predators, etc.) environments. This ability of a species to adapt to these changes is often referred to as ''adaptive capacity.'' To assess the current condition of representation for the foothill yellow-legged frog, we considered the current diversity of ecological conditions and of genetic material throughout the range of the species.

There are considerable ranges of ecological conditions under which foothill yellow-legged frogs occur. As discussed in the SSA Report (Service 2021, Section 2.7 and CHAPTER 3), there are substantial differences in latitude, elevation, precipitation, average temperature, and vegetative community across the species' range. Parts of the foothill yellow-legged frog range also differ in terms of species composition and in hydrology (rain-fed versus snow-fed systems). Exemplary of these different ecological conditions, foothill yellow-legged frog tadpoles from snow-fed Sierra Nevada populations have higher intrinsic growth rates than tadpoles from rain-fed coastal populations, likely due to their constraint to a shorter rearing season in the Sierra Nevada (Catenazzi and Kupferberg 2017, pp. 1255, 1260–1261).

As described in the SSA report (Service 2021, Section 2.6), two rangewide assessments of foothill yellow-legged frog genomic datasets revealed that this taxon is extremely differentiated following biogeographical boundaries (McCartney-Melstad *et al.* 2018, p. 112; Peek 2018, p. 76). The clades that are most genetically divergent (*i.e.,* South Sierra, Central Coast, and South Coast clades), and thus could contribute most to the overall adaptive capacity of this taxon (McCartney-Melstad *et al.* 2018, p. 120; Peek 2018, p. 77), are also the clades with the lowest levels of population resiliency. The South Sierra and Central Coast clades have substantially reduced resiliency and the South Coast clade has extensively reduced resiliency (SSA Report (Service 2021, Section 8.5)). The reduced resiliency in these clades, means that the foothill yellow-legged frog is especially vulnerable to loss of this genetic diversity. The Central Coast and South Coast clades are the most genetically divergent, indicating that a significant amount of the taxon's overall genetic diversity would be lost if either clade were extirpated. The Central Coast and South Coast clades are also ecologically unique because they have lower annual precipitation and higher mean annual temperatures than elsewhere in the range of the species (PRISM Climate Group 2012, 30-year climate dataset; Table 3) and the region hosts the highest freshwater endemism of anywhere in the species' California range (Howard *et al.* 2013, p. 5).

While not as at risk of extirpation, the northern Sierra clades (*i.e.,* North Feather and North Sierra clades) might also have unique adaptive potential in the face of climate change because of their admixture history and intermediacy to the South Sierra and North Coast clades (McCartney-Melstad *et al.* 2018, p. 121). The genetic clade that is comprised of the two North Coast units is also genetically valuable to the foothill yellow-legged frog because it contains the greatest genetic diversity and is the only part of the range that shows a trajectory of increasing genetic diversity (McCartney-Melstad *et al.* 2018, pp. 120–121; Peek 2018, p. 74). The North Coast clade also potentially provides connectivity and a large latitudinal gradient for responding to the effects of climate change.

While the foothill yellow-legged frog clearly has a range of genetically divergent populations, it has likely already lost a lot of diversity due to large extirpations in the southern analysis units. The species is also at risk of further losses amidst trends toward decreasing occupancy and decreasing connectivity. The foothill yellow-legged frog is exhibiting an overall trend of decreasing genetic diversity in spite of the trend of increasing genetic diversity in the North Coast clade (McCartney-Melstad *et al.* 2018, pp. 120–121; Peek 2018, p. 74).

The trend of decreasing genetic diversity in the foothill yellow-legged frog may be leading to losses in adaptive capacity (*i.e.,* ability to adapt to change). Loss of adaptive capacity lowers the species' viability because the decrease in ability to adapt to change increases extinction risk in the face of future changes. For foothill yellow-legged frog conservation, McCartney-Melstad *et al.* (2018, p. 122) strongly recommended that each of the major genetic groups be managed as independent recovery units. Peek (2018, p. 77) also recommended that conservation actions should prioritize protecting foothill yellow-legged frogs in the Central Coast, South Coast, and South Sierra clades because they are simultaneously the most distinct, divergent, and at-risk populations.

Redundancy

Redundancy describes the ability of a species to withstand catastrophic events. To assess redundancy for each analysis unit, we considered the (1) quantity of occupied stream segments (proxy for subpopulations) (SSA Report (Service 2021,Table 10)), (2) spatial distribution of occupied stream

segments (SSA Report (Service 2021, Figure 55)), and (3) population level factors such as connectivity, relative risk of decline, and level of threats. These factors were assessed in terms of their potential influence on the ability of foothill yellow-legged frog metapopulations to survive and recover after a plausible catastrophic event. For example, isolation of occupied stream segments or lack of functional connectivity in an analysis unit, could prevent recolonization of extirpated areas after a massive die-off or temporary habitat destruction.

At the analysis unit scale of redundancy, long-term viability after a catastrophic event would likely be possible in the North Coast clade (North Coast California and North Coast Oregon units) and might be possible in the North Sierra clade. In the North Coast clade, there are large numbers of occupied streams and there are numerous occupied stream segments that both are in the low risk of decline category and are distributed widely across the geographical area (SSA Report (Service 2021, Figure 55)). Furthermore, resiliency is intact in both of the two analysis units that comprise this clade. Resiliency is also intact in the North Sierra clade because there are numerous occupied stream segments that both are in the low risk of decline category and are distributed widely across the geographical area (SSA Report (Service 2021, Figure 55)). However, the North Sierra clade has less redundancy than the North Coast clade because the North Sierra clade is small in size and has poor functional connectivity, which could prevent recolonization after catastrophic events.

The North Feather DPS occupies a relatively small area and several streams or occurrences have been extirpated from past impacts (eastern portion of range, southwestern area near Lake Oroville, and some occurrences in northern Butte County) (CDFW 2020, dataset, entire; Service 2021, figure 49, p. 131). The North Feather DPS also has the highest average relative risk of population decline with only 16 (15 percent) of the 109 analyzed stream segments in the low risk category and 34 stream segments (31 percent) in the high risk category. Overall abundance of foothill yellow-legged frogs for the North Feather DPS is largely unknown, but egg mass densities are very low in the two regulated stream reaches that have long-term monitoring (Rose *et al.* 2020, pp. 63–64, table 1). For example, sections of the Cresta reach of the North Feather River that historically had relatively high numbers of foothill yellow-legged frog egg masses did not have egg masses or were extremely reduced for several years (2006–2017) (CDFW 2019, p. 31; Dillingham 2019, p. 7). As a result, redundancy is limited in the North Feather DPS. The North Feather DPS is not only the smallest clade, but its occupied stream segments are not well-distributed over the geographical area (SSA Report (Service 2021, Figure 55)). The extant North Feather populations occupy an area small enough that a large catastrophic event, such as a high-severity wildfire or drought, could result in functional extirpation. Furthermore, the North Feather DPS has reduced resiliency because of poor occupancy and relatively high risk of population decline.

Redundancy is poor in the South Sierra and Central Coast clades. Both the South Sierra and Central Coast clades have substantially reduced resiliency because of poor occupancy, poor connectivity, relatively high risk of decline, and substantial threats. A single catastrophic event would be unlikely to extirpate the entirety of either unit, but the patchy distribution of occurrences (SSA Report (Service 2021, Figure 55)) and limited connectivity would make it extremely unlikely that extirpated areas would be recolonized naturally.

Redundancy within the South Coast clade is nearly zero. Not only is the resiliency in this clade extensively reduced, but there are only two known populations (SSA Report (Service 2021, Section 8.2)) in the South Coast clade. These two populations (comprised of seven stream segments) are also very close in proximity (SSA Report (Service 2021, Figure 55)). These streams are located close to one another, but the foothill yellow-legged frog populations within them appear to have lost genetic connectivity. Although the stream flows are not regulated by dams, the risk of population decline continues to be medium or high under current conditions due to the combination of threats identified above altering habitat and impacting the DPS. Furthermore, the close proximity of the stream segments to each other makes the South Coast DPS especially vulnerable to extirpation from a single catastrophic event.

