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Presidential Documents

Title 3—

The President

Proclamation 10373 of April 22, 2022

Days of Remembrance of Victims of the Holocaust, 2022

By the President of the United States of America

A Proclamation

On *Yom HaShoah,* Holocaust Remembrance Day, and throughout this week of remembrance, we reflect on the horrors of the Holocaust when the Nazi regime systematically murdered 6 million Jews and millions of other innocents, including Roma, Sinti, Slavs, persons with disabilities, LGBTQI+ individuals, political dissidents, and many others. We stand with Jewish people in the United States, Israel, and around the world in grieving one of the darkest chapters in history. We honor the memories of the victims. We embrace the survivors. We commit to keeping alive the promise of ''never again.''

The world must never forget the truth of what happened across Europe during the Holocaust or forget the horrific crimes and suffering the Nazi regime inflicted on millions of innocent people. Entire families were wiped out. Communities were shattered. Survivors were left with agonizing memories and fading tattoos etched into their skin by the Nazis, reducing them to numbers. It is forever recorded into the history of mankind, and it is the shared responsibility of us all to ensure that the *Shoah* is never erased from our collective memory—especially as fewer and fewer survivors remain. The truth must always be known and shared with future generations in perpetuity.

I have taught my own children and grandchildren about the horrors of the Holocaust, just as my father taught me. I have taken my family to bear witness to the darkness at the Dachau concentration camp so that they could understand why we must always speak out against antisemitism and hatred in all of its pernicious forms. The legacy of the Holocaust must always remind us that silence in the face of such bigotry is complicity.

Remembrance is our eternal duty, but remembrance without action risks becoming an empty ritual. As individuals, we must never be indifferent to human cruelty and human suffering. As nations, we must stand together across the international community against antisemitism, which is once again rearing its ugly head around the world. We must combat other forms of hatred and educate new generations about the Holocaust. We must reject those who try to deny the Holocaust or to distort its history for their own ends. We recognize that, just as the Holocaust was an act of pure antisemitism, so too Holocaust denial is a form of antisemitism. We watch with dismay as the term ''Nazi'' is deployed to make flawed historical parallels. Efforts to minimize, distort, or blur who the Nazis were and the genocide they perpetrated are a form of Holocaust denial and, in addition to insulting both the victims and survivors of the Holocaust, spread antisemitism.

My Administration has stepped up our efforts to counter all the ugly forms antisemitism can take, including Holocaust denial and distortion. We cosponsored a United Nations resolution that charged the international community with combating Holocaust denial through education. We are partnering with the German government to improve Holocaust education and counter Holocaust denial and distortion. A renowned scholar of the Holocaust and

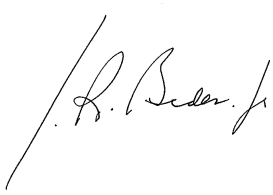
antisemitism, Deborah Lipstadt, was recently confirmed as Special Envoy to Monitor and Combat Antisemitism.

In addition to speaking out against the evils of antisemitism, I signed—and my Administration continues to implement—legislation that gives us more tools to combat crimes that are based on a victim's actual or perceived race, religion, national origin, sexual orientation, gender, gender identity or disability. We issued the first-ever National Strategy for Countering Domestic Terrorism. My Administration has implemented increased funding for a program that helps threatened nonprofits—including houses of worship and other religious affiliated entities—to improve their safety and security. On International Holocaust Remembrance Day, I met with Bronia Brandman and the Vice President met with Ruth Cohen—both Auschwitz survivors—at the White House so we could bear witness to their stories, combat Holocaust denial and distortion, and give life to the lessons of that most terrible period in human history.

Those like Bronia and Ruth who survived the Holocaust and went on to build new lives inspire our Nation and the world, and they are living testaments to the enduring resilience of the human spirit. It is the responsibility of all of us to recognize the pain that they carry and to support them by ensuring that the cruelty of the Holocaust is never forgotten. Today and every day, we stand against antisemitism and all other forms of hate and continue our work to ensure that everyone can live in a world that safeguards the fundamental human dignity of all people.

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 April 24 through May 1, 2022, as a week of observance of the Days of Remembrance of Victims of the Holocaust, and call upon the people of the United States to observe this week and pause to remember victims and survivors of the Holocaust.

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



[FR Doc. 2022–09132

Filed 4–26–22; 8:45 am]

Billing code 3395–F2–P

Presidential Documents

Proclamation 10374 of April 22, 2022

National Crime Victims' Rights Week, 2022

By the President of the United States of America

A Proclamation

Forty years ago, the President's Task Force on Victims of Crime was established to help those who had experienced crime and their families—an important step toward the protection of and support for victims' rights. Over the years, crime victims' rights have evolved. Dedicated professionals have worked to develop support and services for survivors that are more holistic, trauma-informed, and effective at overcoming systemic barriers that certain communities face in prosecuting offenders and obtaining justice. However, more work remains to be done to advance these goals. During National Crime Victims' Rights Week, our Nation renews our commitment to providing survivors of crime the support they need to heal. We honor the dedicated victim service providers who support crime victims, and we continue to advance this important cause for all people.

Delivering true justice requires that we provide all victims with the support they need. Persistent barriers still prevent many survivors from receiving the services they need and the justice they deserve. Many crimes—including violent crimes, such as rape and sexual assault—often go unreported to law enforcement because, among other concerns, victims fear placing themselves in further danger and negative interactions with the criminal justice system. My Administration is also working to tackle the epidemic of gun violence, which is a public health and public safety crisis. In the absence of necessary Congressional action, my Administration is taking action to get illegal guns—and those who would use them to commit crimes—off of our streets.

Victims of crime not only face physical and emotional costs, they often suffer a serious economic toll as well, and this is another area in which my Administration is making progress. The Crime Victims Fund, established through the Victims of Crime Act (VOCA), helps provide critical resources for victim services and victim compensation programs throughout the country. That is why, last July, I signed the VOCA Fix to Sustain the Crime Victim Fund Act into law to strengthen VOCA and increase the revenues to support survivors of crime and victim services organizations. My Administration is supporting innovative programs like sexual assault telehealth services and hospital-based victim assistance, enabling providers to quickly reach more survivors and reduce repeated victimization. I am also proud to have recently signed into law the reauthorization of the Violence Against Women Act (VAWA), which funds programs that provide services to survivors of domestic violence, dating violence, sexual assault, and stalking. This reauthorization of VAWA also expands the rights of victims of technology-facilitated gender-based violence and also includes historic Tribal provisions to protect Native communities and help them pursue justice.

Strengthening public safety also means addressing the trauma and inequality of victimization experienced by communities of color, Native American communities, the LGBTQI+ community, the Asian American community, and other historically marginalized groups. People of color suffer higher rates

of victimization, and violence is disproportionally concentrated in neighborhoods that have been harmed persistently by racial discrimination, segregation, redlining, and disinvestment. Breaking the cycle of violence enhances public safety, public health, and equity. We also know that members of the LGBTQI+ community are more likely to be victims of violent crime.

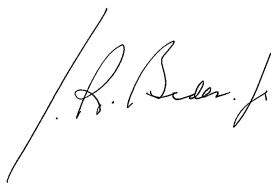
My Administration is committed to using all tools at our disposal to ensure every survivor of crime has equal access to the resources and services they need to recover from their ordeals and regain a feeling of safety. To address a surge in hate crimes and bias-motivated attacks—and to provide law enforcement with the resources to identify and investigate hate crimes, I signed the COVID–19 Hate Crimes Act into law. As part of this law, we have funded a new Center for Culturally Responsive Victim Services to help local programs better serve historically marginalized communities.

In addition to supporting crime victims, we must also hold offenders accountable. That is why the Departments of Justice and Homeland Security are committed to investigating and enforcing our criminal and civil laws and ensuring that Federal, State, local, territorial, and Tribal law enforcement officers and prosecutors receive the training and resources they need to deliver justice to victims.

It takes enormous courage and extraordinary strength to emerge from life's most painful moments. As a Nation, let us all work together to stop crimes before they happen and to give victims the support they need to restore a sense of trust and safety and to move toward healing and justice.

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 April 24 through April 30, 2022, National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services and by volunteering to serve victims in their time of need.

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



[FR Doc. 2022–09137

Filed 4–26–22; 8:45 am]

Billing code 3395–F2–P

Presidential Documents

Executive Order 14072 of April 22, 2022

Strengthening the Nation's Forests, Communities, and Local Economies

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

Section 1. *Policy*. Strengthening America's forests, which are home to cherished expanses of mature and old-growth forests on Federal lands, is critical to the health, prosperity, and resilience of our communities—particularly in light of the threat of catastrophic wildfires. Forests provide clean air and water, sustain the plant and animal life fundamental to combating the global climate and biodiversity crises, and hold special importance to Tribal Nations. We go to these special places to hike, camp, hunt, fish, and engage in recreation that revitalizes our souls and connects us to history and nature. Many local economies thrive because of these outdoor and forest management activities, including in the sustainable forest product sector.

Globally, forests represent some of the most biodiverse parts of our planet and play an irreplaceable role in reaching net-zero greenhouse gas emissions. Terrestrial carbon sinks absorb around 30 percent of the carbon dioxide emitted by human activities each year. Here at home, America's forests absorb more than 10 percent of annual United States economy-wide greenhouse gas emissions. Conserving old-growth and mature forests on Federal lands while supporting and advancing climate-smart forestry and sustainable forest products is critical to protecting these and other ecosystem services provided by those forests.

Despite their importance, the world's forests are quickly disappearing; only a small fraction of the world's mature and old-growth forests remains. Here at home, the primary threats to forests, including mature and old-growth forests, include climate impacts, catastrophic wildfires, insect infestation, and disease. We can and must take action to conserve, restore, reforest, and manage our magnificent forests here at home and, working closely with international partners, throughout the world.

It is the policy of my Administration, in consultation with State, local, Tribal, and territorial governments, as well as the private sector, nonprofit organizations, labor unions, and the scientific community, to pursue science-based, sustainable forest and land management; conserve America's mature and old-growth forests on Federal lands; invest in forest health and restoration; support indigenous traditional ecological knowledge and cultural and subsistence practices; honor Tribal treaty rights; and deploy climate-smart forestry practices and other nature-based solutions to improve the resilience of our lands, waters, wildlife, and communities in the face of increasing disturbances and chronic stress arising from climate impacts. It is also the policy of my Administration, as outlined in *Conserving and Restoring America the Beautiful*, to support collaborative, locally led conservation solutions.

The Infrastructure Investment and Jobs Act (IIJA) I signed into law provides generational investments in ecosystem restoration and wildfire risk reduction. As we use this funding, we will seek opportunities, consistent with the IIJA, to conserve our mature and old-growth forests on Federal lands and restore the health and vibrancy of our Nation's forests by reducing the threat of catastrophic wildfires through ecological treatments that create

resilient forest conditions using active, science-based forest management and prescribed fires; by incorporating indigenous traditional ecological knowledge; and by scaling up and optimizing climate-smart reforestation. My Administration also is committed to doing its part to combat deforestation around the world and to working with our international partners toward sustainable management of the world's lands, waters, and ocean.

Sec. 2. *Restoring and Conserving the Nation's Forests, Including Mature and Old-Growth Forests*. My Administration will manage forests on Federal lands, which include many mature and old-growth forests, to promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and promote sustainable local economic development. Science-based reforestation is one of the greatest opportunities both globally and in the United States for the land sector to contribute to climate and biodiversity goals. To further conserve mature and old-growth forests and foster long-term United States forest health through climate-smart reforestation for the benefit of Americans today and for generations to come, the following actions shall be taken, in consultation with State, local, Tribal, and territorial governments and the public, and to the extent consistent with applicable law:

(a) The Secretary of the Interior and the Secretary of Agriculture (Secretaries)—the Federal Government's primary land managers—shall continue to jointly pursue wildfire mitigation strategies, which are already driving important actions to confront a pressing threat to mature and old-growth forests on Federal lands: catastrophic wildfires driven by decades of fire exclusion and climate change.

(b) The Secretary of the Interior, with respect to public lands managed by the Bureau of Land Management, and the Secretary of Agriculture, with respect to National Forest System lands, shall, within 1 year of the date of this order, define, identify, and complete an inventory of old-growth and mature forests on Federal lands, accounting for regional and ecological variations, as appropriate, and shall make such inventory publicly available.

(c) Following completion of the inventory, the Secretaries shall:

(i) coordinate conservation and wildfire risk reduction activities, including consideration of climate-smart stewardship of mature and old-growth forests, with other executive departments and agencies (agencies), States, Tribal Nations, and any private landowners who volunteer to participate;

(ii) analyze the threats to mature and old-growth forests on Federal lands, including from wildfires and climate change; and

(iii) develop policies, with robust opportunity for public comment, to institutionalize climate-smart management and conservation strategies that address threats to mature and old-growth forests on Federal lands.

(d) The Secretaries, in coordination with the heads of other agencies as appropriate, shall within 1 year of the date of this order:

(i) develop a Federal goal that charges agencies to meet agency-specific reforestation targets by 2030, including an assessment of reforestation opportunities on Federal lands and through existing Federal programs and partnerships;

(ii) develop, in collaboration with Federal, State, Tribal, and private-sector partners, a climate-informed plan (building on existing efforts) to increase Federal cone and seed collection and to ensure seed and seedling nursery capacity is sufficient to meet anticipated reforestation demand; and

(iii) develop, in coordination with the Secretary of Commerce, with State, local, Tribal, and territorial governments, and with the private sector, nonprofit organizations, labor unions, and the scientific community, recommendations for community-led local and regional economic development opportunities to create and sustain jobs in the sustainable forest product sector, including innovative materials, and in outdoor recreation,

while supporting healthy, sustainably managed forests in timber communities.

Sec. 3. *Stopping International Deforestation*. As described in the *Plan to Conserve Global Forests: Critical Carbon Sinks*, my Administration has committed to deliver, by 2030, on collective global goals to end natural forest loss and to restore at least an additional 200 million hectares of forests and other ecosystems, while showcasing new economic models that reflect the services provided by critical ecosystems around the world. The plan recognizes that conserving and restoring global forest and peatland ecosystems, particularly in the Amazon, Congo Basin, and Southeast Asia, can provide significant global greenhouse gas emissions mitigation, both by preventing the emissions caused by deforestation and by increasing the amount of carbon dioxide captured from the atmosphere and stored in soils and forest biomass. My Administration is also committed to combating illegal logging and stopping trade in illegally sourced wood products pursuant to the Lacey Act, as amended, 16 U.S.C. 3371 *et seq.*, and to addressing the related importation of commodities sourced from recently deforested land. To further advance these commitments, conserve these critical ecosystems, and address drivers of global deforestation—including illegal forest clearing to produce agricultural commodities—the following actions shall be taken:

(a) within 1 year of the date of this order, the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Homeland Security (through the Commissioner of U.S. Customs and Border Protection), the Administrator of the Small Business Administration, the Administrator of the United States Agency for International Development, the United States Trade Representative, and the Special Presidential Envoy for Climate, shall submit a report to the President evaluating options, including recommendations for proposed legislation, for a whole-of-government approach to combating international deforestation that includes:

(i) an analysis of the feasibility of limiting or removing specific commodities grown on lands deforested either illegally or after December 31, 2020, from agricultural supply chains; and

(ii) an analysis of the potential for public-private partnerships with major agricultural commodity buyers, traders, financial institutions, and other actors to voluntarily reduce or eliminate the purchase of such commodities and incentivize sourcing of sustainably produced agricultural commodities.

(b) within 1 year of the date of this order, the Secretary of State, in coordination with other appropriate agencies, shall submit a report to the President on how agencies that engage in international programming, assistance, finance, investment, trade, and trade promotion, can, consistent with applicable law, accomplish the following:

(i) incorporate the assessment of risk of deforestation and other land conversion into guidance on foreign assistance and investment programming related to infrastructure development, agriculture, settlements, land use planning or zoning, and energy siting and generation;

(ii) address deforestation and land conversion risk in new relevant trade agreements and seek to address such risks, where possible, in the implementation of existing trade agreements;

(iii) identify and engage in international processes and fora, as appropriate, to pursue approaches to combat deforestation and enhance sustainable land use opportunities in preparing climate, development, and finance strategies;

(iv) engage other major commodity-importing and commodity-producing countries to advance common interests in addressing commodity-driven deforestation; and

(v) assess options to direct foreign assistance and other agency programs and tools, as appropriate, to help threatened forest communities transition to an economically sustainable future, with special attention to the participation of and the critical role played by indigenous peoples and local communities and landholders in protecting and restoring forests and in reducing deforestation and forest degradation.

Sec. 4. *Deploying Nature-Based Solutions to Tackle Climate Change and Enhance Resilience*. Just as forest conservation, restoration, and adaptation generate broad benefits related to climate change and other areas, other nature-based solutions can advance multiple benefits. These solutions include actions that protect coasts and critical marine ecosystems, reduce flooding, moderate extreme heat, replenish groundwater sources, capture and store carbon dioxide, conserve biodiversity, and improve the productivity of agricultural and forest lands to produce food and fiber. To ensure that agencies pursue nature-based solutions, to the extent consistent with applicable law and supported by science, the following actions shall be taken:

(a) The Chair of the Council on Environmental Quality, the Director of the Office of Science and Technology Policy, and the Assistant to the President and National Climate Advisor shall, in consultation with the Secretary of Defense (through the Assistant Secretary of the Army for Civil Works), the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce (through the Administrator of the National Oceanic and Atmospheric Administration), the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Homeland Security (through the Administrator of the Federal Emergency Management Agency), the Administrator of the Environmental Protection Agency, the Administrator of the Small Business Administration, and the heads of other agencies as appropriate, submit a report to the National Climate Task Force to identify key opportunities for greater deployment of nature-based solutions across the Federal Government, including through potential policy, guidance, and program changes.

(b) The Director of the Office of Management and Budget shall issue guidance related to the valuation of ecosystem and environmental services and natural assets in Federal regulatory decision-making, consistent with the efforts to modernize regulatory review required by my Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review).

(c) Implementation of the United States Global Change Research Program shall include an assessment of the condition of nature within the United States in a report carrying out section 102 of the Global Change Research Act of 1990, 15 U.S.C. 2932.

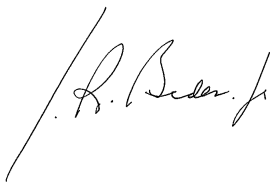
Sec. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
April 22, 2022.

[FR Doc. 2022–09138
Filed 4–26–22; 8:45 am]
Billing code 3395–F2–P

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Housing Service

Rural Business-Cooperative Service

7 CFR Part 5001

[Docket No. RUS–19–Agency–0030]

RIN 0572–AC56

OneRD Guaranteed Loan Regulation

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Final rule; confirmation.

SUMMARY: Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service (hereinafter ''the Agency''), agencies of the United States Department of Agriculture (USDA), published in the **Federal Register** on December 10, 2021, a final rule with request for comments. This document presents the opportunity for the Agency to confirm the final rule as published.

DATES: As of April 27, 2022, the effective date of the final rule published December 10, 2021 at 86 FR 70349 and corrected February 9, 2022 at 87 FR 7367 is confirmed.

FOR FURTHER INFORMATION CONTACT: Lauren Cusick, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone (202) 720–1414; email *lauren.cusick@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agency published a final rule with request for comments in the **Federal Register** on December 10, 2021 at 86 FR 70349. A subsequent correction notice was published on February 9, 2022 at 87 FR 7367. The final rule made necessary revisions to the policy and procedures which will strengthen oversight and management of the growing Community Facilities (CF), Water and Waste Disposal (WWD), Business and Industry (B&I), and Rural Energy for America (REAP) guarantee portfolios. This action was part of a continuing effort by the Agency to improve customer service for its lenders and create a more efficient work process for its staff.

The comment period on the final rule closed February 8, 2022. The Agency did not receive any comments during the public comment period on the final rule, and therefore confirms the rule without change.

Justin Maxson,

Deputy Under Secretary, Rural Development.

[FR Doc. 2022–08695 Filed 4–26–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Housing Service

Rural Business-Cooperative Service

7 CFR Part 5001

[Docket No. RUS–19–Agency–0030]

OneRD Guaranteed Loan Initiative

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Department of Agriculture (USDA).

ACTION: Final rule; applicability.

SUMMARY: On December 10, 2021, Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, agencies of the United States Department of Agriculture (USDA), published a final rule with comment for the OneRD Guarantee Loan Program (OneRD). The final rule was effective on December 10, 2021, and applied to all applications filed by an applicant pursuant to OneRD on or after that date. This document announces which provisions could be applied to applications pending review, conditional commitments, and loans made under OneRD since October 1, 2020.

DATES: This document applies to the final rule issued and effective December 10, 2021.