Overall Current and Future Condition

As discussed above, we used the information from the PVA to inform both the species' current condition (Service 2021, chapter 8, pp. 122–166) and potential future condition (Service 2021, chapter 9, pp. 167–193). The PVA assessed how the following measures would change from current condition: (1) Occupancy and abundance, (2) connectivity, (3) modeled risk of population decline, and (4) status of threats under each future scenario. Because changes to environmental conditions under the future scenarios were reflected by environmental covariates in the PVA (see Service 2021, section 9.2 (Scenarios); Table 17), we were able to forecast the magnitudes of changes in resiliency by comparing the modeled risk of decline (Rose *et al.* 2020, entire) under current conditions to modeled risk under the three future scenarios. The results of the analysis showed that the average risk of population decline for each analysis unit increased under the three future scenarios (Rose *et al.* 2020, p. 39). Under current conditions and all future scenarios, the average relative risk of decline was highest in the South Sierra and Central Coast units and was lowest in the North Coast Oregon, North Coast California, and North Sierra units (Table 3 below and Service 2021, Tables 18 and 19). Under the lower change scenario, decreases in resiliency, compared to current conditions, were small in most analysis units. However, decreases in resiliency were more dramatic under the mean and higher change scenarios. These dramatic declines in resiliency put several analysis units at risk of unit-wide extirpation or functional extirpation (*i.e.,* such extensive reduction in condition that extirpation of the entire unit is likely to eventually occur as remnant populations experience normal environmental and demographic fluctuations) under the mean and higher change scenarios (SSA Report (Service 2021, Table 19)). One of the analysis units (South Coast unit) is at risk of unit-wide extirpation under all three of the future scenarios.

TABLE 3—RELATIVE RISK OF DECLINE SUMMARY FOR CURRENT CONDITION AND THREE FUTURE SCENARIOS

Analysis unit	Risk of decline			
	Current condition	Lower change scenario	Mean change scenario	Higher change scenario
North Coast Oregon	Low	Medium	Medium	Medium.
North Coast California	Medium	Medium	Medium	Medium.
North Feather	Medium	Medium	High	High.
North Sierra	Low	Low	Medium	Medium.
South Sierra	Medium	High	High	High.
Central Coast	Medium	Medium	High	High.
South Coast	Medium	Medium	Medium	High.

Conservation Efforts and Regulatory Mechanisms

Several initiatives and conservation efforts are in place and being implemented for foothill yellow-legged frog conservation including measures for rearing (headstarting), nonnative species removal, development of reintroduction feasibility studies, and habitat conservation planning for the species (Service 2021, table 9, pp. 117–120). Headstarting (hatching eggs and rearing into releasable frogs) has been started on the North Feather River. The program has just been started and the extent from headstarting is limited to a portion of the range of the North Feather DPS. Also benefitting the species (through regulatory protection) is the decision by the California Fish and Game Commission to list five foothill yellow-legged frog genetic clades (referred to as analysis units in this document) under the California Endangered Species Act. In February 2020, the California Fish and Game Commission adopted the findings of the CDFW to list the South Coast, Central Coast, and South Sierra clades as endangered and list the North Feather and North Sierra clades as threatened under the California Endangered Species Act (Commission 2020, p. 1). Another regulatory benefit that applies to breeding and rearing habitat is the 2009 moratorium on suction-dredge mining in California. However, benefits to the foothill yellow-legged frog from the moratorium have not been studied, and permitting processes are in development so that the moratorium may be lifted (State Water Resources Control Board 2020, entire).

The foothill yellow-legged frog is listed as a sensitive species by the BLM and the Forest Service under their Sensitive Species program. These agencies define sensitive species as those species that require special management consideration to promote their conservation and reduce the likelihood and need for future listing under the Act. Any actions conducted by the Forest Service or BLM would need to take into consideration impacts to sensitive species and, if possible, implement best management practices to limit impacts to the species or its habitat. In addition, the species in northern portions of California and the species' range in Oregon on National Forest or BLM lands currently receive protection through conservation measures and best management practices under the Northwest Forest Plan's Survey and Manage program (USDA–USDOI 2001, entire). These measures reduce or eliminate impacts to habitat for the foothill yellow-legged frog and areas occupied by the species during road construction and maintenance activities as well as any vegetation management actions which assist in the reduction of threats associated with wildfire on BLM and Forest Service lands.

The Federal Energy Regulatory Commission (FERC) issues licenses for the operation of nonfederal hydropower projects. Within the range of the foothill yellow-legged frog, numerous hydropower projects require FERC licensing to operate. Part of the licensing process includes consideration of recommendations for the protection of fish and wildlife. Some FERC license requirements have included measures to help protect and conserve foothill yellow-legged frogs including actions such as collection of data, implementation of modified flow regimes to mimic more natural conditions, and other standard best management practices.

Two joint Federal and State habitat conservation plans (HCPs) and California State natural community conservation plans (NCCPs) (Santa Clara Valley HCP/NCCP and East Contra Costa HCP/NCCP) have been approved and implemented for the foothill yellow-legged frog as a covered species and assist in local population and habitat conservation (Jones & Stokes 2006, entire; ICF International 2012, entire). Both HCP/NCCPs are in the northern portion of the Central Coast DPS's range. Another Federal HCP has been issued to the Humboldt Redwood (formerly Pacific Lumber) Company. The Humboldt Redwood Company (HRC) HCP covers areas within the range of the North Coast DPS in Humboldt County and includes adaptive management strategies designed to maintain viability in populations of foothill yellow-legged frogs and other covered aquatic herpetofauna (HRC 2015, entire).

Due to the limited nature of existing conservation efforts and no rangewide planning or coordination, the current conservation efforts are localized. In addition, several ongoing efforts are preliminary steps to on-the-ground conservation (*e.g.,* feasibility research) and other efforts have not had enough time to verify long-term success (*e.g.,* population headstarting) or determine if and how the condition of a foothill yellow-legged frog population may have improved (*e.g.,* bullfrog removal) (Service 2021, section 7.15, pp. 116–121). Therefore, large scale conservation efforts are not known to be currently outweighing any of the threats described above at the species or DPS level, but may reduce some effects at the individual or smaller localized population level.

Determination of Status for the Foothill Yellow-Legged Frog

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an ''endangered species'' or a ''threatened species.'' The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a threatened species as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an ''endangered species'' or a ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B)

overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In determining potential future threats facing the six DPSs, we evaluated various future conditions based on projections of changes in threats. Our timeframe for review looked out approximately 40 years based on the effects of climate change and information developed for the PVA. This was our timeframe for our threats analysis of future conditions for the six DPS to determine if they were likely to become endangered within the foreseeable future (*i.e.,* if they meet the Act's definition of ''threatened species'') throughout their ranges.

Status of the South Sierra DPS and the South Coast DPS of the Foothill Yellow-Legged Frog Throughout All of Their Ranges

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the South Sierra and South Coast DPSs of the foothill yellow-legged frog and their habitat. Below we summarize our assessment of status of the South Sierra DPS and South Coast DPS under the Act.