ADDRESSES: For consideration of the applicable provisions, contact the USDA Rural Development State Office in which the project is located. A listing of each State Office can be found at *https://www.rd.usda.gov/about-rd/state-offices.* Information regarding the OneRD Guarantee Initiative may be found at *https://www.rd.usda.gov/onerd guarantee.*

FOR FURTHER INFORMATION CONTACT: Lauren Cusick, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 0793, Washington, DC 20250; telephone (202) 720–1414; email *lauren.cusick@usda.gov.*

SUPPLEMENTARY INFORMATION: Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service (RUS) issued a final rule that published December 10, 2021, at 86 FR 70349. The final rule revised the policy and procedures to strengthen oversight and management of the growing Community Facilities (CF), Water and Waste Disposal (WWD), Business and Industry (B&I), and Rural Energy for America (REAP) loan guarantee portfolios. The action was part of a continuing effort by the Agency to improve customer service for its lenders and create a more efficient work process for its staff. The Agency has determined that certain provisions that were effective in the rule issued on December 10, 2021, may be applied to applications pending review, conditional commitments, and loans made under 7 CFR part 5001 since October 1, 2020.

Rural Development staff will contact lenders that do not have a current System for Award Management (SAM) registration. Until there is an active SAM registration no conditional commitment or obligation may be executed. The following table provides the amendments made in the final rule published December 10, 2020, which apply to: (1) All new and pending applications filed pursuant to 7 CFR part 5001; (2) Applications where a Conditional Commitment has been issued pursuant to 7 CFR part 5001 but for which no guarantee has been issued; and (3) To lenders with guarantees issued pursuant to 7 CFR part 5001:

Section of regulation	Amendment
5001.130 Lender eligibility requirements.	Paragraph (a) was amended to include new requirements for lenders to be registered in and maintain an account in the System for Award Management (SAM) to conform with 2 CFR part 25.

Lenders may request consideration for certain revised provisions by notifying the Agency. The following table provides the amendments made in the final rule published December 10, 2021, which may be applied to: (1) All new and pending applications filed pursuant to 7 CFR part 5001; (2) Applications where a Conditional Commitment has been issued pursuant to 7 CFR part 5001, but for which no guarantee has been issued; and (3) To lenders with guarantees issued pursuant to 7 CFR part 5001:

Section of regulation	Amendment
5001.408 Participation or assignment of guaranteed loan.	Paragraph (b) was amended to remove the requirement of the lender to maintain a minimum servicing fee of 50 basis points from any holder and will allow the lenders to determine their own interest rate spreads when selling to a holder or participating to another lender.
5001.513 Interest rate changes	Paragraph (e) was amended to allow variable rate changes to be changed to fixed rates whether the fixed rate is higher or lower at the request of the borrower, agreement of the holder, if any, and Agency concurrence.

For pending OneRD applications filed pursuant to 7 CFR part 5001 prior to December 11, 2021, applicants may opt-in to provisions by completing the Opt-In form located in the forms section of the OneRD Guarantee website (*rd.usda.gov/onerdguarantee*). A revised or updated application will need to be submitted by lenders choosing to opt-in to the following provisions:

Section of regulation	Amendment
5001.3 Definitions	The definition of affiliate was updated to further clarify what constitutes an affiliate. The definition of energy efficiency improvement was updated to conform with 7 CFR part 4280. The definition of existing business was updated to further define what it means for an existing business to be in operation. The definition of new business was updated to further define what it means for a new business to be in operation. The definition of power purchase agreement was updated to conform with 7 CFR part 4280.
5001.104 Eligible WWD projects and requirements.	Paragraph (c) was revised to clarify when a utility project that is serving both rural and non-rural areas is eligible for a loan guarantee.
5001.105 Eligible B&I projects and requirements.	The introductory text was revised to clarify that the list of eligible projects is not exclusive of the only projects that will be considered as eligible B&I projects. Paragraph (b)(1) was updated to clarify that a B&I guaranteed loan may be used for the purchase and development of land, buildings, or infrastructure for public or private commercial enterprises. Paragraph (b)(8) was revised to clarify exclusion of owner-occupied housing in the B&I guarantee program. Paragraphs (b)(9) and (10) were combined and edited to clarify when B&I funds may be utilized to fund a CF project. A new paragraph (b)(10) was added to clarify when B&I funds may be used for the development and construction of broadband and telecommunication systems, including modification of existing systems, that are not otherwise eligible for funding in the RUS program or if funding is unavailable in the eligible RUS program, subject to the Public Notice Filing requirements of 7 CFR 1738.106(a) and the additional reporting requirements of 7 CFR 1738.107. Paragraphs (d)(1)(i) and (ii) and (d)(2)(i) and (ii) were revised to clarify the length of time the minimum balance sheet equity must be maintained.
5001.115 Ineligible projects—general	Paragraph (n) was amended to clarify when owner occupied housing is considered eligible and removed paragraph (s) the ineligibility of self-storage facilities.
5001.121 Eligible uses of loan funds	The introductory text was updated to allow a recipient of a loan guarantee to use up to 10 percent of project funds to construct, improve, or acquire broadband infrastructure related to the project financed, to conform with the requirements of 7 CFR part 1980, subpart M.
5001.126 Borrower eligibility	Paragraph (e) was amended to add a new paragraph (e)(3), End users, to conform with 7 CFR part 4280. This revision brings consistency to REAP on the analysis of the eligibility of the applicant controlling interest of an end-user.
5001.205 General project monitoring requirements.	Paragraph (e)(2)(ii) was amended to provide Lenders the opportunity to provide project monitoring under specific criteria.

Justin Maxson,

Deputy Under Secretary, Rural Development.

[FR Doc. 2022–08943 Filed 4–26–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0849; Airspace Docket No. 21–ACE–17]

RIN 2120–AA66

Amendment of VOR Federal Airways V–161, V–190, and V–307, and Revocation of VOR Federal Airway V–516 in the Vicinity of Oswego, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–161, V–190, and V–307, and revokes V–516. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Oswego, KS, VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Oswego VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0849 in the **Federal Register** (86 FR 60416; November 2, 2021), amending VOR Federal airways V–161, V–190, and V–307, and removing VOR Federal airway V–516. The proposed amendment actions were due to the planned decommissioning of the VOR portion of the Oswego, KS, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Subsequent to the NPRM, the FAA published a rule for Docket No. FAA–2021–0276 in the **Federal Register** (87 FR 2320, January 14, 2022; corrected January 25, 2022, 87 FR 3645), amending V–307 by removing the airway segment between the Harrison, AR, VOR/DME and the Oswego, KS, VOR/DME. That airway amendment was effective March 24, 2022, and is included in this rule.

VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by amending VOR Federal airways V–161, V–190, and V–307, and removing VOR Federal airway V–516 due to the planned decommissioning of the Oswego, KS, VOR. The VOR Federal airway actions are described below.

V–161: V–161 extends between the Three Rivers, TX, VOR/Tactical Air Navigation (VORTAC) and the Gopher, MN, VORTAC; and between the International Falls, MN, VOR/DME and the Winnipeg, MB, Canada, VORTAC, excluding the airspace within Canada. The airway segment overlying the Oswego, KS, VOR/DME between the Tulsa, OK, VORTAC and Butler, MO, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

V–190: V–190 extends between the Phoenix, AZ, VORTAC and the Springfield, MO, VORTAC. The airway segment overlying the Oswego, KS, VOR/DME between the Bartlesville, OK, VOR/DME and Springfield, MO, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

V–307: V–307 extends between the Oswego, KS, VOR/DME and the Omaha, IA, VORTAC. The airway segment between the Oswego, KS, VOR/DME and Chanute, KS, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–516: V–516 extends between the Pioneer, OK, VORTAC and the Oswego, KS, VOR/DME. The airway is removed in its entirety.

All NAVAID radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–161, V–190, and V–307, and removing V–516, due to the planned decommissioning of the VOR portion of the Oswego, KS, VOR/DME NAVAID,

qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal airways.

* * * * *

V–161 [Amended]

From Three Rivers, TX; Center Point, TX; Llano, TX; INT Llano 026° and Millsap, TX, 193° radials; Millsap; Bowie, TX; Ardmore, OK; Okmulgee, OK; to Tulsa, OK. From Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; to Gopher, MN. From International Falls, MN; to Winnipeg, MB, Canada, excluding the airspace within Canada.

* * * * *

V–190 [Amended]

From Phoenix, AZ; St. Johns, AZ; Albuquerque, NM; Fort Union, NM; Dalhart, TX; Mitbee, OK; INT Mitbee 059° and Pioneer, OK, 280° radials; Pioneer; INT Pioneer 094° and Bartlesville, OK, 256° radials; to Bartlesville.

* * * * *

V–307 [Amended]

From Chanute, KS; Emporia, KS; INT Emporia 336° and Pawnee City, NE, 194° radials; Pawnee City; to Omaha, IA.

* * * * *

V–516 [Removed]

* * * * *

Issued in Washington, DC, on April 21, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08892 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0632; Airspace Docket No. 21–ASW–11]

RIN 2120–AA66

Amendment of J–8 and V–140, and Establishment of T–422 in the Vicinity of Kingfisher, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Route J–8 and VHF Omnidirectional Range (VOR) Federal airway V–140, and establishes Area Navigation (RNAV) route T–422 in the vicinity of Kingfisher, OK. The Air Traffic Service (ATS) route modifications are necessary due to the planned decommissioning of the VOR portion of the Kingfisher, OK, VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID) which provides navigational guidance for portions of J–8 and V–140. The VOR portion of the VORTAC is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0632 in the **Federal Register** (86 FR 44671; August 13, 2021), amending Jet Route J–8 and VOR Federal airway V–140, and establishing RNAV route T–422 in the vicinity of Kingfisher, OK. The proposed actions were due to the planned decommissioning of the VOR portion of the Kingfisher, OK, VORTAC NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Jet routes are published in paragraph 2004, VOR Federal airways are published in paragraph 6010(a), and United States RNAV T-routes are published in paragraph 6011 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 ATS routes listed in this

document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 to modify Jet Route J–8 and VOR Federal airway V–140, and establish RNAV route T–422. The decommissioning of the VOR portion of the Kingfisher, OK, VORTAC has made this action necessary.

The ATS route actions are outlined below.

J–8: J–8 extends between the Needles, CA, VORTAC and the Casanova, VA, VORTAC. The route segment overlying the Kingfisher, OK, VORTAC between the Borger, TX, VORTAC and the Springfield, MO, VORTAC is removed. The unaffected portions of the existing route remain as charted.

V–140: V–140 extends between the Panhandle, TX, VORTAC and the London, KY, VOR/Distance Measuring Equipment (VOR/DME); and between the Bluefield, WV, VOR/DME and the Casanova, VA, VORTAC. The airway segment overlying the Kingfisher, OK, VORTAC between the Burns Flat, OK, VORTAC and the Tulsa, OK, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

T–422: T–422 is a new route that extends between the Panhandle, TX, VORTAC and the Tulsa, OK, VORTAC. This RNAV route mitigates the removal of the V–140 airway segment between the Burns Flat, OK, VORTAC and the Tulsa, OK, VORTAC (above) and provides RNAV routing capability between the Amarillo, TX, area and the Tulsa, OK, area.

The NAVAID radials listed in the ATS route descriptions below are unchanged and stated in True degrees.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying Jet Route J–8 and VOR Federal airway V–140, and establishing RNAV route T–422, due to the planned decommissioning of the VOR portion of the Kingfisher, OK, VORTAC NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–8 [Amended]

From Needles, CA; Flagstaff, AZ; Gallup, NM; Fort Union, NM; to Borger, TX. From Springfield, MO; St Louis, MO; Louisville, KY; Charleston, WV; INT Charleston 092° and Casanova, VA, 253° radials; to Casanova.

* * * * *

Paragraph 6010(a) Domestic VOR Federal airways.

* * * * *

V–140 [Amended]

From Panhandle, TX; to Burns Flat, OK. From Tulsa, OK; Razorback, AR; Harrison, AR; Walnut Ridge, AR; Dyersburg, TN; Nashville, TN; Livingston, TN; to London, KY. From Bluefield, WV; INT Bluefield 071° and Montebello, VA, 250° radials; Montebello; to Casanova, VA.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–422 Panhandle, TX (PNH) to Tulsa, OK (TUL) [New]

Panhandle, TX (PNH)	VORTAC	(Lat. 35°14′06.22″ N, long. 101°41′56.51″ W)
Burns Flat, OK (BFV)	VORTAC	(Lat. 35°14′13.00″ N, long. 099°12′22.20″ W)
BISKT, OK	WP	(Lat. 35°48′18.66″ N, long. 098°00′14.73″ W)
LASTS, OK	FIX	(Lat. 35°59′45.23″ N, long. 097°16′24.76″ W)
GULLI, OK	FIX	(Lat. 36°00′43.02″ N, long. 097°08′39.63″ W)
Tulsa, OK (TUL)	VORTAC	(Lat. 36°11′46.51″ N, long. 095°47′17.13″ W)

Issued in Washington, DC, on April 21, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08896 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0914; Airspace Docket No. 21–ASO–10]

RIN 2120–AA66

Amendment and Establishment of Area Navigation (RNAV) Routes T–354, and T–421; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends area navigation (RNAV) route T–354, and establishes RNAV route T–421 in the eastern United States. The changes to the routes expand the availability of RNAV routing in support of transitioning the National Airspace System (NAS) from ground-based to satellite-based navigation.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–00914, in the **Federal Register** (86 FR 60183; November 1, 2021), amending T–354 and establishing T–421. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received but it did not address any specifics about the proposal.

United States RNAV T-routes are published in paragraph 6011 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 RNAV routes listed in this document would be subsequently published in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–354, and establishing T–421 as described below.

T–354: T–354 currently extends between the BYZIN, MN, waypoint (WP) and the Cunningham, KY, (CNG) VOR/Distance Measuring Equipment (VOR/DME). This action extends T–354 southward from the Cunningham VOR/DME to the Dyersburg, TN, (DYR) VOR Tactical Air Navigation (VORTAC). The amended T–354 overlies that portion of VOR Federal airway V–47 between the Cunningham VOR/DME and the Dyersburg VORTAC. Additionally, due to the planned VOR decommissioning, the Cunningham VOR/DME is replaced by the MESSR, KY, WP (located 60 feet southwest of the Cunningham VOR/DME), and the Dyersburg VORTAC is replaced by the HAUSS, TN, WP (located 60 feet northeast of the Dyersburg VORTAC).

T–421: T–421 is a new RNAV route that extends between the LYFEE, AL, WP, and the HAGIE, AL, WP. T–421 overlies that portion of VOR Federal airway V–7 between the Wiregrass, AL, (RRS) VORTAC, and the Muscle Shoals, AL, (MSL) VORTAC. Due to the planned VOR decommissioning, the Wiregrass VORTAC is replaced by the LYFEE WP (located 60 feet northwest of the Wiregrass VORTAC) and the Muscle Shoals VORTAC is replaced by the HAGIE WP (located 118 feet northwest of the Muscle Shoals VORTAC).

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action amending RNAV route T–354 and establishing RNAV route T–421, in support of efforts transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–

6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–354 BYZIN, MN to HAUSS, TN [Amended]

BYZIN, MN	WP	(Lat. 47°29′03.97″ N, long. 096°13′28.09″ W)
Park Rapids, MN (PKD)	DME	(Lat. 46°53′53.34″ N, long. 095°04′15.21″ W)
BRNRD, MN	WP	(Lat. 46°20′53.81″ N, long. 094°01′33.54″ W)
SSKYY, WI	WP	(Lat. 45°49′13.60″ N, long. 092°22′28.26″ W)
TONOC, WI	Fix	(Lat. 45°03′47.56″ N, long. 091°38′11.87″ W)
KOETZ, WI	WP	(Lat. 44°13′15.00″ N, long. 091°28′14.00″ W)
HRMNN, WI	WP	(Lat. 43°55′32.51″ N, long. 090°58′04.07″ W)
FOMAG, WI	WP	(Lat. 43°29′38.44″ N, long. 089°46′09.53″ W)
MAYSE, WI	WP	(Lat. 43°10′14.18″ N, long. 089°42′46.52″ W)
HOMRC, IL	WP	(Lat. 41°34′04.67″ N, long. 089°30′20.55″ W)
CPTON, IL	WP	(Lat. 41°06′51.57″ N, long. 089°11′58.93″ W)
BLLUE, IL	WP	(Lat. 40°07′09.20″ N, long. 088°32′45.48″ W)
BOSTN, IL	WP	(Lat. 39°53′46.57″ N, long. 088°26′18.96″ W)
Bible Grove, IL (BIB)	VORTAC	(Lat. 38°55′13.24″ N, long. 088°28′54.50″ W)
MESSR, KY	WP	(Lat. 37°00′30.44″ N, long. 088°50′13.16″ W)
HAUSS, TN	WP	(Lat. 36°01′07.37″ N, long. 089°19′03.41″ W)

* * * * * * *

T–421 LYFEE, AL to HAGIE, AL [New]

LYFEE, AL	WP	(Lat. 31°17′05.04″ N, long. 085°25′52.67″ W)
CLIOS, AL	Fix	(Lat. 31°41′34.39″ N, long. 085°40′16.19″ W)
BANBI, AL	Fix	(Lat. 31°50′04.30″ N, long. 085°45′35.30″ W)
ZOREL, AL	WP	(Lat. 32°26′31.62″ N, long. 086°11′20.06″ W)
GUMMP, AL	WP	(Lat. 33°04′32.55″ N, long. 086°37′06.44″ W)
VLKNN, AL	WP	(Lat. 33°40′12.47″ N, long. 086°53′58.83″ W)
HAGIE, AL	WP	(Lat. 34°42′25.87″ N, long. 087°29′29.76″ W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08894 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0704; Airspace Docket No. 21–AWP–32]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route Q–73; Twenty Nine Palms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route Q–73 due to the creation of Special Activity Airspace (SAA) (Bristol Air Traffic Assigned Airspace (ATCAA)) in the vicinity of Twenty Nine Palms, CA.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route structure in the north central United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2021–0704 in the **Federal Register** (86 FR 50493; September 9, 2021), amending Q–73 in the vicinity of Twenty Nine Palms, CA, in order to provide safe segregation of air traffic around the newly created Bristol ATCAA. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. There were no comments received.

United States Area Navigation Routes are published in paragraph 2006 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 United States Area Navigation Routes listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by amending RNAV route Q–73 due to the creation of SAA, Bristol ATCAA, in the vicinity of Twenty Nine Palms, CA. The amendment adds two additional waypoints (WPs) between LVELL and HAKMN in order to provide an adequate buffer between military activities in that area.

Q–73: Q–73 currently extends from the MOMAR, CA, WP to the CORDU, ID, WP. The FAA is adding two WPs, the BLKWL, CA, WP, between the LVELL, CA, WP and the ZELMA, CA, WP, and the KRLIE, CA, WP, between the ZELMA, CA, WP and the HAKMN, NV, WP. The new WPs will provide safe segregation of air traffic along Q–73 from military aircraft operating within the adjacent SAA. The rest of the route would remain unchanged.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV route Q–73 due to the creation of SAA, Bristol ATCAA, in the vicinity of Twenty Nine Palms, CA qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q–73 MOMAR, CA to CORDU, ID [Amended]

MOMAR, CA	Fix	(Lat. 33°30′54.13″ N, long. 115°56′40.14″ W)
LVELL, CA	WP	(Lat. 34°12′37.38″ N, long. 115°36′53.25″ W)
BLKWL, CA	WP	(Lat. 34°22′01.06″ N, long. 115°29′56.81″ W)
ZELMA, CA	WP	(Lat. 34°46′59.99″ N, long. 115°19′47.51″ W)
KRLIE, CA	WP	(Lat. 35°08′24.42″ N, long. 115°13′59.57″ W)
HAKMN, NV	WP	(Lat. 35°30′28.31″ N, long. 115°04′47.04″ W)
LAKRR, NV	WP	(Lat. 36°05′07.72″ N, long. 114°17′09.16″ W)
GUNTR, AZ	WP	(Lat. 36°24′39.65″ N, long. 114°02′11.55″ W)
ZAINY, AZ	WP	(Lat. 36°39′24.73″ N, long. 113°54′03.50″ W)
EEVUN, UT	WP	(Lat. 37°02′52.90″ N, long. 113°42′42.56″ W)
WINEN, UT	WP	(Lat. 37°56′00.00″ N, long. 113°30′00.00″ W)
CRITO, NV	WP	(Lat. 39°18′00.00″ N, long. 114°33′00.00″ W)
BROPH, ID	WP	(Lat. 42°43′15.71″ N, long. 114°52′31.80″ W)
DERSO, ID	WP	(Lat. 43°21′42.63″ N, long. 115°08′01.66″ W)

ZATIP, ID	WP	(Lat. 46°13′17.48″ N, long. 116°31′37.57″ W)
CORDU, ID	Fix	(Lat. 48°10′46.41″N, long. 116°40′21.84″W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08897 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1021; Airspace Docket No. 21–ASO–9]

RIN 2120–AA66

Amendment and Removal of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends three jet routes and removes one jet route in the eastern United States. This action is associated with the decommissioning of the Atlanta VHF Omnidirectional Range and Tactical Air Navigation (VORTAC) system in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

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 the 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 modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–1021 in the **Federal Register** (86 FR 73205; December 27, 2021), amending three jet routes and removing one jet route in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Jet routes are published in paragraph 2004 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 jet routes listed in this document would be subsequently amended in, or removed, respectively, from FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by amending J–4, J–45 and J–89 and removing J–239 in the eastern United States. This action is associated with the planned decommissioning of the Atlanta VORTAC and the VOR MON program by amending and removing certain jet route segments that are being replaced by area navigation routing. Additionally, the jet route changes reduce aeronautical chart clutter by removing unneeded route segments.