South Sierra DPS: Threats are numerous and severe for the South Sierra DPS and include altered hydrology (Factor A), agriculture (including airborne pesticide drift) (Factor A), illegal cannabis cultivation (Factor A), predation by nonnative species (Factor C), disease and parasites (Factor C), mining (Factor A), urbanization (including development and roads (Factor A), recreation (Factor E), severe wildfire (Factor A), drought (Factor E), extreme flooding (Factor E), the effects of climate change (*e.g.,* increased temperatures, variability in precipitation events, increased drought frequency) (Factor E), and inadequacy of regulatory mechanisms (Factor D). After evaluating threats to the DPS and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we conclude that under current conditions, resiliency, redundancy and representation are substantially reduced due to existing range contractions and the DPS's extensive extirpations and patchy distribution within and between stream segments. Both structural and functional connectivity are also poor in the South Sierra DPS. While exact abundances are largely unknown, populations within the DPS are relatively small and isolated and are impacted by numerous threats that are of such extent and magnitude that they are making the South Sierra DPS currently more susceptible to loss from stochastic or catastrophic events. The South Sierra DPS also has a high average risk of decline with no stream segments in lower risk categories under current conditions. As a result, we find that the magnitude and imminence of threats facing the South Sierra DPS of the foothill yellow-legged frog place the DPS in danger of extinction now, and therefore a threatened status is not appropriate. Thus, after assessing the best scientific and commercial information available, we determine that the South Sierra DPS of the foothill yellow-legged frog is in danger of extinction throughout all of its range.

South Coast DPS: There are numerous, severe threats to the South Coast DPS of the foothill yellow-legged frog including altered hydrology (Factor A), drought (Factor E), nonnative species (Factor C), disease and parasites (Factor C), urbanization (including development roads) (Factor A), and recreation (Factor E), illegal cannabis cultivation (Factor A), extreme floods (Factor E), severe wildfire (Factor A), the effects of climate change (*e.g.,* increased temperatures, precipitation variability, increased drought frequency and duration) (Factor E), and inadequacy of regulatory mechanisms (Factor D). After evaluating threats to the DPS and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we conclude that under current conditions, resiliency, redundancy, and representation are poor for the South Coast DPS. Foothill yellow-legged frogs are mostly extirpated in this DPS and currently occur only in two streams. These streams are located close to one another, but the foothill yellow-legged frog populations within them appear to have lost genetic connectivity. Although the stream flows are not regulated by dams, the risk of population decline continues to be medium or high under current conditions due to the combination of threats identified above altering habitat and impacting the DPS. Furthermore, the close proximity of the stream segments to each other makes the South Coast DPS especially vulnerable to extirpation from a single catastrophic event. Like the other DPSs within the southern portion of the species' range, the area associated with the South Coast DPS is subject to reduced precipitation and drying, which (1) shortens the hydroperiod and negatively affects habitat elements that are hydrology-dependent; (2) limits recruitment, survival, and connectivity; and (3) exacerbates the effects of other threats, such as predation and wildfire. In addition, the current occupancy within the DPS is extremely low and the threats acting on the DPS are of such extent and magnitude to currently cause significant declines. As a result, we find that the magnitude and imminence of threats facing the South Coast DPS of the foothill yellow-legged frog place the DPS in danger of extinction now, and therefore a threatened status is not appropriate. Thus, after assessing the best scientific and commercial information available, we determine that currently the South Coast DPS of the foothill yellow-legged frog is in danger of extinction throughout all of its range.

Status of the South Sierra DPS and South Coast DPS Throughout a Significant Portion of Their Ranges

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the South Sierra DPS and the South Coast DPS of the foothill yellow-legged frog are in danger of extinction throughout all of their ranges, and accordingly we did not undertake an analysis of any significant portion of the range for these two DPSs. Because both DPSs warrant listing as endangered throughout all of their ranges, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson*, 2020 WL 437289 (D. DC 2020), in which the court vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Determination of Status for the South Sierra DPS and South Coast DPS

Our review of the best available scientific and commercial information indicates that the South Sierra DPS and the South Coast DPS meet the Act's definition of endangered species. Therefore, we propose to list the South Sierra DPS and the South Coast DPS as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Status of the North Feather DPS and Central Coast DPS of the Foothill Yellow-Legged Frog Throughout All of Their Ranges

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the North Feather and Central Coast DPSs of the foothill yellow-legged frog and their habitat. Below we summarize our assessment of status of the North Feather DPS and Central Coast DPS under the Act.

North Feather DPS: Numerous threats are currently acting on the North Feather DPS. The North Feather DPS is within the most hydrologically altered part of the foothill yellow-legged frog's range (Factor A) and potentially is among the most impacted by the latent effects from historical mining (Hayes *et al.* 2016, pp. 53–54) (Factor A). Other threats to the DPS include nonnative species (bullfrogs and crayfish) (Factor C), impacts to habitat (agriculture, urbanization, severe wildfire) (Factor A), recreation (Factor E), the effects of climate change (Factor E), and inadequacy of regulatory mechanisms (Factor D). After evaluating threats to the DPS and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we conclude that under current conditions, resiliency, redundancy, and representation for the North Feather DPS are reduced.

The North Feather DPS occupies a relatively small area and several streams or occurrences have been extirpated from past impacts (eastern portion of range, southwestern area near Lake Oroville, and some occurrences in northern Butte County) (CDFW 2020, dataset, entire; Service 2021, figure 49, p. 131). The North Feather DPS also has the highest average relative risk of population decline with only 16 (15 percent) of the 109 analyzed stream segments in the low risk category and 34 stream segments (31 percent) in the high risk category. Overall abundance of foothill yellow-legged frogs for the North Feather DPS is largely unknown, but egg mass densities are very low in the two regulated stream reaches that have long-term monitoring (Rose *et al.* 2020, pp. 63–64, table 1). For example, sections of the Cresta reach of the North Feather River that historically had relatively high numbers of foothill yellow-legged frog egg masses did not have egg masses or were extremely reduced for several years (2006–2017) (CDFW 2019, p. 31; Dillingham 2019, p. 7).

Under current conditions, resiliency in the North Feather DPS is reduced, largely because of the DPS's occupation of a small geographic area, range contraction, the relatively high risk of the DPS's decline, and the area's high degree of hydrological alteration. However, the North Feather DPS still currently contains a relatively high proportion of occurrence records with 42 percent of all known occurrences being from the 2010–2020 timeframe (Service 2021, table 10, figure 49, pp. 125, 131). As a result, occupancy for the North Feather DPS is good, based on a majority of records being within the 2000–2020 timeframe, but abundance is low where there has been population monitoring. Current redundancy is limited in the North Feather clade. The North Feather DPS not only occupies the smallest area, but its occupied stream segments are not well-distributed over the geographical area it occupies. Current representation of the DPS is most likely reduced due to past loss of populations.

In 2001, the FERC issued an order to the licensee responsible for flow regulation on the Cresta and Poe reaches of the North Feather River (Rock Creek–Cresta Hydroelectric Project (FERC Project No. 1962) Pacific Gas and Electric Company (PG&E)). The order required PG&E to develop a plan to ensure recreational and pulse flow releases did not negatively impact the foothill yellow-legged frog. The order also required the establishment of an Ecological Resources Committee (ERC) to evaluate effects of flows and provide adaptive management strategies if flows had a negative impact on the foothill yellow-legged frog populations within the two reaches. In 2006, flow releases for recreational boating were discontinued on the Cresta reach due to possible impacts from flows resulting in low foothill yellow-legged egg masses that year. In 2009 and again in 2014, modified flow programs were implemented to mimic natural flow regimes by reducing flows in spring and summer (April through the foothill yellow-legged frog's breeding season) (GANDA 2018, pp. 1–2). We expect these measures to continue due to the establishment of the ERC on monitoring impacts to foothill yellow-legged frog populations on the two reaches. As a result, there are some signs of improved abundance since 2018, in the Cresta reach of the North Feather River following the above described modifications of the regulated flow regime to more natural conditions. Additional conservation efforts have been implemented to improve abundance of the North Feather DPS including in-situ and ex-situ rearing of foothill yellow-legged frogs for reintroduction (GANDA 2018, pp. 1–3, 13, table 2; Dillingham 2019, pp. 7–9; Rose *et al.* 2020, pp. 63–64, 76, table 1, figure 4). The Forest Service has noted habitat improvements in breeding areas of the Cresta reach and expects abundances and breeding activity to continue to increase in response to conservation efforts associated with in-situ and ex-situ rearing efforts (Dillingham 2019, pp. 7–9). In addition, the environmental condition of streams in the range of the North Feather DPS exhibit colder stream temperatures. These cooler water temperatures, although not currently preferable for the foothill yellow-legged frog, may help to provide climatic resiliency during periods of hot weather that may increase stream temperatures and may extend breeding and rearing timeframes. In addition, the existing conservation efforts to improve populations and regulatory measures to benefit habitat conditions as described above currently document improvements to the DPS's overall current condition. After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we have determined that despite the current condition of the DPS being reduced, the population and habitat factors used to determine the resiliency, representation, and redundancy for the DPS have not been reduced to such a degree to consider the North Feather DPS currently in danger of extinction throughout its range.

However, threat conditions in the future are likely to substantially impact populations of the North Feather DPS. Because of the current cold stream temperatures, future climatic conditions that may increase stream temperatures may potentially benefit many of the North Feather DPS populations; however, the negative effects of increases in streamflow variability due to climate change (*i.e.,* drought/flood events, snow/rain events) and residual environmental stochasticity likely outweigh the benefit of any warmer stream temperatures. Increased water demand and anticipated additional regulation to an already highly regulated hydrologic condition of the DPSs habitat will further limit the DPS's capability to maintain adequate population sizes to support the DPS's metapopulation structure. Nonnative species (bullfrogs and crayfish) will continue to impact the DPS and their impacts may increase as temperatures warm, allowing for spread of warm water species such as bullfrogs and smallmouth bass. Trends indicate that the amount of area severely burned annually by wildfires has been

growing sharply in the range of the North Feather DPS (Service 2021, figures 38 and 39, pp. 105–106) and negative consequences from wildfire-related sedimentation to foothill yellow-legged frog reproduction have been documented in this DPS (Service 2021, pp. 86–87). The populations of the North Feather DPS occupy an area small enough that a large catastrophic event, such as a severe wildfire or prolonged drought, could result in a severe reduction in population size and extent for the DPS. Future resiliency for the North Feather DPS will be markedly reduced as a result of these increases in threats and increases in the synergistic effects of threat interactions. Thus, the projected increases in average relative risk of decline under future conditions under the mean change scenario are likely to decrease occupancy, abundance, and connectivity, with resiliency being markedly reduced from the DPS's current condition, putting the North Feather DPS at risk of functional extirpation or extirpation within 40 years.

As a result of the DPS having a large percentage (42 percent) of recently occupied occurrences (2010–2020) within the occupied stream segments, and implementation of conservation measures to reduce the effects of altered stream hydrology and provide for an increase in populations, we have determined that the current condition of the DPS, although reduced, still exhibits sufficient resiliency, redundancy, and representation and would provide for, at a minimum, pockets of favorable conditions that allow the North Feather DPS to currently sustain its existing populations. However, future impacts from the threats facing the DPS are likely to cause declines in the DPS's population size and distribution. Thus, after assessing the best available information, we conclude that the North Feather DPS of the foothill yellow-legged frog is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Central Coast DPS: Numerous threats are currently acting on the Central Coast DPS including altered hydrology (Factor A), disease (Factor C), drought (Factor A), nonnative bullfrogs (Factor C), impacts to habitat (urbanization (including development and roads), agriculture, trespass cannabis cultivation, extreme floods, and wildfire) (Factor A), recreation (Factor E), the effects of climate change (Factor E), and inadequacy of regulatory mechanisms (Factor D). Human land use and population (urban development) in the northern portions of the DPS's range are high, and the proportion of forest and shrub cover across the DPS's range is low, with large areas being made up of lower elevation open oak woodlands or foothill grassland habitats. Seasonal precipitation within the range of the Central Coast DPS is extremely variable year-to-year, making stream habitat for the Central Coast DPS subject to drying. This, in turn, shortens the breeding season; negatively affects habitat elements that are hydrology-dependent; limits recruitment, survival, and connectivity; and exacerbates the effects of other threats (*e.g.,* wildfire, drought, nonnative predators, disease, and the effects of climate change). However, this variability has also resulted in the Central Coast area of California (including the area occupied by the Central Coast DPS) containing a high number of freshwater species that have evolved adaptations to their environment (Howard *et al.* 2013, p. 5). Below we summarize the resiliency, redundancy, and representation of the Central Coast DPS.

The Central Coast DPS has undergone historical range contraction in portions of its northern (Contra Costa, Alameda, San Mateo, and northern Santa Cruz Counties) and central (southern Santa Clara and northern San Benito Counties) regions. Currently, two clusters of stream segments have had recent (2000–2020) detections of the species, one cluster in the southern part and one cluster in the northern part of the DPS's range (Service 2021, figure 52, p. 137). Population size and abundance for the Central Coast DPS have been historically, and continue to be, small, with those populations in unregulated streams being larger and more productive (Service 2021, pp. 136–137 (8.2 Central Coast)). The southern cluster appears to have functional and genetic connectivity (McCartney-Melstad *et al.* 2018, p. 117, figure 3), which assists in maintaining the cluster's metapopulation integrity. The southern cluster also has fewer human-caused threats (urbanization, high-level recreation) due to its distance away from highly human-populated areas and its location on public lands (BLM's Clear Creek Management Area (CCMA)). Populations within the CCMA in San Benito and Fresno Counties are being monitored and managed by BLM, and currently appear to be self-sustaining (BLM 2014, pp. 4–77, 99–100). The northern cluster is proximate to highly urbanized areas of the south San Francisco Bay area and San Jose, California. The northern cluster also exhibits some genetic differentiation among subpopulations, indicating a lack of functional connectivity (McCartney-Melstad *et al.* 2018, p. 117, figure 3). However, two HCP/NCCPs (East Contra Costa and Santa Clara Valley) (Jones & Stokes 2006, entire; ICF Jones & Stokes 2009, entire) that identify the foothill yellow-legged frog as a covered species have been approved and implemented. These plans assist in ameliorating the current threats acting on the northern populations of the Central Coast DPS and help conserve the DPS and its habitat within their jurisdictional boundaries.

Current resiliency of the Central Coast DPS is substantially reduced due to past impacts limiting connectivity between populations and existing populations having smaller population abundance and breeding (Rose *et al.* 2020, p. 63, table 1). The average risk of population decline for the Central Coast DPS is considered high and numerous threats are currently acting on the DPS (altered hydrology, drought, nonnative species, disease, and urbanization). The current overall redundancy for the Central Coast DPS is considered adequate to maintain the existing populations of the DPS. This is because the Central Coast DPS has numerous occupied stream segments that are spatially distributed across the DPS's range, and those stream segments exhibit variable environmental conditions providing for, at a minimum, refugia for the population. As a result of this distribution, the likelihood that a single catastrophic event would impact a significant proportion of the Central Coast DPS's populations to the point of extirpation or functional extirpation is extremely small. Current representation for the Central Coast DPS is considered sufficient to maintain its adaptive capacity. The Central Coast DPS has evolved in an area with high climatic variability and is most likely adapted to environmental changes. The Central Coast DPS is also one of the most genetically divergent for the foothill yellow-legged frog, indicating that the DPS still contains a significant amount of the taxon's overall genetic diversity.