The route changes are as follows:

J–4: J–4 currently extends between the Los Angeles, CA, (LAX) VORTAC, and the Colliers, SC, (IRQ) VORTAC. The FAA is removing the latter segment of the route from the Meridian, MS, (MEI) VORTAC to the Colliers VORTAC. The amended route extends between the Los Angeles, CA, (LAX) VORTAC and the Magnolia, MS, (MHZ) VORTAC.

J–45: J–45 currently extends between the Atlanta, GA, VORTAC, and the Aberdeen, SD, (ABR) VOR/Distance Measuring Equipment (VOR/DME). This action removes the Atlanta, GA, (ATL) VORTAC from the initial segment. The amended route extends between the Nashville, TN, (BNA) VORTAC, and the Aberdeen, SD, (ABR) VOR/DME.

J–89: J–89 currently extends between the Atlanta, GA, VORTAC, and the Winnipeg, MB, Canada, (YWG) VORTAC. This action removes the Atlanta, GA, (ATL) VORTAC in the initial segment. As amended, the route extends between the Louisville, KY, (IIU) VORTAC, and the Winnipeg, MB, Canada, (YWG) VORTAC. The portion within Canada is excluded.

J–239: J–239 currently extends between the Atlanta, GA, (ATL) VORTAC and the Meridian, MS, (MEI) VORTAC. The FAA is removing the entire route.

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

Regulatory Notices and Analyses

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

number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending three jet routes, removing one jet route, in the eastern United States qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–4 [Amended]

From Los Angeles, CA, via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; Parker, CA; Buckeye, AZ; San Simon, AZ; Newman, TX; Wink, TX; Abilene, TX; Ranger, TX; Belcher, LA; to Magnolia, MS.

* * * * *

J–45 [Amended]

From Nashville, TN; St Louis, MO; Kirksville, MO; Des Moines, IA; Sioux Falls, SD; to Aberdeen, SD.

* * * * *

J–89 [Amended]

From Louisville, KY; Boiler, IN; Northbrook, IL; Badger, WI; Duluth, MN; to Winnipeg, MB, Canada. The portion within Canada is excluded.

* * * * *

J–239 [Removed]

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08893 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31424; Amdt. No. 4005]

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 effective April 27, 2022. 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 April 27, 2022.

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 April 15, 2022.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, 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 19 May 2022

Clarks Point, AK, PFCL, RNAV (GPS) RWY 36, Orig-C

De Witt, AR, 5M1, RNAV (GPS) RWY 18, Orig

De Witt, AR, 5M1, RNAV (GPS) RWY 36, Orig

De Witt, AR, De Witt Muni/Whitcomb FLD, Takeoff Minimums and Obstacle DP, Orig

Phoenix, AZ, KPHX, RNAV (GPS) Y RWY 25L, Amdt 2

Phoenix, AZ, KPHX, RNAV (GPS) Y RWY 26, Amdt 3

Salinas, CA, KSNS, ILS RWY 31, Amdt 6

Salinas, CA, KSNS, LOC RWY 31, Amdt 5

Salinas, CA, KSNS, RNAV (GPS) RWY 8, Orig

Salinas, CA, KSNS, RNAV (GPS) Y RWY 31, Amdt 1

Salinas, CA, KSNS, RNAV (GPS) Z RWY 31, Amdt 1

Salinas, CA, Salinas Muni, Takeoff Minimums and Obstacle DP, Amdt 5

Salinas, CA, KSNS, VOR RWY 13, Amdt 12

Colby, KS, KCBK, NDB RWY 17, Amdt 2

Colby, KS, KCBK, RNAV (GPS) RWY 35, Amdt 2

Camdenton, MO, KOZS, RNAV (GPS) RWY 15, Amdt 2

Camdenton, MO, KOZS, RNAV (GPS) RWY 33, Amdt 2

Camdenton, MO, KOZS, VOR–A, Amdt 7

Columbia, MO, KCOU, ILS OR LOC RWY 2, Amdt 18

Wadesboro, NC, KAFP, RNAV (GPS) RWY 34, Amdt 2C

Findlay, OH, KFDY, RNAV (GPS) RWY 7, Orig-C

Findlay, OH, KFDY, VOR RWY 7, Amdt 12B

Grove City, PA, 29D, RNAV (GPS) RWY 28, Amdt 1C

Jackson, TN, KMKL, RNAV (GPS) RWY 2, Orig-C

Knoxville, TN, KDKX, LOC RWY 26, Amdt 5

Knoxville, TN, KDKX, RNAV (GPS) RWY 26, Amdt 1

Knoxville, TN, KDKX, VOR–B, Amdt 8

Houston, TX, KIAH, RNAV (RNP) Y RWY 8L, Amdt 1

Houston, TX, KIAH, RNAV (RNP) Y RWY 27, Amdt 3

[FR Doc. 2022–08874 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31425; Amdt. No. 4006]

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 April 27, 2022. 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 April 27, 2022.

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 April 15, 2022.

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, 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 No.	FDC date	Subject
19–May–22 ..	IL	Decatur	Decatur	2/6594	3/10/22	This NOTAM, published in Docket No. 31423, Amdt No. 4004, TL 22–11, (87 FR 23431, April 20, 2022) is hereby rescinded in its entirety.
19–May–22 ..	GA	St Simons Island	St Simons Island	2/2714	3/28/22	This NOTAM, published in Docket No. 31423, Amdt No. 4004, TL 22–11, (87 FR 23431, April 20, 2022) is hereby rescinded in its entirety.
19–May–22 ..	FL	La Belle	La Belle Muni	2/0476	3/31/22	RNAV (GPS) RWY 14, Orig-C.
19–May–22 ..	FL	La Belle	La Belle Muni	2/0477	3/31/22	RNAV (GPS) RWY 32, Orig-B.
19–May–22 ..	CA	Carlsbad	Mc Clellan-Palomar	2/0885	4/4/22	RNAV (GPS) Y RWY 6, Orig.
19–May–22 ..	IL	Pinckneyville	Pinckneyville/Du Quoin	2/1832	4/1/22	RNAV (GPS) RWY 18, Amdt 1C.
19–May–22 ..	IL	Pinckneyville	Pinckneyville/Du Quoin	2/1833	4/1/22	RNAV (GPS) RWY 36, Orig-C.
19–May–22 ..	FL	Dunnellon	Marion County	2/2023	4/1/22	RNAV (GPS) RWY 23, Orig-B.
19–May–22 ..	NY	New York	Laguardia	2/2114	4/1/22	RNAV (GPS) Y RWY 31, Orig-A.
19–May–22 ..	TX	Austin	Austin Exec	2/2131	4/4/22	RNAV (GPS) RWY 31, Amdt 1A.
19–May–22 ..	TN	Sevierville	Gatlinburg-Pigeon Forge ..	2/2133	4/4/22	RNAV (GPS) RWY 10, Orig-B.
19–May–22 ..	CA	Los Angeles	Los Angeles Intl	2/2252	4/4/22	ILS OR LOC RWY 6L, Amdt 14.
19–May–22 ..	NC	Maxton	Laurinburg/Maxton	2/2285	4/4/22	ILS OR LOC RWY 5, Amdt 2B.
19–May–22 ..	NC	Edenton	Northeastern Rgnl	2/3038	4/4/22	RNAV (GPS) RWY 1, Amdt 1A.
19–May–22 ..	IL	Pekin	Pekin Muni	2/3253	4/5/22	RNAV (GPS) RWY 9, Orig-B.
19–May–22 ..	IL	Pekin	Pekin Muni	2/3254	4/5/22	RNAV (GPS) RWY 27, Orig-B.
19–May–22 ..	IL	Pekin	Pekin Muni	2/3255	4/5/22	VOR–A, Amdt 7B.
19–May–22 ..	LA	Houma	Houma-Terrebonne	2/3316	4/5/22	VOR/DME RWY 30, Amdt 12B.
19–May–22 ..	FL	Sebring	Sebring Rgnl	2/3320	4/5/22	RNAV (GPS) RWY 14, Orig-C.
19–May–22 ..	FL	Sebring	Sebring Rgnl	2/3321	4/5/22	RNAV (RNP) RWY 19, Amdt 1A.
19–May–22 ..	FL	Sebring	Sebring Rgnl	2/3322	4/5/22	RNAV (GPS) RWY 1, Amdt 1B.
19–May–22 ..	FL	Sebring	Sebring Rgnl	2/3323	4/5/22	RNAV (GPS) RWY 32, Orig-B.
19–May–22 ..	MO	Maryville	Northwest Missouri Rgnl ..	2/3501	4/5/22	RNAV (GPS) RWY 32, Amdt 1A.
19–May–22 ..	MO	Maryville	Northwest Missouri Rgnl ..	2/3502	4/5/22	RNAV (GPS) RWY 14, Amdt 1A.
19–May–22 ..	OH	Findlay	Findlay	2/4213	4/5/22	RNAV (GPS) RWY 18, Amdt 1B.
19–May–22 ..	OH	Findlay	Findlay	2/4214	4/5/22	RNAV (GPS) RWY 25, Amdt 1B.
19–May–22 ..	OH	Findlay	Findlay	2/4215	4/5/22	RNAV (GPS) RWY 36, Amdt 1C.
19–May–22 ..	FL	Hollywood	North Perry	2/6955	3/31/22	RNAV (GPS) RWY 28R, Orig-C.
19–May–22 ..	FL	Hollywood	North Perry	2/6957	3/31/22	RNAV (GPS) RWY 10R, Orig-C.
19–May–22 ..	GA	Greensboro	Greene County Rgnl	2/8153	3/30/22	RNAV (GPS) RWY 7, Amdt 1E.
19–May–22 ..	LA	Leesville	Leesville	2/8635	4/1/22	RNAV (GPS) RWY 18, Orig-A.
19–May–22 ..	LA	Leesville	Leesville	2/8637	4/1/22	RNAV (GPS) RWY 36, Amdt 1A.
19–May–22 ..	TN	Jackson	Mc Kellar-Sipes Rgnl	2/9906	3/31/22	RNAV (GPS) RWY 20, Orig-B.

[FR Doc. 2022–08875 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0279]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—Lake Erie Open Water Swim

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation; correction.

SUMMARY: The Coast Guard is correcting a notice of enforcement of regulation that appeared in the **Federal Register** on April 20, 2022. That notification entitled Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—Lake Erie Open Water Swim. This correction applies to the docket number.

DATES: This correction is effective April 27, 2022.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Spencer Phillips, Coast Guard; telephone 202–372–3854, email *spencer.phillips@uscg.mil.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–08428, appearing on page 23445 in the **Federal Register** on April 20, 2022, the following correction is made:

Federal Register Correction

On page 23445, in the first column, in the headings, ''[Docket No. 0279]'' is corrected to read ''[Docket No. USCG–2022–0279]''.

Dated: April 22, 2022.

James E. McLeod,

Acting Chief, Office of Regulations and Administrative Law.

[FR Doc. 2022–08996 Filed 4–26–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0276]

Safety Zone; San Francisco Giants Fireworks Display, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect personnel, vessels, and the marine environment from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the Patrol Commander (PATCOM), any Official Patrol defined as other federal, state, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulations in 33 CFR 165.1191 will be enforced for the location identified in Table 1 to § 165.1191, Item number 1, from 10 a.m. until 11:30 p.m. on April 29, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST1 Shannon Curtaz-Milian, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7440, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.1191 Table 1, Item number 1 for the San Francisco Giants Fireworks Display from 10 a.m. until 11:30 p.m. on April 29, 2022. The safety zone will extend to all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 10 a.m. until 8 p.m. on April 29, 2022, the fireworks barge will be loading pyrotechnics from Pier 50 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 8:30 p.m. to 8:45 p.m. on April 29, 2022 the loaded fireworks barge will transit from Pier 50 to the launch site near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon the commencement of the 10-minute fireworks display, scheduled to begin at the conclusion of the baseball game, between approximately 9:30 p.m. and 10:30 p.m. on April 29, 2022, the safety zone will increase in size and encompass all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 700 feet out from the fireworks barge near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83). This safety zone will be in enforced from 10 a.m. until 11:30 p.m. on April 29, 2022, or as announced via Broadcast Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol, defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zone. During the enforcement period, if you are the operator of a vessel in one of the safety zones you must comply with directions from the Patrol Commander or other Official Patrol. The PATCOM or Official Patrol may, upon request allow the transit of commercial vessels through regulated areas when it is safe to do so.

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

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: April 15, 2022.

Taylor Q. Lam,

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

[FR Doc. 2022–08990 Filed 4–26–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0913; FRL–9351–02–R7]

Air Plan Approval; Air Plan Approval; State of Missouri; Revised Plan for 1978 and 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the State of Missouri's request to remove its State Implementation Plan (SIP) for maintaining the 1978 Lead National Ambient Air Quality Standards (NAAQS) in portions of Iron County, Missouri, surrounding the former Glover smelter, and replace the maintenance plan with a plan for continued attainment of the 2008 Lead NAAQS regardless of ownership and/or operational status of the Glover facility.

DATES: This final rule is effective on May 27, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0913. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Stephanie Doolan, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7719; email address: *doolan.stephanie@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

The EPA is taking final action pursuant to section 110(l) of the CAA, to amend the Missouri SIP to approve Missouri's SIP revision request as submitted to the EPA on October 7, 2020. The EPA's final approval is based on its review of the state's submittal which is described in detail in the proposal (87 FR 5761, February 2, 2022).

For the reasons described in detail in the EPA's February 2, 2022 proposed approval, the EPA finds that Missouri's 2020 plan and 2020 Consent Agreement, as submitted to the EPA on October 7, 2020, as a replacement to the 2004 plan and 2003 Settlement Agreement, does not interfere with attainment or maintenance of the NAAQS, and thus satisfies CAA section 110(l). If future activities include demolition or deconstruction of any of the remaining structures, the 2020 Plan and 2020 Consent Agreement provide for re-instating air monitors to ensure that deconstruction or demolition of the facility, activities that are known to re-entrain lead dust, do not lead to violations of the 2008 Lead NAAQS, and thereby protect human health and the environment. All the requirements of the 2020 Consent Agreement are also imposed on Doe Run's successors in the event of a future property transaction.

Upon the effective date of this final rule Doe Run may cease operating its ambient air monitors at the Glover facility. For the reasons discussed in detail in the EPA's proposal, lead emissions from the facility are not expected to increase provided that activities remain the same and Doe Run (and any future owner) complies with the requirements of the state and federally enforceable 2020 Consent Agreement. In the event that activities at the facility do change, the 2020 Consent Agreement provides a process for resuming monitoring should certain lead-emitting activities occur at the facility. This requirement to resume monitoring provides an additional measure to ensure continued attainment of both the 1978 NAAQS and the 2008 NAAQS.

II. Have the requirements for approval of a SIP revision been met?

The State's submission met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained in the February 2, 2022 proposal, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

The EPA's proposed approval and supporting information contained in the docket were made available for public review and comment from February 2, 2022 to March 4, 2022. No comments were received.

III. Environmental justice concerns

This action addresses a plan for continued attainment of the 2008 Lead NAAQS for the Glover, Missouri area. In its SIP revision request, Missouri has demonstrated that the air quality in the Glover area is attaining the 2008 Lead NAAQS and will ensure continued attainment of the NAAQS as the benchmark for protection of human health. Replacing the 2004 maintenance plan and 2003 Settlement Agreement with the 2020 Plan and 2020 Consent Agreement provides broader provisions for the activities, including deconstruction and demolition, that are most likely to cause a future NAAQS violation. For these reasons, EPA believes final approval does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

IV. What action is the EPA taking?

The EPA is approving Missouri's request to strengthen the State Implementation Plan (SIP) by removing its maintenance plan and associated Consent Agreement for the 1978 Lead NAAQS for the former Doe Run Glover lead smelter in Iron County, Missouri, and replacing it with a plan for continued attainment of the 2008 Lead NAAQS and a new Consent Agreement.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Source-Specific Orders described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, and are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

Also, in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Source-Specific Permits and Orders from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

[1] 62 FR 27968 (May 22, 1997).

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

• This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this determination is contained in section III of this action, ''Environmental Justice Concerns.''

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

• This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5

• Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 27, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, and Lead.

Dated: April 21, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA–Missouri

■ 2. In § 52.1320:

■ a. In the table in paragraph (d):

■ i. Remove and reserve paragraph (d)(22) and add paragraph (d)(36).

■ b. In the table in paragraph (e):

■ i. Remove and reserve paragraph (e)(49) and add paragraph (e)(83).

The additions read as follows:

§ 52.1230 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
* *	*	*	* *	* *
(22) Reserved				
* *	*	*	* *	* *
(36) Doe Run Glover Facility ..	Consent Agreement APCP–2020–002.	6/2/2020	4/27/2022, [insert **Federal Register** citation].	

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
* *	*	*	* *	* *
(49) Reserved				
* *	*	*	* *	* *
(83) Glover Lead Plan for Continued Attainment of the 2008 Lead NAAQS.	Iron County (part) within boundaries of Liberty and Arcadia Townships.	10/7/2020	4/27/2022, [insert **Federal Register** citation].	[EPA–R07–OAR–2021–0913; FRL–9351–02–R7].

[FR Doc. 2022–08918 Filed 4–26–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[223 LLUTY00000 L12200000.MA0000]

Final Supplementary Rules for the Klondike Bluffs Area of Public Lands Managed by the Moab Field Office in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is finalizing rules limiting camping to developed campgrounds and designated campsites within the Klondike Bluffs Mountain Bike Focus Area and a nearby isolated 160-acre BLM parcel. The rules require the use of portable toilets at designated campsites where constructed toilets are not provided. Additionally, the rules prohibit wood cutting and collecting in the Klondike Bluffs Mountain Bike Focus Area and the nearby 160-acre parcel.

DATES: These final supplementary rules are effective on May 23, 2022.

ADDRESSES: Inquiries may be directed to the BLM Moab Field Office at (435) 259–2100 or 82 East Dogwood Avenue, Moab, UT 84532. The final supplementary rules and accompanying environmental documents are available for inspection at the BLM Moab Field Office and on the ePlanning website at: *https://go.usa.gov/xuZsG.*

A map of the management area and boundaries can be obtained by contacting the Moab Field Office (see **ADDRESSES** section).

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Assistant Field Manager for Recreation, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, UT 84532, (435) 259–2100, or *jljones@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM is establishing these final supplementary rules under the authority of 43 CFR 8365.1–6, which allows State Directors to establish supplementary rules for the protection of persons, property, and the public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the CFR. These final supplementary rules apply to public lands managed by the Moab Field Office.

In September 2019, the BLM issued a decision record on an environmental assessment (EA) to limit camping to designated sites and developed campgrounds in the Klondike Bluffs Mountain Bike Focus Area and a nearby isolated 160-acre parcel of BLM-administered land that is completely surrounded by lands managed by the State of Utah. During the EA process, the BLM identified the need to establish enforceable supplementary rules concerning camping at these locations.

The BLM has documented significant increases in visitation numbers and resulting pressures on camping areas managed by the Moab Field Office. Therefore, the BLM has determined these rules are necessary to increase sustainable camping and recreation opportunities, provide for visitor health and safety, prevent undue degradation of natural and cultural non-renewable resources, and promote high-quality outdoor recreation opportunities.

During the 15-day public comment period on the EA, the BLM received 14 comment letters, 13 of which were in support of the proposal. The proposal was also supported by Grand County, Utah. The Utah Governor's Office of Economic Development commented and offered monetary assistance to build a campground in the Klondike Bluffs area to enhance the quality of the world-class recreation opportunities.

II. Discussion of Public Comments

The BLM published proposed supplementary rules on August 18, 2021 (88 FR 46270). Five comment letters were received during the 60-day public comment period. All five of the commentors expressed strong support for the supplementary rules.

III. Discussion of Final Supplementary Rules

The BLM Moab Field Office

The BLM Moab Field Office has jurisdiction from the Grand County line to the north, the Utah-Colorado State line to the east, Harts Draw and Lisbon Valley to the south, and the Green River to the west. The public lands managed by the Moab Field Office are a domestic and international tourist destination hosting three million visitors per year. The Moab Field Office manages 46 developed campgrounds.

These final supplementary rules are critical for continuing to provide sustainable camping opportunities, ensuring public health and safety, reducing visitor conflicts, and protecting natural and cultural resources on public lands. The supplementary rules already in place have been effective in providing for visitor health and safety and protecting cultural and natural resources while improving the visitor experience. These final rules supplement existing rules by providing protection to an additional high-visitation area managed by the Moab Field Office.