In the future, the average risk of decline for the existing populations is expected to increase by 14 percent and the number of populations at high risk of decline are expected to increase by 69 percent, under the mean change scenario. These changes are a result of increases in threats such as climate-induced demand for surface waters that is projected to increase by 5 to 20 percent (from 1900–1970 levels) by mid-century (2050) (Averyt *et al.* 2013, p. 7, figure 7). Future increases in severe wildfires are expected. Despite wildfire trends in the Central Coast DPS being

stable between 1950 and 2018 (Service 2021, Figure 38), recent events such as the fires in 2020 in the San Mateo–Santa Cruz Unit (CZU) (35,009 hectares (ha) (86,509 acres (ac)) (Santa Cruz and San Mateo Counties) and Santa Clara Unit (SCU) (160,508 ha (396,624 ac)) (Santa Clara, Alameda, Stanislaus Counties) Lightning Complex are examples of expected increasing trends in wildfire activity in the future (CALFIRE 2021, entire). Under the lower change scenario, the Central Coast DPS's resiliency would be slightly reduced. Under the mean change scenario, resiliency would be markedly reduced from current condition due to reductions in population numbers and distribution (reduction in redundancy). This reduction in resiliency under the mean change scenario would put the Central Coast DPS at risk of functional extirpation or extirpation in 40 years.

After evaluating threats to the Central Coast DPS and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the Central Coast DPS of the foothill yellow-legged frog currently sustains numerous populations and contains habitat distributed throughout the DPS's range (redundancy). These widely distributed populations provide for the genetic and ecological representation for the DPS across its range. Therefore, the current resiliency, redundancy, and representation are sufficient to prevent the current threats acting on the Central Coast DPS from causing it to be in danger of extinction anywhere within its range. Thus, the Central Coast DPS of the foothill yellow-legged frog is not currently in danger of extinction throughout its range, and therefore, the Central Coast DPS does not meet the Act's definition of endangered. However, based on our projections of future occupancy (which are currently low and show poor connectivity), modeled risk of decline assessments from the PVA, and the existing and increased threats in the future on the DPS from increasing water demand, increases in wildfire frequency and intensity due to climate change conditions will further impact abundance and connectivity of populations and cause the DPS's habitat to become increasingly less able to support foothill yellow-legged frog populations into the future. Thus, after assessing the best available information, we conclude that the Central Coast DPS of the foothill yellow-legged frog is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status of the North Feather DPS and Central Coast DPS of the Foothill Yellow-Legged Frog Throughout a Significant Portion of Their Ranges

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the North Feather DPS or Central Coast DPS is endangered in a significant portion of its range—that is, whether there is any portion of either DPSs' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of either DPS's range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where either DPS is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the North Feather DPS and Central Coast DPS, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the two DPSs face to identify any portions of either DPS's range where either is endangered.

For North Feather DPS and Central Coast DPS, we considered whether the threats are geographically concentrated in any portion of the DPS's ranges at a biologically meaningful scale. We examined the following threats for the North Feather DPS: Altered stream hydrology, latent effects from historical mining, nonnative species, impacts to the DPS's habitat (agriculture, urbanization, wildfire), recreation, and the effects of climate change, including cumulative effects. For the Central Coast DPS, we examined: Altered stream hydrology, disease, drought, nonnative species, impacts to habitat (urbanization (including roads and recreation), agriculture, trespass cannabis cultivation, extreme floods, and wildfire), and the effects of climate change, including cumulative effects. The major driving forces of altered stream hydrology, wildfire, disease, nonnative species, and the effects of climate change are occurring throughout each DPS at similar levels and we did not find a concentration of any of these threats in any portion of either the North Feather or Central Coast DPS's range at a biologically meaningful scale.

Thus, there are no portions of the North Feather DPS's or Central Coast DPS's range where the threats facing the species are concentrated to a degree where the species in that portion would have a different status from its overall DPS status. Therefore, no portion of the North Feather DPS's or Central Coast DPS's range provides a basis for determining that the North Feather DPS or Central Coast DPS is in danger of extinction in a significant portion of its range. We determine that the two DPSs are likely to become in danger of extinction within the foreseeable future throughout all of their ranges. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant and therefore did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status for the North Feather DPS and Central Coast DPS of the Foothill Yellow-Legged Frog

Our review of the best scientific and commercial information available indicates that the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog are likely to become endangered species within the foreseeable future throughout their ranges and thus meet the Act's definition of threatened species. Therefore, we propose to list the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog as threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Status of the North Coast DPS and North Sierra DPS of the Foothill Yellow-Legged Frog Throughout All of Their Ranges

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the North Coast DPS and the North Sierra DPS of the foothill yellow-legged frog and its habitat. Below we summarize our assessment of status of the North Coast DPS and the North Sierra DPS under the Act. In the SSA report, we provided information regarding the current and future conditions of the North Coast DPS in Oregon and California as separate analysis units. To be consistent, we describe the conditions of the Oregon and California portions of the DPS separately below, but we combine these analyses and present the DPS as one entity for our determination of overall status under the Act.

North Coast DPS (*Oregon*): The major threats that are affecting the foothill yellow-legged frog in the North Coast DPS in Oregon include altered hydrology (Factor A), nonnative species (Factor C), agriculture (including water diversion and fluctuation caused by irrigation) (Factor A), mining (Factor A), urbanization (including development and roads) (Factor A), and recreation (Factor E).

Current conditions of the North Coast DPS in Oregon include legacy impacts from historical habitat loss and alteration of habitat and resulting range contraction. The current extent of the DPS's range in Oregon has been fragmented and the populations remaining have lost some connectivity, with smaller populations sometimes being isolated. Evidence of this isolation has been supported by genetic research that found the DPS in Oregon subdivided into three genetic groups based on locality (McCartney-Melstad *et al.* 2018, p. 117, figure 3). Abundance information also appears to indicate the fragmented populations are lower in abundance than past abundance estimates (Borisenko and Hayes 1999, pp. 20–21; Olson and Davis 2009, p. 26). Although occupancy and connectivity are poor for the DPS in Oregon as a whole, there appear to be some strongholds for the foothill yellow-legged frog (Service 2021, figure 55, p. 151). The areas in the central and southwestern portions of the DPS in Oregon appear to be most stable with numerous occupied stream segments that are both close together and at a relatively low risk of decline. According to the PVA, the average relative risk of population decline in the North Coast DPS in Oregon is the second-lowest across all DPSs. In addition, the majority of stream segments in this unit are in the low relative risk of decline category. This is partly because most stream segments in Oregon do not have regulated flows which are associated with dams. In addition, conservation efforts such as rangewide conservation planning and habitat connectivity prioritization are focusing management on the North Coast DPS in Oregon (Service 2021, table 9, pp. 117–120). Although habitat impacts resulting from present-day threats are currently negatively affecting the North Coast DPS in Oregon, the DPS in Oregon still has a sufficient degree of resiliency, redundancy, and representation, due to the lessened magnitude and extent of threats acting on the DPS, such that we do not consider these present-day effects to place the species in danger of extinction.

North Coast DPS-California: Altered stream hydrology (Factor A) is among the most impactful threats to the North Coast DPS in California. Other major threats that likely have or are contributing to localized declines in the DPS in California include nonnative species (Factor C), habitat impacts from agriculture, mining, and urbanization (including development and roads) (Factor A), and recreation (Factor E). Trespass cannabis cultivation (Factor A) is also an extensive threat in the North Coast DPS in California (CDFW 2019b, pp. 97–98). Illegal water diversions and pesticides for illegal cannabis are reportedly linked to local declines of foothill yellow-legged frogs in the Eel River and South Fork Trinity River (Service 2019, p. 33).

Despite several documented local extirpations, the North Coast DPS in California contains the most abundant foothill yellow-legged frog populations and the majority (1,443 of 2,425 for the species) of stream segments that have had recent (2000–2020) detections of the species (Service 2021, Table 10, Figure 48). Stream segments with recent detections also have good connectivity and are distributed over a large area. The North Coast DPS in California also contains a large number of stream segments (382) in the low risk of decline category. In addition, conservation efforts such as rangewide conservation planning and other regulatory measures to manage streams to benefit the North Coast DPS are currently being implemented in California (Service 2021, table 9, pp. 117–120). Although habitat impacts resulting from present-day threats are currently negatively affecting the North Coast DPS in California, the DPS in California still has a sufficient degree of resiliency, redundancy, and representation, due to the health and number of populations and magnitude and extent of threats acting on the DPS, such that we do not consider these present-day effects to place the DPS in danger of extinction.