The final supplementary rules regarding camping, human waste, and wood gathering cover the Klondike Bluffs Mountain Bike Focus Area and a nearby 160-acre public land parcel (for a total of 14,786 acres) that has become increasingly popular as the Klondike Bluffs Mountain Bike Trail System, which has been developed. The restrictions are directly related to the degradation of natural resources, health and safety issues posed by the presence of human waste, and unsustainable levels of high-density camping use where no facilities exist to mitigate visitor impacts.

The reasoning for each rule is addressed below.

1. *Final rule: You must camp at a designated site.* This final rule applies to the Klondike Bluffs Mountain Bike Focus Area and a nearby 160-acre parcel where dispersed camping is degrading natural, visual, and wildlife resources while causing risks to human health. The affected area reflects the recreation management decision (REC–6) in the 2008 Moab Resource Management Plan (RMP) to limit dispersed camping as visitation impacts and environmental conditions warrant.

2. *Final rule: You must use a constructed toilet or possess, set up for usage, and use a portable toilet to dispose of solid human waste.* Exposure to human waste is a health risk to the public and BLM personnel. The continual deposition of human waste on or just beneath the surface of the ground—which is largely sand and bare rock in the Moab region—is a risk that is not naturally mitigated. These risks are amplified in high-visitation areas and must be mitigated by specifying the methods of disposal. This rule applies to the Klondike Bluffs Mountain Bike Focus Area and the nearby 160-acre parcel because the area experiences a very high level of visitation.

3. *Final rule: You must not cut, gather, or collect wood.* Wood gathering

depletes an already sparse supply of woody vegetation that is not readily replaced in the desert environment. As with camping and human waste, the Klondike Bluffs Area is at a greater risk of resource damage and depletion due to high visitation. To ensure future visitors can enjoy the visual resources, and to protect the sensitive desert ecology, wood cutting, gathering, and collecting in the Klondike Bluffs area is prohibited.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final supplementary rules are not significant regulatory actions and are not subject to review by the Office of Management and Budget under Executive Order 12866. These final supplementary rules will not have an annual effect of $100 million or more on the economy. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These supplementary rules do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These supplementary rules merely establish rules of conduct for public use on a limited area of public lands.

National Environmental Policy Act

These supplementary rules are consistent with and necessary to properly implement decisions proposed, analyzed, and approved in EA #DOI–BLM–UT–Y010–2019–0021–EA. They establish rules of camping conduct for public use of public lands managed by the Moab Field Office to protect public health, safety, and natural and cultural resources. The approved EA is available for review at the physical and on-line locations identified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules merely establish rules of conduct for public use on a limited area of public lands. Therefore, the BLM has determined the final supplementary rules do not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules are not ''major'' as defined under 5 U.S.C. 804(2). The final supplementary rules merely establish rules of conduct for public use on a limited area of public lands and will not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These final supplementary rules will not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector of more than $100 million per year; nor will they have a significant or unique effect on small governments. The final supplementary rules will have no effect on governmental or Tribal entities and will impose no requirements on any of these entities. The final supplementary rules will merely establish rules of conduct for public use on a limited selection of public lands and will not affect Tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These final supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally protected property rights. The final supplementary rules merely establish rules of conduct for public use for a limited area of public lands and will not affect anyone's property rights. Therefore, the Department of the Interior has determined these final supplementary rules will not cause a ''taking'' of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These final supplementary rules will not have a substantial direct effect on the states, the relationship between the Federal Government and the states, nor the distribution of power and responsibilities among the various levels of government. These final supplementary rules will not conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined these final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined these final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Tribal Governments

In accordance with Executive Order 13175, the BLM conducted consultation and coordination with Tribal governments in the development of the RMP and the EA which form the basis for the final supplementary rules. Tribal consultation was also undertaken on EA #DOI–BLM–UT–Y010–2019–0021–EA. The two Tribes who responded (the Hopi and the Southern Ute) fully concurred with the action to limit camping to designated sites.

Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined the final supplementary rules do not comprise a significant energy action, and they will not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* Federal criminal investigations or prosecutions may result from these rules, and the collection of information for these purposes is exempt from the Paperwork Reduction Act, 44 U.S.C. 3518(c)(1).

Author

The principal author of these final supplementary rules is Kathleen Stevens, Outdoor Recreation Planner, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, UT 84532.

V. Final Supplementary Rules for the BLM Moab Field Office

For the reasons stated in the preamble, and under the authorities for supplementary rules found at 43 U.S.C. 1740, and 43 CFR 8365.1–6, the BLM Utah State Director establishes the following supplementary rules:

Definitions

The following definitions apply to the final supplementary rules.

Camping: The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel, for the apparent purpose of overnight occupancy while engaged in recreational activities such as hiking, hunting, fishing, bicycling, sightseeing, off-road vehicle activities, or other generally recognized forms of recreation.

Klondike Bluffs Mountain Bike Focus Area: Public land located east of U.S. Highway 191, west of Arches National Park, north of the Dalton Wells Road and south of the block of State land near Interstate 70. A map of the area can be viewed at the Moab Field Office or in the Klondike Bluffs EA.

Portable Toilet: (1) A containerized and reusable system; (2) A commercially available biodegradable system that is landfill disposable (*e.g.,* Rest Stop, Go-Anywhere Toilet Kit or ''WAG bag''); or (3) A washable, reusable toilet within a camper, trailer or motor home.

The following rules apply to the Klondike Bluffs Mountain Bike Focus Area and a nearby 160-acre parcel:

(1) You must camp at a designated site.

(2) You must not dispose of human waste in any other container than a portable or constructed toilet.

(3) You must not cut, gather, or collect wood.

Penalties

Under Section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within Utah may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Exemptions

Any Federal, State, local, or military persons acting within the scope of their official duties; members of an organized rescue or firefighting force in performance of an official duty; and persons who are expressly authorized or approved by the BLM.

Gregory Sheehan,

Bureau of Land Management, Utah State Director.

[FR Doc. 2022–08859 Filed 4–26–22; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220421–0101: RTID 0648–XX078]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2022 Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Final rule.

SUMMARY: This final rule allocates annual catch entitlements to groundfish sectors for the 2022 fishing year and approves changes to previously approved sector operations plans. This rule also denies four novel sector exemption requests. The action is necessary because sectors must receive allocations in order to operate in fishing year 2022. This action will allow limited access permit holders to continue to operate sectors, and to exempt sectors from certain effort control regulations to improve the efficiency and economics of sector vessels.

DATES: Northeast multispecies annual catch entitlements for sectors are effective May 1, 2022, through April 30, 2023.

ADDRESSES: Copies of each sector's operations plan and contract are available from the NMFS Greater Atlantic Regional Fisheries Office: Contact Claire Fitz-Gerald at *Claire.Fitz-Gerald@noaa.gov,* Kyle Molton at *Kyle.Molton@noaa.gov,* or Samantha Tolken at *Samantha.Tolken@noaa.gov.* These documents are also accessible via the GARFO website. To view these documents and the **Federal Register** documents referenced in this rule, you can visit: *https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan.*

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Multispecies Fishery Management Plan (FMP) defines a sector as ''a group of persons holding limited access Northeast multispecies permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives.'' A sector must be comprised of at least three Northeast multispecies permits issued to at least three different persons, none of whom have any common ownership interest in the permits, vessels, or businesses associated with the permits issued [to] the other two or more persons in that sector. Sectors are self-selecting, meaning participation is voluntary, and each sector can choose its members.

The Northeast multispecies sector management system annually allocates a portion of the Northeast multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACE) and are based on the collective fishing history of a sector's members. Sectors may receive allocations of large-mesh Northeast multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and ocean pout, which are non-allocated species managed under separate effort controls. ACEs are portions of a stock's annual catch limit (ACL) available to commercial Northeast multispecies vessels. A sector determines how to harvest its ACE.

Because sectors elect to receive an allocation under a quota-based system, the FMP grants sector vessels several universal exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; portions of the Gulf of Maine (GOM) Cod Protection Closures; Northeast multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on Georges Bank (GB); and the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing under the provisions of the Redfish Exemption Program. The FMP allows the Council to add universal exemptions using the framework adjustment procedure. Sectors may request additional exemptions annually as part of their sector operations plans to increase flexibility and fishing opportunities. Sectors are prohibited from requesting exemptions from permitting restrictions, gear restrictions designed to minimize habitat impacts, and most reporting requirements.

In addition to the sectors, there are several state-operated permit banks that each receive an allocation based on the fishing history of permits they hold. The final rule implementing Amendment 17

to the FMP allowed a state-operated permit bank to receive an allocation without needing to comply with sector administrative and procedural requirements (77 FR 16942; March 23, 2012). Instead, permit banks are required to submit a list of permits to NMFS, as specified in the permit bank's Memorandum of Agreement between NMFS and the state. These permits are not assigned to active vessels; instead, the allocations associated with the permits may be leased to vessels enrolled in sectors. State-operated permit banks contribute to the total allocation under the sector system.

We have previously approved 16 sectors to operate in fishing years 2021 and 2022 and also approved 19 requested exemptions for sectors (86 FR 22898; April 30, 2021). Because all approved operations plans cover two fishing years, approved sectors may continue operations and the approved exemptions in fishing year 2022. Copies of the operations plans and contracts, the environmental assessment (EA), and other supporting documents are available at: *https://www.fisheries.noaa.gov/species/northeast-multispecies* and from NMFS (see **ADDRESSES**). This action makes 2022 allocations to sectors based on the specifications set by the New England Fishery Management Council in Framework Adjustments 59 and 61 to the FMP. This action also announces default catch limits for two management units which do not have specifications in place for fishing year 2022. This action also approves several changes to already approved sector operations plans and denies four requests for novel sector exemptions.

Catch Limits for Fishing Year 2022

Previously Established and Default Catch Limits

Framework 59 (85 FR 45794; July 30, 2020) and Framework 61 (86 FR 40353; July 28, 2021) to the FMP previously set fishing year 2022 catch limits for all groundfish stocks. However, neither Framework 59 or 61 specified 2022 catch limits for Eastern GB cod or Eastern GB haddock. Eastern GB cod and haddock are management units of the GB cod and GB haddock stocks that NMFS manages jointly with Canada, and the shared quota is set annually.

This year, in Framework 63 to the FMP, the Council adopted new or adjusted fishing year 2022 catch limits for: GOM cod; GB cod; GB haddock; GB yellowtail flounder; and white hake. Framework 63 would set 2022 catch limits for the two U.S./Canada management units (Eastern GB cod and Eastern GB haddock). We have published a proposed rule for Framework 63 (87 FR 23482; April 20, 2022), however, we will not be able to implement Framework 63 measures, if approved, before May 1, 2022.

As a result, the sector and common pool allocations in this rule are based on the 2022 catch limits set in Framework 59 and 61 that will be effective on May 1, 2022 (Table 1), default catch limits for Eastern GB cod and Eastern GB haddock (Table 2), and preliminary 2022 fishing year rosters. If we approve Framework 63, the 2022 catch limits announced in this rule for these stocks will change when Framework 63 measures become effective.

This rule also announces default catch limits for Eastern GB cod, and Eastern GB haddock (Table 2). These stocks do not already have a catch limit in place for fishing year 2022. The groundfish regulations implement default catch limits for any stock for which final specifications are not in place by the beginning of the fishing year on May 1. The FMP's default specifications provision sets catch at 35 percent of the previous year's (2021) catch limits, except in instances where the default catch limit would exceed the Council's recommendation. The default catch limits are effective from May 1 through July 31, or until the final rule for Framework 63 is implemented if prior to July 31. To comply with these regulations and minimize impacts on the fishery we are announcing these default specifications. If Framework 63 is not in place on or before July 31, all fishing for these management units will be prohibited beginning August 1.

Catch Limit Changes for GB Cod

The previously set fishing year 2022 U.S. Acceptable Biological Catch (ABC) for GB cod is 1,308 mt, which will be in place on May 1. The Council recommended a fishing year 2022 US ABC of 343 mt for GB cod in Framework 63. This is a 74-percent decrease, which will go into effect after May 1 if Framework 63 is approved. The Council's recommendations will be further discussed in the Framework 63 proposed rule. We are highlighting this change in this rule because the GB cod sector allocations approved in this rule are based on the previously set 2022 catch limits. If the Council's recommended catch limits become final with no changes, the U.S. ABC and resulting sector allocations for this stock will be reduced when Framework 63 is implemented, and allocations will be changed in accordance with that reduction.

TABLE 1—NORTHEAST MULTISPECIES CATCH LIMITS FOR 2022

Stock	Total U.S. ABC (mt)	Commercial groundfish sub-ACL (mt)
GB Cod *	1,308	1,093.1
GOM Cod *	552	270.4
GB Haddock *	81,242	72,250.4
GOM Haddock	11,526	7,055.9
GB Yellowtail Flounder *	80	63.6
SNE/MA Yellowtail Flounder	22	15.6
CC/GOM Yellowtail Flounder	823	691.9
American Plaice	2,825	2,630.1
Witch Flounder	1,483	1,317.3
GB Winter Flounder	608	563.2
GOM Winter Flounder	497	280.9
SNE/MA Winter Flounder	456	288.1
Redfish	10,062	9,558.9
White Hake *	2,147	2,019.3
Pollock	16,812	14,134.7
N. Windowpane Flounder	160	107.9
S. Windowpane Flounder	384	42.9

TABLE 1—NORTHEAST MULTISPECIES CATCH LIMITS FOR 2022—Continued

Stock	Total U.S. ABC (mt)	Commercial groundfish sub-ACL (mt)
Ocean Pout	87	49.8
Atlantic Halibut	101	73.4
Atlantic Wolffish	92	85.6

* These catch limits are based on previously set fishing year 2022 specifications and will be replaced when the final rule for Framework 63 becomes effective, if approved.

TABLE 2—DEFAULT CATCH LIMITS FOR 2022

Stock	Groundfish sub-ACL (mt)
Eastern GB Cod *	66.7
Eastern GB Haddock *	2,270.1

* These catch limits are based on default specifications and will be replaced when the final rule for Framework 63 becomes effective, if approved.

Operations Plan Submissions and Changes

Annually, we solicit operations plan submissions for consideration for approval; however, sectors already approved to operate in fishing years 2021 and 2022 were not required to submit operations plans for 2022. We did not receive any new operations plans for approval for fishing year 2022. As a result, there will be no additional sectors authorized to operate in fishing year 2022 beyond those previously approved.

Although no new operations plans were submitted we did receive several requests to modify existing sector operations plans that we are approving. Sectors may request changes to operations plans as needed to implement administrative changes to their operations. Several sectors requested changes related to electronic monitoring (EM), including adding audit model EM plans to their existing operations plans, updates to methods used to estimate discards, and revised language authorizing the sharing of confidential data to support EM program operations. Additionally, several sectors requested modifications that would add NMFS-approved maximized retention electronic monitoring (MREM) program language to their sector operations plans. The addition of MREM language would allow for a more seamless transition to MREM for sectors vessels should it be approved for operation for all sectors in fishing year 2022. Several sectors also requested operations plan modifications to add a description of a gear conflict reduction agreement that sector members have agreed to in order to limit gear conflicts between sector groundfish and lobster vessels. We are approving these changes to existing sector operations plans.

Sector Allocations for Fishing Year 2022

This rule makes 2022 ACE allocations to all sectors based on their preliminary 2022 sector rosters. These allocations are based on the May 1, 2022, ACL for each stock. Because sectors are operating under 2-year operations plans for fishing years 2021 and 2022, these allocations would allow vessels enrolled in sectors to operate under their existing operations plan, as approved.

For fishing year 2022, we set a deadline for sectors to submit preliminary sector rosters by February 28, 2022, in order to determine rosters for final rulemaking and allocations. However, rosters published in this rule may still not reflect the final ACE allocation for fishing 2022 because all permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2022, to withdraw from a sector and fish in the common pool for fishing year 2022. As a result, the total permits participating in sectors for fishing year 2022 could change from the preliminary rosters included in this rule, but such changes are expected to be minimal based on past fishing years.

We calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock. Table 3 shows the total PSC for each sector by stock for fishing year 2022. Tables 4 and 5 show the estimated allocations that each sector will receive, in pounds and metric tons, respectively, for fishing year 2022, based on their preliminary fishing year 2022 rosters. We provide the final allocations, to the nearest pound, to each sector based on their final May 1 rosters. We use these final allocations, along with later adjustments including ACE transfers, reductions for overages, or increases for carryover, to monitor sector catch. The common pool sub-ACLs are also included in each of these tables. The common pool sub-ACL is managed separately from sectors and does not contribute to available ACE for leasing or harvest by sector vessels.

We do not assign separate PSCs for the Eastern GB cod or Eastern GB haddock; instead, we assign each permit a PSC for the GB cod stock and GB haddock stock. Each sector's GB cod and GB haddock allocations are then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and GB haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod total allowable catch (TAC) as its Eastern GB cod. The Eastern GB haddock allocations are determined in the same way. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area. A sector may also ''convert,'' or transfer, its Eastern GB cod or haddock allocation into Western GB allocation and fish that converted ACE outside the Eastern GB area.

We expect to finalize 2021 catch information for sectors in summer 2022. We will allow sectors to transfer fishing year 2021 ACE for two weeks upon our completion of year-end catch accounting to reduce or eliminate any fishing year 2021 overages. If necessary, we will reduce any sector's fishing year 2022 allocation to account for a remaining overage in fishing year 2021. Each year we notify the Council and sector managers of this deadline and announce this decision on our website at: *https://www.fisheries.noaa.gov/species/northeast-multispecies.*

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Table 3 -- Cumulative PSC (Percentage) Each Sector Would Receive by Stock for Fishing Year 2022*

Sector Name	MRI Count	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Fixed Gear Sector	64	11.57437434	0.70089617	1.55519582	0.18102677	0.01097362	0.19081548	1.71017673	0.50290396	1.09923355	0.02017438	8.03466759	0.99095592	0.53639676	1.04444409	3.10432913
Maine Coast Community Sector	109	2.16020889	16.02246610	3.05041844	12.27952652	1.65881234	2.43176803	6.42304059	15.55482796	12.32711923	0.75080575	7.96502545	1.83038959	8.91076473	13.77820055	12.63306526
Maine Permit Bank	11	0.13420443	1.15723293	0.04447830	1.12476158	0.01383913	0.03193513	0.31910182	1.16557943	0.72761271	0.00021871	0.42712661	0.01808815	0.82192224	1.65450461	1.69560998
Mooncusser Sector	48	12.01246812	6.23497319	3.84352772	3.68933703	1.22858724	0.85891785	3.02327800	0.85900641	1.81413333	0.95225711	2.85065686	2.47136026	4.74544471	10.66355140	10.53173805
NEFS 2	114	6.42274393	24.14546365	10.59892380	20.65374023	1.63512775	1.23149902	22.86714581	9.63101617	12.97671001	3.21922867	21.78882166	4.09676099	14.91185424	8.16413606	13.77816797
NEFS 4	58	7.43563310	11.16605718	5.83717898	8.87641414	2.17153621	2.27336558	6.41190111	9.52747738	8.86565245	0.69751694	7.43888383	1.00213039	6.67306380	8.27041162	6.86770790
NEFS 5	22	0.47764689	0.32230808	0.81002718	0.11416074	1.26973702	18.61360666	0.95098662	0.44282304	0.62677707	0.43005854	0.84495369	11.43390161	0.01835670	0.09330528	0.04511771
NEFS 6	23	3.12782423	2.92650355	3.59851426	4.39743319	3.31836153	5.13539140	4.19995133	4.55719164	6.01292714	1.73420349	4.75759934	1.92732147	6.81096482	4.52319801	3.66608439
NEFS 7	8	0.46511153	0.02295198	0.39870508	0.01682869	1.30597646	1.04216498	0.05141221	0.25101541	0.25426560	0.30404575	0.05435503	0.19115862	0.15784343	0.07885382	0.18131273
NEFS 8	52	9.79065018	2.36556099	9.22601400	5.08858566	22.23228769	7.58620726	6.91185249	7.62246791	6.36740827	29.95464952	3.95680202	10.32357289	5.31544955	4.49201117	4.00546095
NEFS 10	30	0.53019689	2.61458523	0.17733240	1.32984406	0.00115364	0.56810314	4.45627686	1.21947025	2.12396902	0.01090896	9.43507929	0.61343625	0.33681854	0.65808782	0.77242016
NEFS 11	43	0.39806922	11.57156727	0.03481596	2.78899264	0.00149043	0.01152054	2.44672751	1.59062293	1.60498045	0.00308144	2.05187740	0.02145695	1.87817602	4.30591802	8.77340870
NEFS 12	21	0.63215855	3.12919672	0.09407804	1.08979160	0.00043163	0.03437315	8.61359448	0.79827496	0.62437747	0.00044212	10.30223232	0.26160710	0.22794467	0.29619013	0.77836927
NEFS 13	68	12.54533450	0.66418644	20.85739377	0.93004380	34.73148908	24.06494237	6.86634474	8.41818993	9.46802252	19.04059017	2.01217739	17.84833065	4.43249980	2.26662578	2.69597369
New Hampshire Permit Bank	4	0.00082581	1.14746151	0.00003417	0.03235447	0.00002035	0.00001795	0.02188704	0.02851462	0.00616587	0.00000326	0.06077592	0.00003670	0.01940283	0.08137015	0.11138837
Sustainable Harvest Sector 1	43	7.71730833	4.89170305	10.15259191	13.79266567	6.11951078	2.26271938	4.97333175	14.07058879	12.34448379	11.83315294	3.39219724	5.83076564	14.26310387	16.84437202	10.39029971
Sustainable Harvest Sector 2	28	5.06336818	1.50908222	2.14763455	1.43830630	5.11110904	4.57576219	5.67509896	2.50453932	2.24113631	8.73243092	4.19271236	8.46085022	1.11393369	1.66621635	1.45140966
Sustainable Harvest Sector 3	60	17.02657875	6.67798255	25.85930157	20.27554749	14.59688815	8.43378398	10.26983177	18.78194297	18.03593562	19.90979287	3.10984537	20.84422077	27.89687122	20.16440833	17.76149465
Common Pool	481	2.48529412	2.72982119	1.71383404	1.90063943	4.59266792	20.65310591	3.80806017	2.47354692	2.47908959	2.40643847	7.32421064	11.83365585	0.92918838	0.95419481	0.75664173

* This table is based on preliminary fishing year 2022 sector rosters.

Table 4 -- Estimated ACE (in 1,000 lb), by Stock, for Each Sector for Fishing Year 2022*#

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	17	262	4	78	2,502	28	0	0	26	29	32	0	50	6	114	46	967
MCCS	3	49	96	153	4,908	1,910	2	1	98	902	358	9	49	12	1,901	613	3,937
MOON	18	272	37	192	6,184	574	2	0	46	50	53	12	18	16	1,012	475	3,282
MPB	0	3	7	2	72	175	0	0	5	68	21	0	3	0	175	74	528
NEFS 2	9	145	144	530	17,053	3,213	2	0	349	558	377	40	135	26	3,181	363	4,294
NEFS 4	11	168	67	292	9,392	1,381	3	1	98	552	257	9	46	6	1,424	368	2,140
NEFS 5	1	11	2	41	1,303	18	2	6	15	26	18	5	5	73	4	4	14
NEFS 6	5	71	17	180	5,790	684	5	2	64	264	175	22	29	12	1,453	201	1,142
NEFS 7	1	11	0	20	641	3	2	0	1	15	7	4	0	1	34	4	57
NEFS 8	14	222	14	462	14,844	792	31	3	105	442	185	372	25	66	1,134	200	1,248
NEFS 10	1	12	16	9	285	207	0	0	68	71	62	0	58	4	72	29	241
NEFS 11	1	9	69	2	56	434	0	0	37	92	47	0	13	0	401	192	2,734
NEFS 12	1	14	19	5	151	170	0	0	131	46	18	0	64	2	49	13	243
NEFS 13	18	284	4	1,044	33,558	145	49	8	105	488	275	236	12	113	946	101	840
NHPB	0	0	7	0	0	5	0	0	0	2	0	0	0	0	4	4	35
SHS 1	11	175	29	508	16,335	2,146	9	1	76	816	358	147	21	37	3,043	750	3,238
SHS 2	7	115	9	107	3,455	224	7	2	87	145	65	108	26	54	238	74	452
SHS 3	25	385	40	1,294	41,606	3,154	20	3	157	1,089	524	247	19	132	5,951	898	5,535
Common Pool	4	56	16	86	2,757	296	6	7	58	143	72	30	45	75	198	42	236
Sector Total	143	2,207	580	4,919	158,137	15,260	134	27	1,467	5,655	2,832	1,212	574	560	21,135	4,409	30,926

*This table is based on preliminary fishing year 2022 sector rosters and 2022 catch limits described in this rule.

#Numbers are rounded to the nearest thousand pounds. In some cases, this table shows an allocation of 0, but that sector may be allocated a small amount of that stock in tens or hundreds pounds.

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Table 5 -- Estimated ACE (in metric tons), by Stock, for Each Sector for Fishing Year 2022*#

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	8	119	2	35	1,135	13	0	0	12	13	14	0	23	3	52	21	439
MCCS	1	22	43	69	2,226	866	1	0	44	409	162	4	22	5	862	278	1,786
MOON	8	123	17	87	2,805	260	1	0	21	23	24	5	8	7	459	215	1,489
MPB	0	1	3	1	32	79	0	0	2	31	10	0	1	0	80	33	240
NEFS 2	4	66	65	241	7,735	1,457	1	0	158	253	171	18	61	12	1,443	165	1,948
NEFS 4	5	76	30	133	4,260	626	1	0	44	251	117	4	21	3	646	167	971
NEFS 5	0	5	1	18	591	8	1	3	7	12	8	2	2	33	2	2	6
NEFS 6	2	32	8	82	2,626	310	2	1	29	120	79	10	13	6	659	91	518
NEFS 7	0	5	0	9	291	1	1	0	0	7	3	2	0	1	15	2	26
NEFS 8	7	100	6	209	6,733	359	14	1	48	200	84	169	11	30	514	91	566
NEFS 10	0	5	7	4	129	94	0	0	31	32	28	0	27	2	33	13	109
NEFS 11	0	4	31	1	25	197	0	0	17	42	21	0	6	0	182	87	1,240
NEFS 12	0	6	8	2	69	77	0	0	60	21	8	0	29	1	22	6	110
NEFS 13	8	129	2	473	15,222	66	22	4	48	221	125	107	6	51	429	46	381
NHPB	0	0	3	0	0	2	0	0	0	1	0	0	0	0	2	2	16
SHS 1	5	79	13	230	7,409	973	4	0	34	370	163	67	10	17	1,380	340	1,469
SHS 2	3	52	4	49	1,567	101	3	1	39	66	30	49	12	24	108	34	205
SHS 3	11	175	18	587	18,872	1,431	9	1	71	494	238	112	9	60	2,699	407	2,511
Common Pool	2	26	7	39	1,251	134	3	3	26	65	33	14	21	34	90	19	107
Sector Total	65	1,001	263	2,231	71,730	6,922	61	12	666	2,565	1,285	550	260	254	9,587	2,000	14,028

*This table is based on preliminary fishing year 2022 sector rosters and 2022 catch limits described in this rule.

#Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

Exemptions Previously Granted for Fishing Years 2021 and 2022

Previously Granted Exemptions for Fishing Years 2021 and 2022 (1–18)

We have already granted exemptions from the following requirements for fishing years 2021 and 2022, all of which have been requested and granted in previous years: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets for Day gillnet vessels outside the GOM; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a Northeast multispecies/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) prohibition on discarding; (9) gear requirements in the Eastern U.S./Canada Management Area; (10) prohibition on a vessel hauling another vessel's hook gear; (11) the requirement to declare an intent to fish in the Eastern U.S./Canada Special Access Program (SAP) and the Closed Area (CA) II Yellowtail Flounder/Haddock SAP prior to leaving the dock; (12) seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (13) seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; (14) sampling exemption; (15) prohibition on combining small-mesh exempted fishery and sector trips in southern New England (SNE); (16) extra-large mesh requirement to target dogfish on trips excluded from at-sea monitoring (ASM) in SNE and Inshore GB; (17) requirement that Handgear A vessels carry a Vessel Monitoring System (VMS) unit when fishing in a single broad stock area; and (18) limits on the number of gillnets for Day gillnet vessels in the GOM. We also approved an exemption from the 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets to allow a 5.5-inch (14.0-cm) codend on directed redfish trips, however, that exemption was eliminated in 2021 when we approved a new universal sector exemption for redfish as part of Framework Adjustment 61 (86 FR 40353; July 28, 2021). A detailed description of the previously granted exemptions and supporting rationale can be found in the applicable final rules identified in Table 6 below.

TABLE 6—EXEMPTIONS PREVIOUSLY GRANTED FOR FISHING YEARS 2020 AND 2021

Exemptions	Rulemaking	Date of publication	Citation
1–2, 4–9	Fishing Year 2011 Sector Operations Final Rule	April 25, 2011	76 FR 23076
10–11	Fishing Year 2012 Sector Operations Final Rule	May 2, 2012	77 FR 26129
12–14	Fishing Year 2013 Sector Operations Interim Final Rule	May 2, 2013	78 FR 25591
3, 15	Fishing Years 2015–2016 Sector Operations Final Rule	May 1, 2015	80 FR 25143
16	Framework 55 Final Rule	May 2, 2016	81 FR 26412
17	Amendment 18 Final Rule	April 21, 2017	82 FR 18706
18	Fishing Year 2018 Sector Operations Final Rule	May 1, 2018	83 FR 18965

Northeast Multispecies **Federal Register** documents can be found at *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/*.

Exemption Requests Not Approved in Fishing Year 2022

For fishing year 2022, sectors requested a total of four new exemptions, two related to extra-large mesh gillnets and EM, and two related to MREM and existing universal exemptions. We are denying all new sector exemption requests for fishing year 2022. A detailed summary of the exemption requests and rationale for our denial of their approval is included in the preamble for the proposed rule for this action (87 FR 12416; March 4, 2022), and is not repeated here.

Comments and Responses

We received no comments on the proposed rule. As a result, this rule contains no comment summary or response to comments.

Changes From the Proposed Rule

The allocations published in the proposed rule were based on final fishing year 2021 sector rosters because we had not yet received preliminary rosters for the 2022 fishing year. The deadline for preliminary sector roster submissions for fishing year 2022 was February 28, 2022. The ACE allocated to each sector has been updated in the final rule to reflect preliminary sector enrollment for the 2022 fishing year.

The allocations outlined in the proposed rule were based on fishing year 2022 catch limits expected under Framework 63. Because Framework 63 will not be in place before May 1, 2022, this rule announces default specifications for two stocks that did not previously have fishing year 2022 catch limits, and bases 2022 allocations to sectors on previously established fishing year 2022 catch limits and those defaults. The ACE allocated to each sector has been updated in the final rule to reflect the previously established 2022 catch limits and default specifications.

There are no other changes from the proposed measures.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this final rule. This action allocates ACE for fishing year 2022 to 16 groundfish sectors in the Northeast multispecies fishery. This rule could not be completed earlier because required deadlines for sectors to submit rosters, sector exemption requests, and other necessary information to NMFS do not allow for the development of a rule earlier in the year. We must have preliminary sector rosters for the upcoming fishing year in order to allocate preliminary ACE to sectors. Sectors are prohibited from fishing without ACE allocations, as such, timely implementation is necessary to ensure that sectors may fish at the start of the 2022 fishing year on May 1, 2022. If sectors were prohibited from fishing while waiting for the rule to take effect, there would be significant disruption to the fishery along with negative economic impacts and a reduced ability to achieve optimum yield, thus undermining the intent of the rule. Industry members and other stakeholders are aware of and familiar with this annual process and had an opportunity to comment on these procedures during the development and approval of Amendment 16. Stakeholders also expect this process to ensure these actions occur in a timely manner.

This action is exempt from the procedures of Executive Order (E.O.) 12866.

This final rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: April 21, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–08901 Filed 4–26–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210505–0101; RTID 0648–XB912]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Actions #1 and #2

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

ACTION: Inseason modification of 2022 management measures.

SUMMARY: NMFS announces two inseason actions in the 2022 ocean salmon fisheries. These inseason actions modify the commercial and recreational ocean salmon fisheries in the area from Cape Falcon, OR, to Point Arena, CA.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–676–2148, Email: *shannon.penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The 2021 annual management measures for ocean salmon fisheries (86 FR 26425, May 14, 2021), announced management measures for the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2021, until the effective date of the 2022 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: North of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affect only the SOF recreational salmon fishery, as set out under the heading Inseason Action below.

Consultation on these inseason actions occurred on March 11, 2022, and March 14, 2022. Representatives from NMFS, Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Wildlife (CDFW), and Council staff participated in the consultations. The Council may consider further inseason action at its April 6–13, 2022, meeting.

These inseason actions were announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

At its March 8–14, 2022, meeting, the Council's Salmon Technical Team (STT) presented updated stock abundance forecasts for salmon stocks managed under the Pacific Coast Salmon Fishery Management Plan (FMP). Based on the STT's report, SOF ocean salmon fisheries will be constrained in 2022 by the abundance forecast for Klamath River fall-run Chinook salmon (KRFC), which was determined to be overfished under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 2018. The forecast of potential spawner abundance is derived from the ocean abundance forecasts, ocean natural mortality rates, age-specific maturation rates, stray rates, and the proportion of escapement expected to spawn in natural areas.

Inseason Action #1

Description of the action: Inseason action #1 modifies the SOF commercial salmon fishery from the Heceta Bank Line (latitude 43°58′00″ N), OR, to Humbug Mountain, OR, previously scheduled to open on March 15. This fishery is closed through April 30, 2022. This area is scheduled to re-open to commercial troll fishing on May 1, 2022.

Effective date: Inseason action #1 took effect on March 15, 2021, and remains in effect until superseded.

Reason and authorization for the action: NMFS is taking inseason action in the commercial salmon fisheries to manage and conserve SOF ocean salmon fishery impacts on KRFC and to provide additional fishing opportunity in adjacent areas. In Oregon, this inseason action takes place in the area from Cape Falcon to Humbug Mountain at the Heceta Bank Line, which is the port area analysis boundary used by the STT. This allows for finer-scale management of fisheries in the Northern Oregon (NO) (Cape Falcon to Heceta Bank Line) and Central Oregon (CO) (Heceta Bank Line to Humbug Mountain) port areas. The NO and CO port area impacts are analyzed separately by the STT and the environmental assessment prepared under the National Environmental Policy Act (NEPA) Final Environmental Assessment for 2021 Ocean Salmon Fisheries Management Measures (*https://www.fisheries.noaa.gov/action/fisheries-west-coast-states-west-coast-salmon-fisheries-2021-management-measures*) and have different impacts on salmon stocks; *e.g.,* the NO port area has lower impacts on KRFC than the CO port area.

The West Coast Region Regional Administer (RA) considered the landings of Chinook salmon to date, fishery catch and effort to date, and the timing of the action relative to the length of the season, and determined that this inseason action was necessary to meet management goals set preseason. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #1 occurred on March 11, 2022. Representatives from NMFS, CDFW, ODFW, and the Council participated in this consultation.

Inseason Action #2

Description of the action: Inseason action #2 modifies the ocean salmon recreational fishery from latitude 40°10′ N to Point Arena, CA, previously scheduled to open on April 2, 2022. This fishery is closed through April 30, 2022.This area is schedule to re-open for recreational fishing on May 1, 2022.

Effective date: Inseason #2 took effect on March 14, 2022, and remains in effect until superseded.

Reason and authorization for the action: NMFS is taking inseason action in the recreational salmon fisheries to manage and conserve SOF ocean salmon fishery impacts on KRFC and to provide additional fishing opportunity in adjacent areas. This modification is needed to attain escapement goals and conservation objectives given 2022 preseason forecasts previously mentioned.

The RA considered Chinook salmon landings and fishery catch and effort to date in the SOF area from latitude 40°10′ N to Point Arena, CA, and determined that this inseason action was necessary to meet management objectives set preseason. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #2 occurred on March 14, 2022. Representatives from NMFS, CDFW, ODFW, and the Council participated in this consultation.

All other restrictions and regulations remain in effect as announced for the 2021 ocean salmon fisheries (86 FR 26425, May 14, 2021), as modified by previous inseason action (86 FR 34161, June 29, 2021; 86 FR 37249, July 15, 2021; 86 FR 40182, July 28, 2021; 86 FR 43967, August 11, 2021; 86 FR 48343, August 30, 2021; 86 FR 54407, October 1, 2021; 86 FR 64082, November 17, 2021).

The RA determined that these inseason actions were warranted based on the best available information on Pacific salmon abundance forecasts, landings to date, anticipated fishery effort and projected catch, and the other factors and considerations set forth in 50 CFR 660.409. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles (5.6–370.4 kilometers) off the coasts of the states of Washington, Oregon, and California) consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory action was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action is authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available and that fishery participants can take advantage of the additional fishing opportunity these changes provide. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (86 FR 26425, May 14, 2021), the Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would restrict fishing at levels inconsistent with the goals of the FMP and the current management measures.

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

Dated: April 21, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–08887 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 22016–0049; RTID 0648–XB773]

Fisheries of the Exclusive Economic Zone off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2022 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1,200 hours, Alaska local time (A.l.t.), April 22, 2022, through 1,200 hours, A.l.t., May 31, 2022.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2022 TAC of pollock in Statistical Area 630 of the GOA is 8,080 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2022 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,580 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

While this closure is effective the maximum retainable amounts at

§ 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 in the GOA. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of April 21, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: April 22, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–08988 Filed 4–22–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 81
Wednesday, April 27, 2022

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 302, 317, 319, 330, 731, 754, and 920

RIN 3206–AO00

Fair Chance To Compete for Jobs

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend rules pertaining to when, during the hiring process, a hiring agency can request information typically collected during a background investigation from an applicant for Federal employment. In addition, OPM is proposing new regulations to establish the requirement for the timing of collection of criminal history information and for governing complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency in reference to the timing of collection of criminal history information. Finally, the regulations will outline adverse action procedures that will apply when it is alleged that an agency employee has violated the requirements and appeal procedures that will be available from a determination by OPM adverse to the Federal employee. OPM is proposing these changes to implement the Fair Chance to Compete for Jobs Act of 2019 (Fair Chance Act). With some exceptions, the Fair Chance Act prohibits Federal agencies and Federal contractors acting on their behalf from requesting that an applicant for Federal employment disclose criminal history record information before the agency makes a conditional offer of employment to that applicant. The Fair Chance Act identifies some positions to which the prohibition shall not apply and requires OPM to issue regulations identifying additional positions to which the prohibition shall not apply. It also requires OPM to establish complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance with the Fair Chance Act by an employee of an agency, establishes minimum penalties and procedures to be followed before a penalty may be assessed, and requires OPM to establish appeal procedures available in the event of a determination adverse to the Federal employee.

DATES: Comments must be received on or before June 27, 2022.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this proposed rulemaking.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. All comments received will be posted without change, including any personal information provided. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked ''late,'' and OPM is not required to consider them in formulating a final decision. Before acting on this proposal, OPM will consider and respond to all comments within the scope of the regulations that we receive on or before the closing date for comments. Changes to this proposal may be made in light of the comments we receive.

FOR FURTHER INFORMATION CONTACT: For questions with respect to 5 CFR part 754, contact Timothy Curry by email at *employeeaccountability@opm.gov* or by telephone at (202) 606–2930. For questions with respect to 5 CFR part 731, contact Lisa Loss by email at *SuitEA@opm.gov* or by telephone at (202) 606–7017. For questions on all other parts, contact Mike Gilmore by telephone on (202) 606–2429, by fax at (202) 606–4430, by TTY at (202) 418–3134, or by email at *Michael.Gilmore@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

Provisions of the Fair Chance Act were incorporated into the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), which was signed into law by the President on December 20, 2019. The Fair Chance Act places limitations on agency requests for criminal history record information prior to conditional offer of employment. It also requires a complaint process by which applicants for appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance with the requirements of the Fair Chance Act. Furthermore, the Fair Chance Act establishes requirements and procedures regarding penalties for violations.

The Existing 'Ban the Box' Rule

On December 1, 2016, OPM issued a final rule at 81 FR 86555, that revised its regulations pertaining to when, during the hiring process, a hiring agency can request information typically collected during a background investigation from an applicant for Federal employment. The changes were to promote compliance with Merit System Principles as well as the goal of the Federal Interagency Reentry Council and the Presidential Memorandum of January 31, 2014, ''Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own,'' otherwise known as ''Ban the Box'' rules. As noted by OPM when it first promulgated the rule, the intent of the rule was to conform regulatory requirements to what OPM believed was already the predominant agency practice as many agencies already employed the practice of waiting until the later stages of the hiring process to collect criminal history information. OPM does not currently have any data to show whether the revised regulations affected agency hiring processes or were instead, as OPM anticipated, a codification of existing practices.

Currently OPM regulations, 5 CFR parts 330 and 731, prevent agencies, unless an exception is granted by OPM, from making inquiries into an

applicant's criminal or credit history of the sort asked on the Optional Form (OF) 306 titled, Declaration for Federal Employment, 'Background Information' section or other forms used to conduct suitability investigations for Federal employment unless the hiring agency has made a conditional offer of employment to the applicant. The Fair Chance Act contains the same prohibition with respect to criminal history and does not address credit history. The Act has elaborated on the methods of inquiry not permitted and also provides for certain exceptions to the rule. Furthermore, the Fair Chance Act requires OPM, when making additional exceptions, to give due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

Explanation of OPM's Proposed Rule Under the Fair Chance Act

1. Restrictions on Preemployment Criminal Inquiries

OPM is proposing these provisions under section 1122(b)(1) of the Fair Chance Act, under which the Director of OPM ''shall issue such regulations as are necessary to carry out chapter 92 of title 5, United States Code (as added by this subtitle).'' OPM is also proposing these provisions to implement the requirements of 5 U.S.C. 9202(c)(2), as added by the Fair Chance Act, which requires the OPM Director to issue regulations identifying positions with respect to which the prohibition shall not apply giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions, beyond those already identified in the statute.