After assessing the best scientific and commercial information available, and based on the information on the North Coast DPS's overall current condition above, we have determined that the North Coast DPS (in California and Oregon) of the foothill yellow-legged frog is not currently in danger of extinction throughout all of its range. Below, we review the North Coast DPS's future condition and status.

Future Condition of the North Coast DPS: Over the next 40 years (our timeframe of foreseeable future), the projected increases in risk of decline and the increasing risk of serious threats indicate that the resiliency of the North Coast DPS will decrease in the future (Service 2021, table 19, pp. 180–181). This decline is expected to be largely related to the altered stream hydrology (in California) in the mainstem river systems and threats associated with severe wildfire events exacerbated by changes in climatic conditions. However, the North Coast DPS in Oregon has the lowest risk of decline under the mean and higher change scenarios and has the second-lowest risk of decline under the lower change scenario. In addition, the percent forest and shrub cover for the entire DPS is projected to change very little by 2060 (less than 0.3 percent of total area under the mean change scenario) in the North Coast DPS overall (California and Oregon data summarized together) (Sleeter and Kreitler 2020, unpublished data). This would result in a relatively stable upland habitat conditions for the DPS over this timeframe. This DPS overall is also likely to be more resilient to projected changes in climate variables (*i.e.,* stream temperature and annual streamflow). For example, projected increases in stream temperature could increase population growth rates in those streams that tend to be cooler than in the rest of the species' range. In addition, although resiliency for the North Coast DPS will be reduced, the reduction will not be significantly different from current condition. This is mostly because the North Coast DPS has a large number of occupied stream segments, contains populations with high abundances, is distributed relatively uniformly across a large geographic area, and has good connectivity between populations, making it able to withstand the anticipated variation and increase of

stochastic events. Regulatory mechanisms such as the Forest Service's and BLM's Sensitive Species Program and habitat management programs under the Northwest Forest Plan which provides for species management and habitat protection for activities on their lands will continue to be implemented for a large portion of the DPS. As a result, the North Coast DPS's resiliency would most likely be only slightly reduced from the threats it will face in the foreseeable future over the next 40 years due to its heightened current condition. Therefore, due to the DPS's current and projected high occupancy level, its abundance, connectivity, and distribution of populations within the DPS as well as implementation of measures to reduce threats, we have determined that the North Coast DPS will continue to have a sufficient degree of resiliency, redundancy, and representation such that we do not anticipate the future threats to limit the DPS's ability to maintain populations in the wild.

After review of the threats identified above and cumulative effects facing the North Coast DPS, as well as existing conservation measures, we conclude that threats have likely impacted individuals or localized populations of the North Coast DPS. However, the magnitude and extent of these impacts into the future will not significantly impact the resiliency, representation, or redundancy for the DPS or result in a decline in the overall distribution or general demographic condition of the DPS such that it is likely to become in danger of extinction in the foreseeable future throughout the DPS's range.

North Sierra DPS: The major threats that likely have or are contributing to declines of the foothill yellow-legged frog in the North Sierra DPS include altered stream hydrology (Factor A), nonnative species (Factor C), habitat impacts (agriculture, mining, urbanization (including development and roads) (Factor A) and recreation (Factor E), and the effects of climate change (Factor E). The North Sierra DPS is in the most hydrologically altered part of the foothill yellow-legged frog's range and contains a high density of hydropower dams (CDFW 2019b, p. 97). While the North Sierra DPS has a high proportion of forest and shrub cover (86 percent), it may be affected by agricultural activities (vineyards) adjacent to habitat in the foothill portions of the northern Central Valley (Service 2021, supplementary figure 1, p. 224). The northern Sierra Nevada (North Feather and North Sierra DPSs) is also suspected to be the most impacted from the latent effects from historical mining (Hayes *et al.* 2016, pp. 53–54).

Despite the threats acting on the North Sierra DPS, its populations have the lowest risk of decline across the DPS's range due to it having a large proportion of occupied streams containing populations that are both robust and stable. The majority (65 percent) of the DPS's 278 analyzed stream segments are currently in the low relative risk category. The North Sierra DPS is made up of a dense network of occupied stream segments that are distributed across the range of the DPS. There are few documented extirpations of occurrences in the North Sierra DPS. As a result, the resiliency, redundancy, and representation across the DPS are considered sufficient to reduce the impact of threats and currently maintain populations in the wild.

In the future, the North Sierra DPS is expected to decline due to alterations associated with regulated water flows. However, these declines are not expected to impact the North Sierra DPS to such a degree that populations would be significantly impacted. The PVA determined that the North Coast DPS would have the lowest risk of decline under the lower change scenario and the second-lowest risk of decline under the mean and higher change scenarios. As a result, we expect resiliency, redundancy, and representation across the DPS to remain sufficient for the DPS to maintain populations in the wild into the foreseeable future.

We have reviewed the current threats identified above and cumulative effects facing the North Coast and North Sierra DPSs, and evaluated the condition of the resiliency, representation, and redundancy for each of the DPSs. Based on the favorable conditions currently measured by the resiliency, redundancy and representation across the DPSs, the threats acting on the two DPSs are not of such magnitude, extent, and imminence that they are causing the two DPSs to be in danger of extinction now throughout their ranges.

The future threats acting on and driving the status of the two DPSs include altered hydrology (either through stream flows or past stream alterations) and the effects of climate change, which may result in increased hydrological changes or severity of habitat loss from wildfire impacts. We anticipate that, although the risk of decline will increase due to the threats acting on the two DPSs into the future, the two DPSs' resiliency, representation, and redundancy are projected to sufficiently reduce the effect of future impacts to such a degree that populations of both DPSs would be able maintain viability into the future.

Thus, after assessing the best scientific and commercial information available, we conclude that the North Coast DPS (in northern California and Oregon) and the North Sierra DPS (located primarily in Yuba, Sierra, Nevada, and Placer Counties, California) are not currently in danger of extinction and not likely to become in danger of extinction within the foreseeable future throughout their respective ranges.

Status of the North Coast DPS and North Sierra DPS of the Foothill Yellow-Legged Frog Throughout a Significant Portion of Their Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the North Coast DPS and North Sierra DPS are not in danger of extinction or likely to become so in the foreseeable future throughout all of their respective ranges, we now consider whether either may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of their respective ranges—that is, whether there is any portion of the DPSs' ranges for which it is true that both (1) the portion is significant; and (2) the DPS is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the DPS's range.

In undertaking this analysis for the North Coast DPS and North Sierra DPS, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the DPSs and the threats that the DPSs face to identify any portions of the range where the DPSs are endangered or threatened.

For the North Coast DPS and North Sierra DPS, we considered whether the threats are geographically concentrated in any portion of the DPSs' ranges at a biologically meaningful scale. We examined the following threats: Hydrological alteration of streams (Factor A), latent effects from historical mining (Factor A), predation from nonnative species (bullfrogs and crayfish) (Factor C), other impacts to

habitat (agriculture, urbanization, severe wildfire) (Factor A), recreation (Factor E), and the effects of climate change (Factor E), including cumulative effects. In our analysis, we did not find any portion of either the North Coast DPS's range or the North Sierra DPS's range where the threats identified above are currently acting at a biologically meaningful scale such that any portion of the DPSs' ranges may be endangered, or where threats are likely to act on either DPS into the future such that any portion may be threatened. Occupied stream segments are distributed throughout each of the DPSs, and connectivity in the majority of each DPS is considered to be good except within the Oregon portion of the North Coast DPS. However, the Oregon portion also has fewer regulated streams, and populations, although small, are in a low risk of decline both now and into the future. Therefore, no portion of the two DPSs' ranges provides a basis for determining that either DPS is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find that the DPSs are not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of their ranges. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant and therefore did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status of the North Coast DPS and North Sierra DPS of the Foothill Yellow-Legged Frog

Our review of the best scientific and commercial information available indicates that the North Coast DPS and North Sierra DPS of the foothill yellow-legged frog do not meet the Act's definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we find that listing the North Coast DPS and North Sierra DPS of the foothill yellow-legged frog under the Act is not warranted at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If any of the DPSs identified above are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement management actions that promote the protection or recovery of the DPSs. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/grants.*

Although the four DPSs are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its

critical habitat, the responsible Federal agency must enter into consultation with the Service.