Unless otherwise required by law, an employee of an agency may not request, in oral or written form (including through the Declaration for Federal Employment (OPM Optional Form 306) or any similar successor form, the USAJOBS internet website, or any other electronic means) that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant. Under the provisions of the Fair Chance Act, this prohibition does not apply under the following circumstances:

- Determinations of eligibility described under clause (i), (ii) or (iii) of 5 U.S.C. 9101(b)(1)(A) *i.e.,* for (i) access to classified information; (ii) assignment to or retention in sensitive national security duties or positions; or (iii) acceptance or retention in the armed forces; or
- recruitment of a Federal law enforcement officer (defined in 18 U.S.C. 115(c)).

The Fair Chance Act applies to all appointments in the Executive branch; *i.e.,* to appointments in the competitive service, the excepted service, and the Senior Executive Service (SES). Therefore, OPM is proposing to: (1) Revise the provisions in 5 CFR part 330, subpart M, which currently implements the Ban the Box rules for the competitive service, by removing the reference to criminal history so that the Fair Chance Act can be implemented for all types of appointments in a newly created part 920; (2) preserve the existing Ban the Box rules restricting pre-employment credit inquiries for appointments in the competitive service; and (3) amend part 731 to incorporate the exceptions to this provision as established by law and to refer agencies to the newly created part 920 for guidance on other types of positions for which the prohibition under the Act for collecting criminal history information will not apply. For the convenience of the reader, we are placing these provisions in the newly created part 920 rather than repeat the provisions in parts 302, Employment in the Excepted Service; 317, Employment in the Senior Executive Service; 319, Employment in Senior-Level and Scientific and Professional Positions; 330, and 731. OPM is also proposing to amend parts 302, 317, and 319 to include a reference as a reminder that these types of positions are subject to the provisions of the Fair Chance Act found in chapter 92 of title 5, U.S.C and 5 CFR part 920.

The regulations explain that agencies may request exceptions from OPM on a case-by-case basis. OPM will consider exceptions based on legitimate, job/position-related reasons, giving due consideration to requests for positions with specific job-related duties. Exceptions previously granted to agencies by OPM pursuant to 5 CFR part 330 subpart M (*i.e.,* the Ban the Box provisions) continue to be valid.

The proposed rule will continue to permit agencies to make an objection, pass-over request, or suitability determination on the basis of criminal or credit history record information only after the applicant's qualifications for the position being filled have been fairly assessed and the hiring agency has made a conditional offer of employment to the applicant.

2. Complaint, Adverse Action, and Appeal Procedures

Under section 9203, the Act requires the Director of OPM to establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee with 5 U.S.C. 9202. Under the provisions of section 9204, the Act further establishes minimum requirements regarding penalties for violations of the Act and provides that such penalties may be entered only after notice to the Federal employee accused and an opportunity for a hearing on the record (thereby, indirectly, establishing minimum procedural requirements before an adverse determination can be made). Finally, the Act requires the Director of OPM, by rule, to establish procedures providing for an appeal from any adverse action taken under section 9204 by no later than 30 days after the date of the action. The Act further notes in section 9205 that an adverse action taken under the Act shall not be subject to the procedures under chapter 75 of title 5 or, except as provided for the appeal process established under the Act, be subject to appeal or judicial review. Therefore, OPM is proposing new regulations governing complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202 of title 5, and adverse action and appeal procedures for alleged violations of section 9202 of title 5.

3. Section-by Section Analysis

Part 302

OPM is proposing to add § 302.107 to subpart A to incorporate the requirements of the Fair Chance Act. Proposed § 302.107 addresses when inquiries into an applicant's criminal history may be made and circumstances under which exceptions may be requested and considered by OPM.

Part 317

OPM is proposing to add § 317.202 to subpart B to incorporate the requirements of the Fair Chance Act. Proposed § 317.202 addresses when inquiries into an applicant's criminal and credit history may be made and circumstances under which exceptions may be requested and considered by OPM.

Part 319

OPM is proposing to add § 319.106 to subpart A to incorporate the

requirements of the Fair Chance Act. Proposed § 319.106 addresses when inquiries into an applicant's criminal and credit history may be made and circumstances under which exceptions may be requested and considered by OPM.

Part 330

The Fair Chance Act does not specifically address the timing of suitability inquiries into a job applicant's credit history. Nevertheless, the Presidential Memorandum of January 31, 2014, addresses this topic, and is still in effect. As a result, OPM's revision of § 330.1300 retains the prohibition on making inquiries into a job applicant's credit history and removes any reference to criminal history as that prohibition will be addressed in part 920.

Part 731

The Fair Chance Act does not specifically address the timing of suitability inquiries into a job applicant's credit history. Nevertheless, the Presidential Memorandum of January 31, 2014, addresses this topic, and is still in effect. As a result, OPM's revision of § 731.103(d)(1) retains the prohibition on making inquiries into a job applicant's credit history and updates the reference to the prohibition relating to criminal history as reflected in the new part 920, which incorporates the requirements of the Fair Chance Act and addresses the circumstances under which exceptions may be requested and considered by OPM.

Part 754

Subpart A—Complaint Procedures

The Fair Chance Act directs OPM to establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, regarding compliance with 5 U.S.C. 9202. Based on these unique requirements, OPM is proposing to add a new 5 CFR part 754 to implement the complaint procedure requirements of the Fair Chance Act. This new proposed rule falls under subpart A of 5 CFR part 754 as ''Complaint Procedures.'' The Fair Chance Act does not provide job applicants the ability to use any existing statutory or regulatory complaint procedures that may be available for other employment related complaints, such as the U.S. Office of Special Counsel, which investigates prohibited personnel practices. Thus, there currently is no regulatory framework for the complaint process for job applicants to allege violations of the nature described in the Fair Chance Act. The Fair Chance Act is also silent on who investigates complaints.

Under 5 U.S.C. 9203(2), the Director of OPM ''shall . . . establish and publish procedures under which an applicant for an appointment to a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with section 9202,'' and section 1122(b)(1) of the Fair Chance Act, reprinted at 5 U.S.C. 9201 note, requires the Director to ''issue such regulations as are necessary to carry out'' this and the other requirements of chapter 92. More generally under 5 U.S.C. 1103(a)(5)(A), the Director is authorized to execute, administer, and enforce this and any other provision of civil service law. Under these authorities we are prescribing a complaint procedure under which an applicant will initially file a complaint, or any other information, and if applicable, supporting material with the employing agency, which will transmit the material to OPM.

To be acceptable for processing by OPM, the complaint, or any other information, and supporting material must be accompanied by a report of investigation. However, the only investigative authority in the Fair Chance Act is in section 9204(a), under which the Director of OPM must determine whether a violation has occurred ''after notice and an opportunity for a hearing on the record.'' This language encompasses adverse action procedures, as described in greater detail below, but it also encompasses the predicate fact-finding needed for OPM to either initiate an adverse action based on a complaint, dismiss the complaint, or require additional fact finding. Accordingly, OPM has determined that, under the proposed rule, subject to certain limitations and requirements, the best approach is for OPM to delegate to agencies its authority under 5 U.S.C. 9204(a) to investigate a complaint, or any other information, while reserving to OPM the authority under section 9204(a) to provide notice of a proposed adverse action and an opportunity to respond to the charges.[1]

Under 5 U.S.C. 1104(a) and (b), OPM may delegate, in whole or in part, any personnel management function vested in or delegated to the Director and establish standards and oversight programs as necessary. In addition, under 5 CFR parts 5 and 10, OPM has responsibility to oversee the Federal personnel system and agency compliance with merit system principles and supporting laws, rules, regulations, Executive Orders, and OPM standards. OPM may set forth policies, procedures, standards, and supplementary guidance for the implementation of this part in OPM issuances. This includes, but is not limited to, procedures and guidance related to agency obligations to report to OPM actions taken to investigate any complaints filed by an applicant regarding an agency's compliance with 5 U.S.C. 9202 and adverse actions taken at the direction of OPM for non-compliance with 5 U.S.C. 9202. Therefore, OPM believes that with appropriate OPM guidance and oversight, agencies can investigate violations of Fair Chance Act requirements in a fair and impartial manner. OPM will then notify the agency employee of negative findings, provide an opportunity for the employee to be heard, and render a decision on the final record.

Section 754.101 Coverage

Subpart A applies to ''a complaint, or any other information,'' submitted by an applicant for an appointment to a position in the civil service relating to compliance with 5 U.S.C. 9202. Regarding ''any other information,'' it is conceivable that an applicant may ask a question or raise a concern about non-compliance with section 9202 without knowledge of an agency's specific complaint procedures. Agency procedures must address how to conduct outreach when an applicant initiates contact about a complaint.

The proposed rule describes who may utilize the agency complaint procedures described in § 754.102. Specifically, the complaint procedures are available to an applicant as the term applicant is defined in proposed § 920.101, which means a person who has applied to an agency under its procedures for accepting applications consistent with governmentwide regulations, as applicable.

Section 754.101 includes definitions that track the definitions in part 920, as described in greater detail below.

Section 754.102 Agency Complaint Process

OPM was informed by other existing complaint procedures in establishing the processes required by the Fair Chance Act. OPM believes that

[1] This delegation of investigative authority is not possible when the alleged violator is an administrative law judge (ALJ) for whom an adverse action is governed by the procedures in 5 U.S.C. 7521. Such actions require formal adjudication under the Administrative Procedure Act, under which fact-finding by an agency head or an ALJ ''constitutes the exclusive record for decision.'' 5 U.S.C. 556(b), (e).

establishing a process which is similar to other successful and effective processes will facilitate implementation of the Fair Chance Act complaint process in covered agencies as agencies are already familiar with these similar processes.

As noted above, within guidelines established by OPM and subject to OPM oversight, the proposed rule assigns to each agency covered by the Fair Chance Act regulations the responsibility to receive complaints, or any other information, and any applicable supporting material. Further, consistent with these OPM guidelines and oversight, the proposed rule delegates to each agency OPM's responsibility to conduct an investigation of the written complaint, or any other information, regarding compliance with 5 U.S.C. 9202. Agencies then would have responsibility to provide OPM the applicant's written complaint or any other information, along with supporting material and the results of the agency's investigation, so OPM may determine any further actions, such as additional investigative fact-finding or appropriate penalties, regarding violations of the Fair Chance Act requirements.

OPM believes there is ample precedent for agencies to establish internal procedures for receipt and investigation of employment-related complaints against the agency and to accomplish these tasks in a fair and impartial manner. For example, Federal employees may request their agency conduct a review of the classification of the employee's position and may appeal the classification decision to the agency under rules established by OPM. Another example concerns the responsibility of agencies to establish programs to promote equal opportunity and to identify and eliminate discriminatory practices and policies. This includes the responsibility to provide for the prompt, fair, and impartial processing of Equal Employment Opportunity (EEO) complaints under rules established by the Equal Employment Opportunity Commission (EEOC). These examples have helped inform OPM of successful procedures that can be modeled in establishing the processes required by the Fair Chance Act.

The proposed rule directs covered agencies to establish a complaint process within 90 days of the effective date of the final rule that allows an applicant to file a complaint, or submit any other information, within 30 calendar days of the date of the alleged non-compliance with 5 U.S.C. 9202 by an employee of the covered agency. The proposed rule further directs covered agencies to extend this time limit when the applicant shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the non-compliance with section 9202 occurred, to consider a reasonable accommodation of a disability, or for other proper and adequate reasons considered by the agency. OPM believes this provides applicants sufficient time to submit a complaint, or any other information, and is comparable to time limits for filing other types of employment-related complaints. It also provides an opportunity for the applicant to submit a complaint or any other information after 30 days if the applicant's rights to do so were not properly publicized. This highlights why it will be critical for agencies to widely publicize information regarding the complaint process to job applicants. The information must appear in agency job announcements. In addition to placing this information in job announcements, agencies should consider placing this information on agency websites/portals soliciting applications for those positions that do not require a posting on USAJOBS, such as excepted service positions. Finally, as noted above, the proposed rule requires that covered agencies conduct outreach about its complaint procedures, when an applicant initiates contact about an alleged violation.

The proposed rule requires covered agencies to investigate any complaint, or any other information, regarding compliance with section 9202. It notes that in order to carry out this function in an impartial manner, the same agency official(s) responsible for executing and advising on the recruitment action may not also be responsible for managing, advising, or overseeing the agency complaint process. Agencies otherwise have discretion to determine responsibility for investigating complaints, or any other information, under this process.

The proposed rule requires agencies to develop an impartial and appropriate factual record sufficient for OPM to make findings on the complaint. In other words, the record should allow a reasonable fact finder to draw conclusions as to whether non-compliance with section 9202 occurred. Agencies otherwise have discretion to determine the appropriate fact-finding methods to carry out this responsibility.

The proposed rule requires the agency to delegate sufficient authority to the investigator to secure the production, from agency employees and contractors of documentary evidence and testimonial evidence needed to report on and investigate the complaint. While agencies may have less control over the applicant's cooperation, applicants have an incentive to cooperate. If an agency notifies OPM that an applicant has refused to produce documentary or testimonial evidence sought during the investigation, OPM may direct the agency to suspend the investigation; or if the investigation continues despite an applicant's failure to participate, OPM may make an adverse inference or, in appropriate circumstances, dismiss the complaint.

In addition, the proposed rule requires the agency to complete the investigation within 60 calendar days of the filing of the complaint. Due to the narrow scope of section 9202, OPM believes that 60 calendar days is sufficient time to complete a thorough investigation.

The proposed rule requires the agency to provide OPM an administrative report on the investigation of a complaint within 30 calendar days of completing the investigation. This report should include all necessary information for OPM to make a determination on whether non-compliance with section 9202 occurred. The report should include the applicant's written complaint, or any other information submitted by the applicant, the agency's factual findings, a complete copy of all information gathered during the investigation, and any other information the agency believes OPM should consider. OPM may request the agency provide additional information as necessary. After review, OPM will notify the agency and the subject(s) of the complaint in writing of OPM's findings regarding the complaint, including any decision to initiate adverse action proceedings under 5 CFR part 754, subpart B, or to dismiss the complaint.

Agencies exercise authority under this section by delegation from OPM and must adhere to the OPM requirements for receipt and investigation of complaints or any other information, as stated in this section as well as any OPM issuances. Agencies must also implement policies and procedures and maintain records demonstrating that they employ reasonable methods to ensure adherence to the Fair Chance Act and OPM regulations and any subsequent issuances. OPM retains the exclusive authority to determine the sufficiency of an agency's complaint process, including the sufficiency of the investigation. OPM may direct further action if OPM determines it necessary for its adjudication of the complaint or

any other information submitted regarding an allegation of non-compliance with section 9202.

Section 754.103 Applicant Representatives

The proposed language in this section provides that the applicant may select a representative of their choice to assist throughout the complaint process. It further notes that an agency may disallow an applicant's representative when the individual's activities as a representative would cause a conflict of interest or position, when the applicant designates an agency employee who cannot be released from their official duties because of the priority needs of the Government, or when the applicant designates an agency employee whose release would give rise to unreasonable costs to the Government. This is comparable to requirements and restrictions on representatives that are provided for in OPM regulations on classification appeals. OPM believes this is appropriate and fair for the applicant when balanced against the business and mission needs of the agency.

Subpart B—Adverse Actions

The Fair Chance Act does not require compliance with any existing statutory or regulatory adverse action procedures which are available for other conduct-related matters. Section 9204 prescribes certain penalties to be imposed by OPM for each violation of 5 U.S.C. 9202 and requires notice and an opportunity for a hearing on the record by OPM for any employee alleged to have committed a violation of section 9202. Section 9205 further notes that the procedures of chapter 75 of title 5, United States Code, are not applicable and that appeal or judicial review are not applicable except as provided under procedures established by the Director of OPM. Based on these unique requirements, OPM is proposing to add subpart B, Adverse Actions, under the new 5 CFR part 754, to implement a new adverse action and appeals process related to violations of the Fair Chance Act.

While implementing the requirements of the Fair Chance Act, we have also been mindful of the need to provide procedures that we are confident would provide for due process. Those include, at a minimum, a meaningful opportunity—before a decision is made on an adverse action—for an individual to know the charges and penalty and present a defense. In addition, in light of the case law available in relation to chapter 75 proceedings, we have concluded that it is prudent to provide for the ability to appeal the adverse action of a suspension for 15 days or more before an impartial adjudicator, a procedural right that would be available with respect to analogous penalties in a chapter 75 adverse action proceeding. The following sections identify the requirements proposed for this new subpart and briefly describe the purpose of each requirement.

Section 754.201 Coverage

This section describes which actions and employees are covered by the new adverse action procedures established by OPM and defines key terms used in the subpart. Employees of agencies as defined in section 920.101 are subject to the adverse action procedures established in this subpart.

This section also defines the terms ''day,'' ''suspension,'' ''civil penalty,'' and ''Director.'' The term ''day'' is consistent with how OPM defines this term in adverse action rules under 5 CFR part 752. The term ''suspension'' is similar to how OPM defines it under part 752 but modified for purposes of aligning it with the requirements of the Fair Chance Act. OPM believes it is appropriate to use similar definitions for the Fair Chance Act adverse action procedures to facilitate a common understanding of these terms. The term ''civil penalty'' is intended to clarify that this penalty is a form of monetary penalty on a covered agency employee which is separate and distinct from a suspension without pay. Finally, the term ''Director'' is consistent with how OPM defines it in other regulations promulgated by OPM. OPM believes this is consistent with the Director's statutory authority and otherwise will facilitate an effective process that allows the Director to timely respond to complaints from across the entire Executive Branch.

Section 754.202 Penalty Determination

This section describes the specific penalties OPM may direct an agency to process when an agency employee has been found to have violated section 9202 of the Act. The Act specifies certain penalties for violations of the Act including written warnings, suspensions without pay, and civil penalties of various amounts depending on the violation. The Act provides that these actions are not subject to the procedures under chapter 75 of title 5, United States Code but under procedures established by OPM. Notably, the range of penalties includes some forms of penalty that are not enumerated under the ''adverse actions'' provisions found in chapter 75 of title 5, United States Code (written warnings, civil penalties), and another form of penalty that *is* found in chapter 75 and requires procedures set out in subchapter II of chapter 75 (suspensions of 15 days or more).

Since penalties of written warnings, suspensions without pay, and civil monetary penalties may be taken across multiple Federal agencies utilizing various systems and internal processes, the proposed rule specifies that the employing agency can be directed by OPM to (1) issue the employee a written warning; (2) process a suspension; and (3) collect a civil penalty after OPM determines a violation of section 9202 has occurred. This is comparable to OPM directing employing agencies to process actions taken by OPM, such as removal actions for suitability.

OPM proposes that the employing agency will collect a civil penalty and remit it to the Treasury, for deposit in the Treasury. OPM invites public comment on the method for collecting and remitting civil penalties.

OPM proposes that the employing agency must carry out the Director's order to suspend the employee as soon as practicable. This is consistent with the practice for suspensions under chapter 75. However, OPM proposes that if the Director orders a civil penalty, the penalty cannot be collected and remitted until the conclusion of any appeal to the Merit Systems Protection Board. This is consistent with 5 U.S.C. 1215(a)(3)(A), under which the Office of Special Counsel can pursue a civil penalty as a disciplinary action, but the penalty cannot be collected until the Board's proceedings have concluded. Deferring the collection of a civil penalty until resolution of the Board appeal will limit the possibility of having to collect civil penalties and then refund them if OPM's action is not sustained. OPM will track and monitor agencies' processing of OPM's orders by establishing new legal authority codes and remark codes to identify that the adverse actions are taken under 5 U.S.C. 9202. OPM's *Guide to Processing Personnel Actions* will be updated to reflect the new codes.

Section 754.203 Procedures

The proposed rule establishes the procedures to be utilized for actions taken under this subpart. The procedures in the subpart are similar, but not identical, to the adverse action procedures found at 5 CFR part 752. There are some very unique differences. For example, a written warning issued under this section is an adverse action and is subject to the same procedures and retention period as any other records of adverse actions.

The proposed rule specifies that the proposed action is made by the Director or Director's designee in order to implement the statutory requirements found in the Fair Chance Act. Since the Director is now required to make determinations involving employees in numerous agencies across the Executive Branch, the proposed rule provides that the Director may designate OPM officials to act on their behalf.

The proposed rule does provide for procedural rights appropriate to the situation: (1) A meaningful opportunity—before a decision is made on an adverse action—for an individual to know the charges and penalty and present a defense, with representation; and (2) the ability to appeal the adverse action of a suspension of 15 days or more before an impartial adjudicator. This is similar to what is found in 5 CFR part 752.

The proposed rule provides for a 30-day notice of any proposed action under this subpart. While notices of this length are typically only required for suspensions greater than 14 days under OPM's adverse action rules at 5 CFR part 752, OPM believes it is appropriate to propose a 30-day notice for any actions proposed under this subpart due to the unique nature of this process. OPM will have to notify employees who are located and employed in other Federal agencies, not just at OPM. In light of these requirements, OPM believes a 30-day notice for all proposed actions will facilitate an effective process by allowing all parties involved to be timely notified and to effectively respond to the proposed action.

The Fair Chance Act requires ''notice and an opportunity for a hearing on the record'' when OPM proposes an action and before OPM renders any decision. OPM proposes to fulfill this requirement by providing a notice of proposed action, an opportunity to review the material relied upon, an opportunity to respond orally and/or in writing to the notice of proposed action to the Director of OPM (or designee), and a decision by the Director of OPM (or delegated designee), to be followed by an appeal to the Merit Systems Protection Board (MSPB) if the action taken is a suspension of 15 days or longer. This comports with (and, at least at the lower end of the penalty range, exceeds) the 5th Amendment due process requirements for suspension of a tenured public employee. *See Gilbert* v. *Homar,* 520 U.S. 924, 929, 930, 933 (1997).

Except as described below, a hearing before an administrative law judge (ALJ) under the Administrative Procedure Act (APA) is not required. OPM notes that the term ''notice and an opportunity for a hearing on the record'' frequently invokes formal hearing procedures under the APA, 5 U.S.C. 554(a), 556–557. *See, e.g., Crestview Parke Care Ctr.* v. *Thompson,* 373 F.3d 743, 748 (6th Cir. 2004). An exception in section 554(a)(2) applies, however, ''to the extent there is involved . . . the selection or tenure of an employee.'' The phrase ''there is involved'' is broad, encompassing proceedings that implicate employee selection or tenure even if that subject matter is not the direct focus of the adjudication. Likewise, the APA's legislative history shows that the phrase ''selection or tenure'' in 5 U.S.C. 554(a)(2) is to be construed broadly, since ''the selection and control of public personnel has been traditionally regarded as a largely discretionary function which, if to be overturned, should be done by separate legislation.'' S. Rep. No. 79–758, at 16 (1945); *see also Starrett* v. *Special Counsel,* 792 F.2d 1246, 1252 (4th Cir. 1986).

The proposed rule provides that the employee's agency must give the employee who is in an active duty status a reasonable amount of official time to review the material relied on to support OPM's proposed action, to prepare and present an answer orally and in writing, and to secure affidavits. OPM may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the employee's answer, within such time as would be reasonable, but not less than 7 days. The proposed rule provides that the OPM Director may designate an official who has authority to make or recommend a final decision on the proposed adverse action, hear the employee's oral answer, and consider any written response.

An employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from their official position would give rise to unreasonable costs or whose priority work assignments preclude their release.

Whereas the hearing obligation for non-ALJs will be fulfilled by the procedures described above, OPM believes it is appropriate to provide a hearing opportunity before taking an adverse action against an ALJ. The exception in 5 U.S.C. 554(a)(2) does not apply to ''a[n] administrative law judge appointed under section 3105 of this title.'' Likewise, 5 U.S.C. 559 provides that a subsequent statute—such as the Fair Chance Act—''may not be held to supersede or modify'' 5 U.S.C. 7521, governing the formal APA hearing rights of ALJs facing a suspension, ''except to the extent that it does so *expressly*'' (emphasis supplied). Finally, 5 U.S.C. 7521(b) includes a list of those statutes under which an action otherwise covered by 5 U.S.C. 7521(b) is excepted. Congress did not include the Fair Chance Act in the list of exceptions.

Since 5 U.S.C. 9205(b)(1) generally makes procedures under ''chapter 75'' inapplicable to adverse actions taken under the Fair Chance Act, without ''expressly'' superseding or modifying 5 U.S.C. 7521, the APA permits no deviation from the procedures in 5 U.S.C. 7521, when the alleged violator is an incumbent ALJ appointed under 5 U.S.C. 3105.

Accordingly, OPM proposes that if the employee alleged to have violated section 9202 is an ALJ appointed under section 3105, before OPM takes the proposed action the ALJ should have an opportunity for a hearing before the Merit Systems Protection Board and the Board should establish and determine whether good cause exists. Under 5 U.S.C. 1305, the proceeding must be governed by the regulations of the Board, not those of OPM.[2]

Finally, the proposed rule provides that only the reasons specified in the notice of proposed action and any answer the employee or the employee's representative, or both, made to the designated official may be considered in deciding on the proposed action. In the case of ALJs, OPM must await the MSPB's good cause determination. The decision notice must specify in writing the reasons for the decision and advise the employee of any appeal rights. This facilitates satisfaction of minimum procedural rights.

Section 754.204 Appeal Rights

The Fair Chance Act does not specify any appeal rights for penalties enacted for violations of the Act other than any

[2] We note that the penalty for a first offense of the Fair Chance Act under 5 U.S.C. 9204(a)(1) is a mere ''warning,'' which is not an offense listed in 5 U.S.C. 7521; while the penalty for a subsequent offense may include a ''suspension,'' which is specifically covered by 5 U.S.C. 7521(b)(2). Likewise a ''civil penalty'' for a fourth or subsequent violation is not an offense listed in section 7521. Yet 5 U.S.C. 554(a)(2) requires a formal hearing regardless of whether or not the penalty against the ALJ is listed in section 7521, and OPM sees no practicable way to establish two separate formal hearing programs for offenses resulting in a penalty not listed in 5 U.S.C. 7521 (a ''warning'' or a ''civil penalty'') and for offenses resulting in a penalty listed in 5 U.S.C. 7521 (a ''suspension'').

appeal rights established by OPM. Under 5 U.S.C. 1103(a)(5), OPM has the broad authority to execute, administer, and enforce civil service rules and regulations. Therefore, pursuant to its statutory authority, as well as the President's delegation of his authority, OPM does have statutory authority to create the right of appeal to the Merit Systems Protection Board (MSPB) by regulation where appropriate. The Merit Systems Protection Board, in turn, has the responsibility to ''hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under . . . law, rule, or *regulation,*'' and an employee may appeal to the Board ''from any action which is appealable to the Board under any law, rule, or *regulation.*'' 5 U.S.C. 1204(a)(1), 7701(a) (emphasis supplied). Both the U.S. Court of Appeals for the Federal Circuit and the Board have consistently affirmed the principle that the Board's enabling statute gives it appellate jurisdiction over actions that are made appealable to the Board by OPM regulation; and that where an appeal is solely by regulation, the regulation circumscribes the scope of the appeal. *See Roberto* v. *Dep't of the Navy,* 440 F.3d 1341, 1350 (Fed. Cir. 2006); *Folio* v. *Dep't of Homeland Sec.,* 402 F.3d 1350, 1355 (Fed. Cir. 2005); *Dowd* v. *United States,* 713 F.2d 720, 722–23 (Fed. Cir. 1983); *Gaxiola* v. *Dep't of the Air Force,* 6 M.S.P.R. 515, 519 (1981). For example, a probationer has certain rights of appeal only as conferred by OPM regulation. OPM is prescribing an MSPB appeal right for adverse actions of 15 days or longer and for civil penalties taken under the Fair Chance Act as described below, when the alleged violator is an employee other than an ALJ.

For forms of misconduct not covered by the Fair Chance Act, written warnings and suspensions of 14 days or less do not have appeal rights to the MSPB. This was an intentional choice on Congress's part in passing the Civil Service Reform Act (CSRA). This scheme balances the interests of Federal employees with the needs of ''sound and efficient administration.'' *See United States* v. *Fausto,* 484 U.S. 439, 445 (1988). Prudently, the more serious the personnel action, the more robust are the remedies afforded. For example, ''Chapter 75 of the Act governs adverse actions taken against employees for the 'efficiency of the service,' which includes action . . . based on misconduct.'' *Fausto,* at 446. Employees facing a ''major adverse action'' are entitled to MPSB review, and, if the decision is adverse, subsequent appeal to the MSPB's reviewing court, the U.S. Court of Appeals for the Federal Circuit. *Id.* at 447. A covered employee facing only a ''minor adverse personnel action''—that is, a relatively short suspension—is entitled to less robust remedies, *id.* at 450: Namely, advance written notice, a reasonable time to respond, the right to be represented by an attorney, and a timely written decision, but not the right to full review by the MSPB and appeal to the Federal Circuit. 5 U.S.C. 7503(b).

For these reasons, OPM believes such appeal rights should not be conferred for written warnings and suspensions of 14 days or less taken under this subpart. This promotes efficiency and avoids creating inconsistencies on when appeal rights are provided for similar penalties on different types of misconduct. Moreover, for a short suspension under the Fair Chance Act, as for a short suspension under chapter 75, the procedures we propose—advance notice, an opportunity to review the material relied upon, and an opportunity for a written submission and an oral hearing before an OPM official, prior to any final action—are fair and adequate, without the need for an additional level of appeal to the MSPB.

Conversely, OPM has concluded that it would be appropriate to provide MSPB appeal rights for suspensions of more than 14 days under this subpart or any decision to impose a civil penalty. This facilitates a consistent approach to appeal rights for suspensions taken under the Fair Chance Act and under chapter 75. The agency will process any action at OPM's direction. Thus, there is no separate right of appeal to the agency from the decision. Any appeal to the MSPB will be against OPM and not against both OPM and the employee's agency.

The Board will have the authority to reverse OPM's action if the charges are not proved by preponderant evidence. If the Board finds that OPM has proved at least one specification of the charge by preponderant evidence, the Board must sustain the action. The Fair Chance Act does not incorporate the requirement in 5 U.S.C. 7503(a) and 7513(a) that an adverse action shall be ''for such cause as will promote the efficiency of the service.'' Accordingly, there is no requirement for OPM to prove a nexus between the employee's conduct and service efficiency, and the Board cannot mitigate the penalty.[3]

OPM reads 5 U.S.C. 9205(b) as permitting the Director to decide which adverse actions are subject to appeal and which are not. Because the adverse action is ordered by OPM and only processed by the employing agency, there is no right to file an administrative grievance or contractual negotiated grievance for the adverse action under a negotiated grievance procedure. OPM, not the employing agency, orders the action under the Fair Chance Act. OPM is not a party in an agency's administrative grievance procedures, and OPM is not the subject of a collective bargaining agreement between an agency and an exclusive bargaining representative for that agency.[4] Therefore, an agency cannot overrule OPM's decision; the agency is merely processing an action taken by OPM. OPM invites public comment on whether a grievance procedure of some kind should be provided for short suspensions, and on how it would work considering that employing agencies lack discretion when OPM orders an adverse action.

Section 754.205 Agency Records

This section outlines what OPM and the covered agency must maintain copies of, and their obligation under the Privacy Act.

Part 920

OPM is proposing to regulate the provisions of the Fair Chance Act in 5 CFR part 920 because these provisions apply to positions in the excepted, Senior Executive, and competitive services. For the convenience of the reader, we are placing them in one location rather than repeat the provisions in parts 302, 317, 319, and 330, respectively. We also note that some agencies may have positions that are exempt from part 302 but not exempt from the provisions of the Fair Chance Act. Likewise, agencies may have positions akin to those in the SES, but which operate outside the provisions of part 317. Placing these rules in a common location not tied specifically to title 5 excepted service or SES rules will help mitigate any confusion as to their applicability governmentwide.

[3] In addition, a Fair Chance Act appeal is not a category of appeal for which the Board inherited the Civil Service Commission's penalty mitigation authority upon its establishment in 1978. *See Douglas* v. *Veterans Admin.,* 5 M.S.P.R. 280, 292–94 (1981). Likewise, where, as in 5 U.S.C. 9205(a), Congress authorizes OPM to prescribe appellate procedures by regulation, OPM has latitude to prescribe the scope of the Board's jurisdiction. *See Folio,* 402 F.3d at 1355.

[4] In addition, an adverse action under the Fair Chance Act is not an action within the meaning of 5 U.S.C. 7512, so there can be no election of remedies under 5 U.S.C. 7121(e)(1).

Subpart A

Proposed subpart A, of part 920 General Provisions, contains general provisions that are applicable to the timing of criminal history inquiries. Proposed section 920.101 contains definitions necessary for the administration of this part.

Proposed § 920.102 explains which positions are covered by this part and which positions may be excluded. Section 920.102(a) makes clear that positions in the competitive service, excepted service, and SES in executive agencies as well as positions in the United States Postal Service and the Postal Regulatory Commission are covered by this part. Section 920.102(b) states that for purposes of this part an exempt position is any position for which a hiring agency is required by statute to make inquiries into an applicant's criminal history prior to extending an offer of employment to the applicant.

The Fair Chance Act defines which agencies are covered by the Act. This definition includes an Executive Agency as such term is defined in 5 U.S.C. 105; the United States Postal Service and the Postal Regulatory Commission; and the Executive Office of the President. An ''Executive agency'' is defined in 5 U.S.C. 105 to mean an Executive Department under 5 U.S.C. 101, a Government corporation under 5 U.S.C. 103, and an independent establishment under 5 U.S.C. 104 (including the Government Accountability Office). Therefore, coverage of the Fair Chance Act is broad.

The definition of an ''executive agency'' in 5 U.S.C. 105 does not specifically include a ''military department'' as defined in 5 U.S.C. 102: Namely, the Department of the Army, the Department of the Navy, or the Department of the Air Force. OPM construes the Fair Chance Act to cover the military departments as well as the Department of Defense in which they reside, and proposes to include the military departments in the definition of a ''agency.'' Absent an expression of congressional intent to the contrary, because military departments are part of the Department of Defense, they are subject to those Civil Service laws that apply to an ''executive agency'' within the meaning of 5 U.S.C. 105. *See White* v. *Dep't of the Army,* 115 M.S.P.R. 664, 668 (2011). Yet ''[t]he organizational history of the Department of Defense indicates that the military service departments were intended to function—at least, with respect to personnel matters—with the independence that generally characterizes executive departments outside the Department of Defense, rather than the limited kind of independence that generally characterizes organizations within those departments.'' *Pervez* v. *Dep't of Navy,* 193 F.3d 1371, 1373 (Fed. Cir. 1999 (quoting *Francis* v. *Dep't of the Navy,* 53 M.S.P.R. 545, 549 (1992)). Thus, because of the military departments' ''treatment as separate agencies for personnel purposes,'' *Pervez,* 193 F.3d at 1374, OPM's proposed rule defines the military departments as separate ''agencies'' for purposes of complying with the Fair Chance Act.

While the coverage of Executive departments in 5 U.S.C. 101 is straightforward enough, 5 U.S.C. 9202(1) makes no specific exceptions for subdivisions of Executive departments which have their own statutory personnel authorities. Prominent examples include the Veterans Health Administration within the Department of Veterans Affairs, the Federal Aviation Administration within the Department of Transportation, the Transportation Security Administration within the Department of Homeland Security, and the intelligence components of the Department of Defense. We welcome comment on whether any statute establishing an alternative personnel system for a subdivision of a department or agency creates an exception from 5 U.S.C. 9202(1), notwithstanding the Fair Chance Act's later date of enactment.

The Fair Chance Act covers ''Government corporations'' and ''independent establishments'' as defined in 5 U.S.C. 103 and 104, and OPM must include them, generally, as covered ''agencies'' in our proposed rule. We note that these definitions have been broadly construed to cover a number of entities that have historically operated outside of the title 5 personnel system. Under 5 U.S.C. 103, '' 'Government corporation' means a corporation owned or controlled by the Government of the United States,'' and this text has been construed to include both corporations wholly owned by the U.S. Government, and mixed-ownership corporations under U.S. Government control, as specified in 31 U.S.C. 9101(2) and (3). *See Snead* v. *Pension Benefit Guar. Corp.,* 74 M.S.P.R. 501, 503 (1997); *Dockery* v. *Fed. Deposit Ins. Corp.,* 64 M.S.P.R. 458, 461–62 (1984). In light of this broad construction, we are soliciting comment on whether the authorizing statute of any Government corporation operates to make an exception from 5 U.S.C. 9202(1)'s coverage, notwithstanding the Fair Chance Act's later date of enactment.

The term ''independent establishment'' is defined in 5 U.S.C. 104 as ''an establishment in the executive branch . . . which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment.'' The term has been construed broadly to cover independent, free-standing establishments with their own structure, or entities that have been created by statute or executive order and are not privately owned or privately controlled. *Applicability of the Fed. Vacancies Reform Act to Vacancies at the Int'l Monetary Fund and the World Bank,* 24 Op. O.L.C. 58, 65–66 (2000); *Hereford* v. *Tenn. Valley Auth.,* 88 M.S.P.R. 201, 205–206 (2001). There is no specific exception in 5 U.S.C. 104 for independent regulatory agencies or commissions as defined in 44 U.S.C. 3502(5), or for free-standing agencies that largely operate outside of the title 5 personnel system. Accordingly, we are soliciting comment on whether the authorizing statute of any independent establishment operates to make an exception from 5 U.S.C. 9202(1)'s coverage, notwithstanding the Fair Chance Act's later date of enactment.

Finally, 5 U.S.C. 9202(1)(B) expressly extends OPM's rulemaking and enforcement power under the Fair Chance Act to ''the Executive Office of the President.'' We construe this language as applying to an application for any competitive service position within the Executive Office of the President (EOP), consistent with OPM's broad legal authority over competitive service employment. Under 5 U.S.C. 3302 and 1104(a)(1), the President may ''prescribe rules governing the competitive service'' and ''delegate . . . authority for personnel management functions'' to OPM. The President has prescribed Civil Service Rules I and V, as codified in parts 1 and 5 of Title 5, Code of Federal Regulations. These rules state that for ''all positions in the competitive service and . . . all incumbents of such positions,'' OPM ''may secure effective implementation of the civil service laws, rules, and regulations'' by ''[e]valuating the effectiveness of . . . agency compliance with and enforcement of applicable laws, rules, regulations and office directives'' and ''[i]nvestigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.'' 5 CFR 1.1, 5.2(b), (c). Following OPM's report of an evaluation or investigation, ''[w]henever the Director issues specific

instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions;'' and OPM ''shall promulgate and enforce regulations necessary to carry out'' these requirements. 5 CFR 5.1, 5.3(b).

In 5 U.S.C. 1103(a)(5)(A) and 1303(1), Congress has charged OPM with ''executing, administering, and enforcing'' these civil service rules and ''investigat[ing] and report[ing] on matters concerning . . . the enforcement and effect'' of these rules. These provisions do not restrict OPM's oversight authority over positions and employees in the competitive service based on where they are placed in the Executive branch. Thus, it would be consistent with preexisting authority for OPM to order a penalty under the Fair Chance Act as a corrective action, following an investigation and an adverse action proceeding, if an EOP employee is found to have made a prohibited inquiry to an applicant for a competitive service position.

However, OPM's oversight authority is more limited with respect to positions and employees in the excepted service. We do not believe Congress intended to subject applications for positions outside of the competitive service in every component of the Executive Office of the President to OPM's regulatory and enforcement jurisdiction under the Fair Chance Act, considering the established principle that some, but not all, EOP components are ''independent establishments'' of the Executive branch within the meaning of 5 U.S.C. 104, and thus within 5 U.S.C. 105's definition of an ''executive agency'' subject to regular title 5 employment rules.

The term ''independent establishment'' in 5 U.S.C. 104 has been construed to cover those free-standing components of the EOP which have their own structure and unity, such as the Office of Management and Budget; but to exclude from its coverage components of informal or *ad hoc* nature, *i.e.,* working groups or task forces. *See Applicability of the Fed. Vacancies Reform Act,* 24 Op. O.L.C. at 65–66, 67. The term has also been held to exclude those EOP components which are not ''independent establishments'' by operation of other laws. *See Haddon* v. *Walters,* 43 F.3d 1488, 1490 (D.C. Cir. 1995) (noting the exclusion of the Executive Residence).[5] Thus OPM's proposed rule does not extend to applications for positions outside of the competitive service in these components of the Executive Office of the President.

In addition, the Act defines the terms ''appointing authority,'' ''conditional offer,'' and ''criminal history record information.'' An ''appointing authority'' is an employee in the executive branch of the Government of the United States that has authority to make appointments to positions in the civil service. ''Conditional offer'' means an offer of employment in a position in the civil service that is conditioned upon the results of a criminal history inquiry. The term ''criminal history record information'' has the meaning given the term in section 5 U.S.C. 9101(a), except as provided in subparagraphs (B) and (C) of section 9201. Subparagraph (B) states that criminal history record information includes any information described in the first sentence of section 9101(a)(2) that has been sealed or expunged pursuant to law. Subparagraph (C) states that criminal history record information includes information collected by a criminal justice agency, relating to an act or alleged act of juvenile delinquency, that is analogous to criminal history record information (including such information that has been sealed or expunged pursuant to law). OPM incorporates these definitions without additional interpretation, as they are clear on their face.

The Fair Chance Act uses the term ''employee,'' which is defined in 5 U.S.C. 2105; but effectively modifies the definition by including, in its coverage, the United States Postal Service and the Postal Regulatory Commission, which would otherwise be excluded from the definition by operation of 5 U.S.C. 2105(e). Accordingly, we are adding the following definition to proposed § 920.101: ''Employee means an 'employee' as defined in 5 U.S.C. 2105, and an employee of the United States Postal Service or the Postal Regulatory Commission.''