Examples of Federal agency actions within the species' habitat within the DPSs that may require conference or consultation or both, as described in the preceding paragraph, include but are not limited to management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, Forest Service, BLM, and National Park Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; construction and maintenance of roads, bridges, or highways by the Federal Highway Administration; water management and conveyance activities by the Bureau of Reclamation; and licensing for hydropower and safety of dams by the FERC.

South Sierra DPS and South Coast DPS—Proposed Endangered Status

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

Because activities being implemented in the range of the species are variable and have variable impacts depending on the nature of the project, we are unable at this time to identify any specific activities within the range of the species that would not constitute a violation of section 9, as effects of any actions on the species are fact-pattern specific. However, actions whose effects do not extend into foothill yellow-legged frog habitat are unlikely to result in section 9 violations.

Based on the best available information, the following activities may result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

Activities that the Service believes could potentially harm the foothill yellow-legged frog and result in ''take'' include, but are not limited to:

(1) Unauthorized handling or collecting of the species;

(2) Destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow;

(3) Inappropriate livestock grazing that results in direct or indirect destruction of riparian habitat;

(4) Pesticide applications in violation of label restrictions;

(5) Introduction of nonnative species that compete with or prey upon foothill yellow-legged frogs, such as the introduction of nonnative bullfrogs or nonnative fish; and

(6) Modification of the channel or water flow of any stream or removal or destruction of vegetation or stream substrate in any body of water in which the foothill yellow-legged frog is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

North Feather DPS and Central Coast DPS—Proposed Threatened Status

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protective regulations under section 4(d) of the Act for the proposed threatened North Feather DPS and Central Coast DPS complies with our policy.

II. Proposed Rule Issued Under Section 4(d) of the Act for the North Feather DPS and the Central Coast DPS of the Foothill Yellow-Legged Frog

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley*

Alliance v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history of the Act, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him [or her] with regard to the permitted activities for those species. He [or she] may, for example, permit taking, but not importation of such species, or he [or she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed proposed rules that are designed to address the conservation needs of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that these rules as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog. As discussed above under Summary of Biological Status and Threats, we have concluded that the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog are likely to become in danger of extinction within the foreseeable future throughout their respective ranges primarily due to threats associated with altered stream hydrology, nonnative species, impacts to habitat (agriculture, mining, urbanization, roads, recreation), disease, drought, extreme floods, high-severity wildfire, and the exacerbation of threats from the effects of climate change. The provisions of this proposed 4(d) rule would promote conservation of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog by encouraging management of the species' stream habitat and landscape in ways that meet both resource management considerations and the conservation needs of the species. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog. This proposed 4(d) rule would apply only if and when we make final the listing of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog as threatened species.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with the Service. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a license from the Federal Energy Regulatory Commission under the Federal Power Act, or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of ''not likely to adversely affect'' continue to require the Service's written concurrence and actions that are ''likely to adversely affect'' a species require formal consultation and the formulation of a biological opinion.

Provisions of the Proposed 4(d) Rule for the North Feather DPS and the Central Coast DPS of the Foothill Yellow-Legged Frog

This proposed 4(d) rule would provide for the conservation of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog by prohibiting the following activities, except as otherwise authorized or permitted: Import or export; take; possession and other acts with unlawfully taken specimens; delivery, receipt, transportation, or shipment in interstate or foreign commerce in the course of commercial activity; or sale or offer for sale in interstate or foreign commerce. These prohibitions mirror those prohibitions afforded to endangered species under section 9(a)(1) of the Act.

In addition to the prohibited activities identified above, we also provide standard and other exceptions to those prohibitions for certain activities as described below.

We note that the long-term viability of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog, as with many wildlife species, is intimately tied to the condition of their habitat. As described in our analysis of the species' status, one of the major threats to the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog's continued viability is habitat loss, degradation, and fragmentation resulting from past or current anthropogenic impacts or from catastrophic wildfires. The potential for an increase in frequency and severity of catastrophic wildfires from the effects of climate change subsequently increases the risk to the species posed by this threat. An additional threat is the occurrence of nonnative species that may predate upon and compete for resources with the foothill yellow-legged frog.

We have determined that actions taken by forest management entities in the range of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog for the purpose of reducing the risk or severity of catastrophic wildfires and protecting stream habitat, even if these actions may result in some short-term or low level of localized negative effect to North Feather DPS and/or Central Coast DPS of the foothill yellow-legged frog, will further the goal of reducing the likelihood of either DPS becoming endangered, and will also likely contribute to their conservation and long-term viability. This includes measures approved by the Service, to conduct wildfire prevention activities, non-emergency suppression activities, and other silviculture best management practices that are in accordance with an established forest or fuels management plan and that include measures that minimize impacts to the species and its habitat.

In addition, habitat restoration efforts that specifically provide for the habitat needs of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog as approved by the Service

and include measures that minimize impacts to the species and its habitat are appropriate for an exception. These activities would most likely have some limited short-term impacts but overall would provide for conservation of the two DPSs. Habitat restoration efforts focused on other species (*e.g.,* salmonid species) are not included in this exception without written approval from the Service.

Removal and restoration of trespass cannabis cultivation sites as approved by the Service are excepted from prohibitions. These activities would benefit the foothill yellow-legged frog, especially in the Central Coast DPS area. Trespass cannabis cultivation sites cause several issues for the foothill yellow-legged frog including water diversion, pollution, sedimentation, and introduction of pesticides and fertilizers to streams occupied by the foothill yellow-legged frog. When these sites are found, they often require reclamation (waste cleanup and removal of fertilizers, pesticides, and debris) and restoration to precultivation conditions. Cleanup of these sites may involve activities that may cause localized, short-term disturbance to the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog. However, the removal of pesticides and other chemicals that can affect the North Feather DPS or Central Coast DPS of the foothill yellow-legged frog and the surrounding environment is encouraged. Removal and restoration of trespass cannabis cultivation sites is expected to have long-term benefits for resiliency of the North Feather DPS and Central Coast DPS.

Nonnative species removal would significantly increase the viability of the foothill yellow-legged frog. As discussed above, bullfrogs, nonnative fish, and nonnative crayfish contribute to foothill yellow-legged frog predation and increase competition for resources. Bullfrogs also are vectors for disease that affects the foothill yellow-legged frog. Actions with the primary or secondary purpose of removing nonnative animal species that compete with, predate upon, or degrade the habitat of the foothill yellow-legged frog that are conducted in unoccupied habitat and approved by the Service are provided as an exception. Large-scale actions that disrupt habitat or are conducted in occupied stream segments would need additional approval from the Service.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take would help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other ongoing or future threats.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act and are included as standard exceptions in the proposed 4(d) rule.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the foothill yellow-legged frog, that may result in otherwise prohibited take, without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the foothill yellow-legged frog. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, we did not identify an imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA report and this proposed listing determination for the four DPSs of the foothill yellow-legged frog, we determined that the present or threatened destruction, modification, or curtailment of habitat or range (Factor A) is a threat to the four DPSs and that the Factor A threats in some way can be addressed by the Act's section 7(a)(2) consultation measures. The four DPSs occur wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not identified other circumstances for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the four DPSs of the foothill yellow-legged frog.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the four DPSs of the foothill yellow-legged frog is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the four DPSs of the foothill yellow-legged frog and habitat characteristics where the four DPSs are located. A careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are in the process of working with the State and other partners in acquiring the complex information needed to perform that assessment. Therefore, due to the current lack of data sufficient to perform required analyses, we conclude that the designation of critical habitat for the four DPSs of the foothill yellow-legged frog is not determinable at this time. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information from all of the Tribes within the entire range of the foothill-yellow-legged frog to inform the development of the SSA report, and we notified Tribes of our upcoming proposed listing determination. We also provided these Tribes the opportunity to review a draft of the SSA report and provide input prior to making our proposed determination on the status of the foothill yellow-legged frog, but we did not receive any responses. We will continue to coordinate with Tribal entities throughout the listing process for the foothill yellow-legged frog.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and Field Office staff within the range of the species in California and Oregon.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for ''Frog, foothill yellow-legged

[Central Coast DPS]'', ''Frog, foothill yellow-legged [North Feather DPS]'', ''Frog, foothill yellow-legged [South Coast DPS]'', and ''Frog, foothill yellow-legged [South Sierra DPS]'' to the List of Endangered and Threatened Wildlife in alphabetical order under AMPHIBIANS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * *	* *	AMPHIBIANS		* *
* * *	* *			* *
Frog, foothill yellow-legged [Central Coast DPS].	*Rana boylii*	California (All foothill yellow-legged frogs in the Central Coast Range south of San Francisco Bay to San Benito and Fresno Counties).	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.43(g).[4d]
Frog, foothill yellow-legged [North Feather DPS].	*Rana boylii*	California (All foothill yellow-legged frogs in the North Feather River watershed largely in Plumas and Butte Counties).	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.43(g).[4d]
Frog, foothill yellow-legged [South Coast DPS].	*Rana boylii*	California (All foothill yellow-legged frogs in the Coast Range from Coastal Monterey County south to Los Angeles County).	E	[**Federal Register** citation when published as a final rule].
Frog, foothill yellow-legged [South Sierra DPS].	*Rana boylii*	California (All foothill yellow-legged frogs in the Sierra Nevada Mountains south of the American River sub-basin south to the Transverse Range in Kern County).	E	[**Federal Register** citation when published as a final rule].
* * *	* *			* *

■ 3. Amend § 17.43 by adding a paragraph (g) to read as set forth below:

§ 17.43 Special rules—amphibians

* * * * *

(g) Foothill yellow-legged frog (*Rana boylii*), Central Coast Distinct Population Segment (DPS) and North Feather DPS.

(1) *Location.* The Central Coast DPS and North Feather DPS of the foothill yellow-legged frog are shown on the map that follows:

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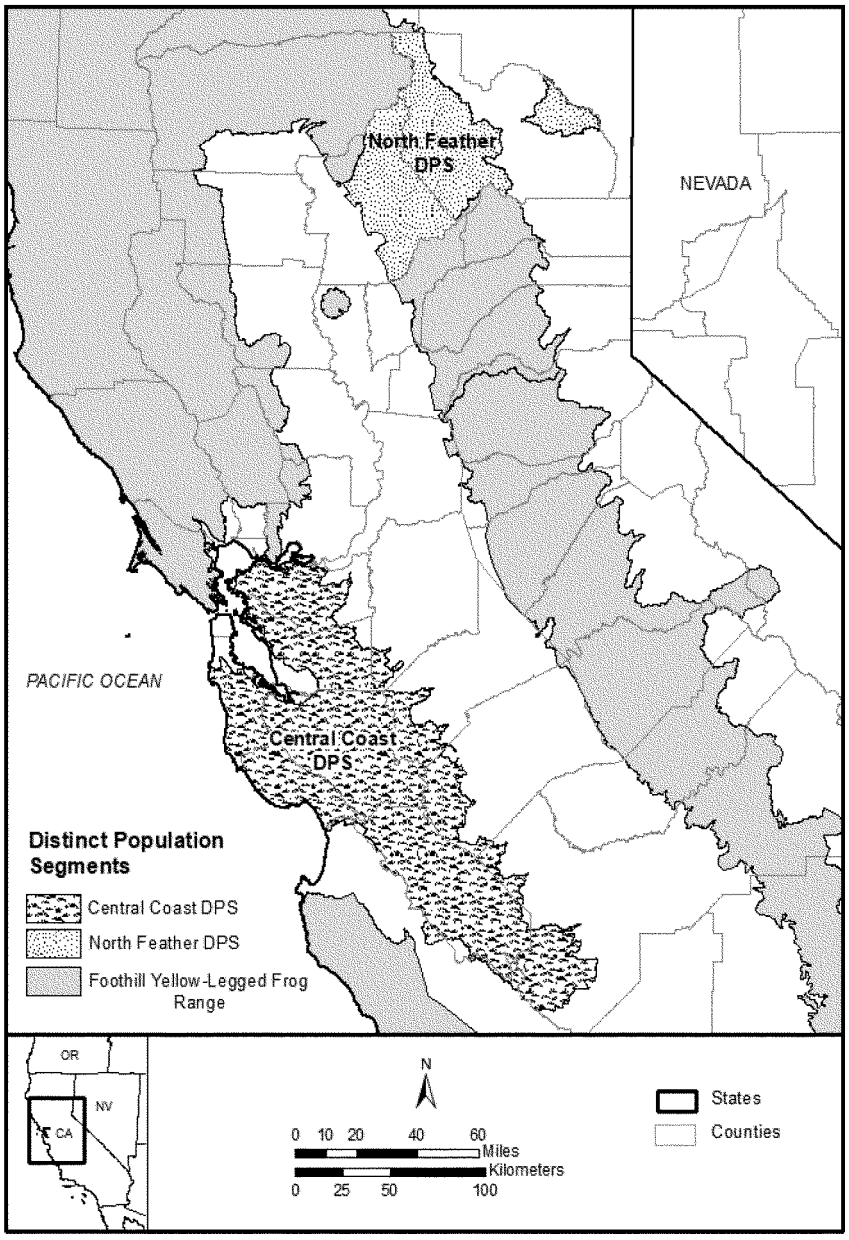
Figure 1 to paragraph (g)



(2) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Central Coast DPS and North Feather DPS of the foothill yellow-legged frog. Except as provided under paragraph (g)(3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(3) *Exceptions from prohibitions.* In regard to the Central Coast DPS and North Feather DPS of the foothill yellow-legged frog, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Forest management activities as approved by the Service for the purposes of reducing the risk or severity of catastrophic wildfire, which include fuels reduction activities, non-emergency firebreak establishment or maintenance, and other non-emergency wildfire prevention and suppression activities that are in accordance with an established forest or fuels management plan and that include measures that minimize impacts to the species and its stream habitat.

(B) Habitat restoration efforts as approved by the Service that are specifically designed to provide for the conservation of the foothill yellow-legged frog's habitat needs and include measures that minimize impacts to the species and its habitat as approved by the Service. Habitat restoration efforts for other species that may not share habitat requirements (*e.g.,* salmonid species) are not included in this exception unless approved by the Service.

(C) Efforts as approved by the Service to remove and clean up trespass cannabis cultivation sites and related water diversion infrastructure and restore areas to precultivation conditions.

(D) Removal or eradication of nonnative animal species including, but not limited to, American bullfrogs, smallmouth bass, and nonnative crayfish species occurring within stream reaches unoccupied by the foothill yellow-legged frog within the range of the Central Coast DPS or North Feather DPS as approved by the Service.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–27512 Filed 12–27–21; 8:45 am]

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