As described in greater detail below, we are defining ''political appointment'' as an appointment by the President without Senate confirmation (except those appointed under 5 CFR 213.3102(c)) because these are not positions of a confidential or policy determining character); an appointment to a position compensated under the Executive Schedule (5 U.S.C. 5312 through 5316); an appointment of a White House Fellow to be assigned as an assistant to a top-level Federal officer (5 CFR 213.3102(z)); a schedule C appointment (5 CFR 213.3301, 213.3302); a noncareer, limited term, or limited emergency Senior Executive Service appointment (5 CFR part 317, subpart F); an appointee to serve in a political capacity under agency-specific authority; and a provisional political appointment. This definition lists the different types of political appointing authorities found in regulation and statute.

Finally, we are defining an ''applicant'' as a person who has actually applied to an agency under its procedures for accepting applications. This definition resolves a textual ambiguity in 5 U.S.C. 9202(a). It makes clear that the Fair Chance Act's remedies are only for persons who have actually applied for Federal jobs, not for persons who, for example, are merely considering applying for a job, have saved a resume in an on-line applicant interface such as USAJOBS but have not yet submitted it in response to a job opportunity announcement, or have attended a recruiting event but have not yet formally applied for a vacancy. We note that for USAJOBS announcements, 5 CFR 330.104 requires agencies to notify applicants of how to submit an application and how the receipt of an application will be documented.

Subpart B

Proposed subpart B addresses when inquiries into an applicant's criminal history may be made. Proposed § 920.201 regulates this aspect of the Fair Chance Act. Proposed paragraph (a) states that an agency cannot request an applicant's criminal history information orally or in written form, prior to giving a conditional offer of employment. This includes the following points in the recruitment and hiring process: (1) Initial application, through a job opportunity announcement on USAJOBS, or through any recruitment/public notification such as on the agency's website/social media, etc.; (2) after an agency receives an initial application through its back-end system, through shared service providers/recruiters/contractors, or orally or via

[5] We note that there is also substantial case law on when an EOP component is a covered ''agency'' within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. 552(f)(2). This case law did not guide us in construing whether an EOP component is an ''agency'' within the meaning of the Fair Chance Act. This is because, despite facial similarities between 5 U.S.C. 105 and 5 U.S.C. 552(f)(2), the test of whether an EOP component is covered by the FOIA derives from the FOIA's unique legislative history, rather than from its text. *See Kissinger* v. *Reporter's Comm. for Freedom of the Press,* 445 U.S. 136, 156 (1980); *Citizens for Responsibility and Ethics in Wash.* v. *Office of Admin.,* 566 F.3d 219, 222 (D.C. Cir. 2009). OPM has no reason to believe that Congress intended the same considerations to govern EOP's coverage under the FOIA and EOP's coverage under the Fair Chance Act.

email and other forms of electronic notification; and (3) prior to, during, or after a job interview. This prohibition applies to agency personnel, shared service providers, contractors involved in the agency's recruitment and hiring process, automated systems (specific to the agency or governmentwide), etc.

Proposed paragraph (b) tracks the requirements of 5 U.S.C. 9202(b) and (c)(1). It allows agencies to make inquiries into a job applicant's criminal history, prior to making a conditional job offer to that applicant, if doing so is otherwise required by law, if the position requires a determination of eligibility for access to classified information or employment in a sensitive position, or eligibility for acceptance or retention in the armed forces (as described in 5 U.S.C. 9101(b)(1)(A)(i), (ii), or (iii)), or if it is a Federal law enforcement officer position (as defined in section 115(c) of title 18). We are clarifying that for this purpose a ''sensitive position'' is one that been so designated under the Position Designation System issued by OPM and the Office of Director of National Intelligence, which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security. This conforms to our regulations governing sensitive positions in 5 CFR 1400.201.

The reference in the Fair Chance Act to a position requiring a determination of eligibility for acceptance or retention in the armed forces is ambiguous. By its terms the Fair Chance Act applies only to applicants for ''an appointment to a position in the civil service,'' not for acceptance into the armed forces. We construe this provision as relating to those positions in the civil service where the applicant is required to maintain military membership as a condition of civilian Federal employment, *i.e.,* a dual-status military technician position. Our proposed rule incorporates this interpretation.

The Fair Chance Act applies to applicants to positions in the ''civil service,'' which, under 5 U.S.C. 2101(1), extends to ''all appointive positions'' in the executive branch. Proposed paragraph (b) makes an exception for applicants for political appointments, since political appointees provide confidential, policy-determining, or policy-advocating functions on behalf of the President or presidentially-appointed agency heads, and serve as personal advisors and representatives to the President and other senior administration officials. Pre-employment criminal history screening may be required for these positions prior to a conditional offer of employment, because of the utmost trust and discretion required in these positions and the potential for adverse publicity associated with unfit applicants. OPM is not making an exception for applicants to positions requiring appointment by the President with the advice and consent of the Senate. The Fair Chance Act already excludes such positions because a ''conditional offer'' is never extended for these positions under 5 U.S.C. 9202(a); rather, the individual is nominated and then confirmed.

Proposed paragraph (b) also describes other circumstances for which OPM may grant exceptions in response to a request from a hiring agency. OPM may grant exceptions on a case-by-case basis only when an agency demonstrates specific job-related reasons why the agency needs to evaluate an applicant's criminal history for a position prior to making a conditional offer giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

Proposed paragraph (c) adds the requirement to notify applicants of the prohibition in job opportunity announcements and on agency websites/portals for positions that do not require a posting on USAJOBS, such as excepted service positions, in addition to information about its complaint process as required by part 754 of this chapter.

Proposed § 920.202 defines what constitutes a violation of the Fair Chance Act and the prohibition in proposed § 920.201. Proposed paragraph (a) defines a violation as any oral or written request from criminal history information prior to a conditional job offer. Proposed paragraph (b) explains that a violation occurs when a prohibited inquiry is made by agency personnel, including when they act through shared service providers, contractors involved in the agency's recruitment/hiring process, or automated systems (specific to the agency or governmentwide).

This section also outlines several situations in which a violation could occur. An agency cannot request criminal history information upon the initial application, through a job opportunity announcement on USAJOBS, or through any recruitment/public notification such as on the agency's website/social media. An agency also cannot request this information after an agency receives an initial application through its back-end system, through shared service providers/recruiters/contractors, or orally or via email and other forms of electronic notification prior to giving the conditional offer. Additionally, the agency cannot request the information verbally prior to, during, or after a job interview prior to giving a conditional offer.

Proposed paragraph (c) provides that when a prohibited request, announcement, or communication is publicly posted or simultaneously distributed to multiple applicants, it constitutes a single violation. This resolves an ambiguity in the language of 5 U.S.C. 9202(a) and prevents the absurd and unintended outcome of thousands of violations and complaints arising from a single job opportunity announcement on USAJOBS.

Proposed paragraph (d) explains that any violation as defined in paragraph (a) is subject to the complaint and penalty procedures in part 754 of this chapter.

Expected Impact of This Proposed Rule

A. Statement of Need

OPM is issuing this proposed rule to implement the provisions of the Fair Chance Act found in Chapter 92 of title 5, United States Code. This statute prohibits Federal agencies and Federal contractors from requesting that applicants for employment disclose criminal history record information before the agency makes a conditional offer of employment to that employee. The Fair Chance Act identifies some positions to which the prohibition shall not apply and requires OPM to issue regulations identifying additional positions to which the prohibition shall not apply. It also requires OPM to establish complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency with the Fair Chance Act, and adverse action and appeal procedures when it has been determined that a Federal employee has violated the Fair Chance Act. OPM is implementing these statutory requirements in the least burdensome way it can while still effectuating the congressional purposes of the Fair Chance Act.

B. Impact

The proposed rule allows job applicants to present their qualifications and abilities for assessment and be considered based on their merits without the specter of a criminal record during the selection process. Employment of people with criminal records is the single most important

influence on reducing re-offending.[6] The impact to communities and society includes reducing criminal justice costs, crime victimization costs, and the costs of incarceration to the reoffenders and their families.[7] Another significant impact of the proposed rule is that the Federal government, as the nation's largest employer and a model employer, will demonstrate an example of fair hiring practices by removing unnecessary barriers for people with records who desire to join the Federal workforce.

OPM believes there is significant value in being able to demonstrate the effect of these proposed regulations on both Federal agencies and formerly incarcerated individuals. As noted earlier, however, OPM currently does not have and is not aware of any data to show what impact, if any, OPM's existing ''Ban the Box'' rules have had on agency hiring processes. Therefore, OPM invites comments regarding any hiring data agencies may have that demonstrate the effect of either OPM's prior regulations or the potential impact of these proposed rules. This includes ways that these proposed rules may impact the size of applicant pools for positions not previously covered by OPM's regulation, including positions in the excepted service as well as positions in the United States Postal Service and the Postal Regulatory Commission.

C. Regulatory Alternatives

OPM's implementing regulations are required by statute and cannot be avoided. In the proposed regulations for part 754, OPM fleshes out procedures for receiving and investigating complaints, or any other information, as well as procedural and appeal rights for an agency employee alleged to have violated section 9202. The statute establishes the agencies and employees covered by proposed 5 CFR part 754, available penalties that can be imposed for an employee found to have violated section 9202, and the 30-day timeframe for appealing an adverse action.

First, OPM considered the option of receiving complaints, and any other information, directly from applicants and conducting its own outreach and investigative fact-finding, as appropriate to the nature of the applicant's submission. However, OPM believes there is ample precedent for agencies to establish internal procedures for receipt and investigation of employment-related complaints against the agency and to accomplish these tasks in a fair and impartial manner. Therefore, we have laid out an approach that we believe is minimally burdensome for agencies. Subject to OPM guidelines and oversight, the proposed rule assigns to each agency covered by the Fair Chance Act regulations the responsibility to receive complaints, or any other information, and any applicable supporting material. Further, the proposed rule delegates to each agency OPM's responsibility to conduct an investigation of the complaint, or any other information, regarding compliance with 5 U.S.C. 9202. OPM believes that establishing a process which is similar to other successful and effective processes will facilitate implementation of the Fair Chance Act complaint process in covered agencies as agencies are already familiar with these similar processes. While the proposed rule provides parameters to guide agencies and facilitate governmentwide consistency, the assignment and delegation to agencies reduces the need for what would be more extensive regulations if OPM were directly receiving and investigating complaints, and other information, related to an alleged violation of section 9202.

Regarding the procedures for adverse actions, the statute requires notice and an opportunity for a hearing on the record by OPM for any employee alleged to have committed a violation of section 9202. Section 9205 further notes that the procedures of chapter 75 of title 5, United States Code, are not applicable and that appeal or judicial review are not applicable except as provided under procedures established by the Director of OPM. Because chapter 75 procedures are not available, it is necessary for OPM to propose an alternative to implement the unique procedural and appeal elements of the Fair Chance Act. In developing proposed procedures, OPM considered the benefits of adapting the adverse action procedures found at 5 CFR part 752 rather than another approach. Adapting the part 752 procedures affords agencies the benefit of familiarity, facilitates ease of transfer in knowledge and skills to the new regulations, and reduces the need for more extensive or complex regulations.

D. Costs

Costs Related to Parts 302, 317, 319, 330, 731 and 920—Restrictions on Preemployment Criminal Inquiries Prior to Conditional Offer

This rule will affect the operations of over 80 Federal agencies—ranging from cabinet-level departments to small independent agencies. This rule expands the prohibition on making inquiries into an applicant's criminal background prior to a conditional offer of employment. The prohibition currently applies to positions in the competitive service. The proposed rule would expand this prohibition to include agencies with positions in the excepted service and the Senior Executive Service. There are approximately 20 agencies in the Executive Branch that are fully in the excepted service that will be impacted by this rule. We estimate that this rule will require individuals employed by these agencies to develop policies and procedures to implement the rule when making appointments. For the purpose of this cost analysis, with regard to parts 302, 317, 319, 330, 731, and 920, the assumed average salary rate of Federal employees performing this work will be the rate in 2022 for GS–14, step 5, from the Washington, DC, locality pay table ($143,064 annual locality rate and $68.55 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $137.10 per hour.

In order to comply with the regulatory changes in this proposed rule, affected agencies will need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, this will require an average of 250 hours of work by employees with an average hourly cost of $137.10. This would result in estimated costs in that first year of implementation of about $34,275 per agency, and about $2,742,000 in total governmentwide. We do not believe this rule will substantially increase the ongoing administrative costs to agencies (including the administrative costs of administering the program and hiring and training new staff).

Costs Related to Part 754—Complaint Procedures, Adverse Actions, and Appeals for Criminal History Inquiries Prior to Conditional Offer

Regarding the implementation of the regulatory requirements in proposed part 754, in the event of a complaint by an applicant, agencies will incur labor costs associated with the investigation into the complaint and OPM will incur labor costs associated with reviewing the results of the investigation and reaching a determination which could include issuing a notice of proposed action to the subject of the complaint, considering any response, and making a

[6] National Employment Law Project, ''The Business Case: Becoming a Fair-Chance Employer'' (June 2016).

[7] U.S. Department of Labor, ''Reducing Recidivism and Increasing Opportunity'' (June 2018).

final determination. In the event OPM directs the employing agency to take an action as a result of a founded complaint, OPM would incur labor costs in responding to and/or defending any appeal by the subject of the complaint to the Merit Systems Protection Board.

In order to estimate the costs to implement the proposed regulatory requirements in part 754 for complaint procedures, adverse actions, and appeals, OPM made certain assumptions and considered that some costs may vary depending on agency size and the extent to which an agency is able to leverage existing policies, practices, and procedures. For this cost analysis, the assumed staffing for Federal employees performing the work required by the regulations in part 754 is one executive; one GS–14, step 5; a GS–15, step 5; and one GS–7, step 5 in the Washington, DC, locality area. The 2022 basic rate of pay for an executive at an agency with a certified SES performance appraisal system ranges from $135,468 to $203,700 annually, for an average of $169,584 per year or $81.26 per hour. For General Schedule employees in the Washington, DC, locality area, the 2022 pay table rates are $168,282 annually and $80.63 hourly for GS–15, step 5; $143,064 annually and $68.55 for GS–14, step 5, and $57,393 annually and $27.50 hourly for GS–7, step 5. We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in assumed hourly labor costs of $162.51 for an executive; $161.27 for a GS–15, step 5; $137.10 for a GS–14, step 5; and $55 for a GS–7, step 5.

As to overall complaint procedures, program implementation and oversight, OPM assumes it will incur certain upfront costs and then ongoing costs. For example, the establishment of new processing codes requires one-time updates to OPM's databases and personnel action processing handbook. After the issuance of any final rule effecting part 754, OPM may develop additional materials related to its implementation. This includes, but is not limited to, procedures and guidance related to agency obligations to report to OPM actions taken to investigation any complaints filed by an applicant regarding an agency's compliance with 5 U.S.C. 9902 and adverse actions taken at the direction of OPM for non-compliance with 5 U.S.C. 9202. OPM estimates that the cost for its implementation and oversight in the first year will be $30,370.00 and $3,687.04 on average in subsequent years.

OPM estimates that it will cost each agency $21,319.04 in the first year to establish an internal policy for handling alleged violations of 5 U.S.C. 9202. We assume that larger agencies advertise more vacancies and are therefore likely to receive a greater number of complaints. We estimate the annual cost of complaint intake and investigation for large agencies to be $172,746.00 (based on an average of 30 complaints per large agency); medium size agencies $115,164.00 (for 20 complaints); and small size agencies $57,582.00 (for 10 complaints). The total estimated cost for agencies to receive and investigate complaints is $345,492.00 annually, which averages to $5,758.20 per complaint.

For agency outreach regarding any other information that may potentially be an attempt to file a complaint for an alleged violation of 5 U.S.C. 9202, OPM again assumes that larger agencies advertise more vacancies and are therefore likely to experience a greater number of such instances. We estimate that large agencies on average may conduct 30 instances of outreach and incur $8,226.00 for the total number of instances. Medium size agencies may conduct outreach for 20 instances and incur $5,484.00 total. Small agencies may conduct outreach for 10 instances and incur $2,742.00 total. The total estimated annual cost of agency outreach is $16,452.00 and the average cost of agency outreach is $274.20 per instance.

Following agency intake, outreach (if applicable), and investigation, OPM is responsible for administering the adverse action procedures as outlined in proposed § 754.203. Based on the estimate for the annual number of complaints that Federal agencies may receive (60 for large, medium, and small agencies combined), OPM estimates that 75%, or 15, of the complaints may result in a finding of a violation of 5 U.S.C. 9202. While OPM will carefully review and consider each investigative file submitted by agencies, OPM expects that only those investigations that result in a finding of a violation will generate a meaningful increase in cost above staff's usual duties and responsibilities. Assuming 15 such cases, the total cost for OPM's administration of the adverse action procedures, including proposing an action, considering any reply, and issuing a decision, is estimated to be $159,818.40. The average cost for OPM per adverse action is $10,654.56.

Under the proposed regulation, agencies are responsible for processing any adverse action imposed by OPM. Agencies routinely process suspensions for other forms of misconduct. Thus, applying those same procedures to adverse actions imposed for violations of 5 U.S.C. 9202 will be a negligible cost for agencies. However, OPM does anticipate some cost for the one-time update to agency processing systems for the new codes established by OPM to identify that the adverse actions are taken under 5 U.S.C. 9202, as well as the establishment of agency procedures for the collection of civil penalties. OPM estimates the costs to agencies in the first year for updating their systems and procedures and processing actions to be $24,690.04. Thereafter, we estimate that the average cost for an agency to process an adverse action, including any civil penalty, is $960.50 per action.

The available penalties for violations of 5 U.S.C. 9202 include written warnings and short suspensions (14 days or less) that are not grievable or appealable. Further, an employee's first two violations of section 9202 will result in a penalty no stronger than a seven-day suspension. For only a third or subsequent violation would OPM impose a penalty that may be appealable to the MSPB. While such an appeal to the MSPB is possible, we believe that it will be rare that an employee violates section 9202 three or more times. OPM anticipates that if 15 adverse actions are imposed per year, only one on average will be appealable to the MSPB. We therefore do not believe there will be a measurable impact on MSPB operations and thus, we have not estimated costs for the MSPB.

Because any appeal filed is against OPM and not the employing agency, OPM will be responsible for defending the action. OPM estimates $11,447.84 to defend an appeal.

The remaining requirements of the proposed part 754 for complaint procedures, adverse actions, and appeals will require minimal costs for OPM or agencies. With respect to informing applicants of the agency's complaint procedures via the agency's public website and in vacancy announcements, the additional cost to agencies will be small. Agencies already provide notice on their public websites and in vacancy announcements about how an applicant can file an EEO complaint. Also, agencies provide information to the public on their external websites about how to file an Inspector General complaint. Thus, an additional notice does not present a significant additional cost. In conclusion, OPM estimates a cost of $598,141.47 to implement the complaint procedures under the proposed Fair Chance Act regulations in the first year and the recurring cost per year to be $32,782.34.

Indirect Costs

We note that OPM's rule, when finalized, may have indirect costs on other entities. Section 1122(d) of the Fair Chance Act amends section 207(d)(2) of the Congressional Accountability Act of 1995 to require the Board of Directors of the Office of Congressional Workplace Rights to promulgate regulations that are ''the same'' as OPM's ''except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' Section 1122(e) of the Fair Chance Act similarly amends 28 U.S.C. 604(e)(5)(B) to require the Director of the Administrative Office of the U.S. Courts to promulgate regulations that are ''the same'' as OPM's ''except to the extent that the Director . . . may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this subsection.'' Finally, section 1123(c) of the Fair Chance Act requires the Federal Acquisition Regulation (FAR) Council to amend the FAR ''to be consistent with'' OPM's regulations ''to the maximum extent practicable'' and to ''include together with such revision an explanation of any substantive modification of the Office of Personnel Management regulations, including an explanation of how such modification will more effectively implement the rights and protections under this section.''

Such indirect costs are not quantifiable since sections 1122(d)–(e) and 1123(c) of the Fair Chance Act give the other entities significant leeway to adopt, reject, or modify OPM's regulations with respect to the populations covered by those sections.

E. Benefits

The Fair Chance Act regulations will help level the playing field for applicants with a criminal history record, contribute to an equitable and diverse Federal workforce, and enhance transparency and accountability in the Federal hiring process. More than 70 million adults in the United States have an arrest or conviction record that can show up on a routine background check for employment. As a result, one in three adults may face serious challenges securing employment in order to provide for their families and communities.[8] With some exceptions, the Fair Chance Act prohibits Federal employers from requesting that an applicant disclose criminal history record information before the agency makes a conditional offer of employment to that applicant. The proposed regulations provide the opportunity for qualified applicants with records to advance in the hiring process just as a qualified applicant without a criminal history record would advance. Studies show that employment is the single most important factor in reducing recidivism; that people with criminal records are no more likely to be fired for misconduct than people without records; and that they are statistically less likely to quit, which saves employers in turnover costs.[9] Therefore, the regulations benefit not only the Federal government as an employer but also American society as a whole at the family and community levels.

This regulation will support the Administration's priority to advance comprehensive equity. Executive Order 14035 establishes an initiative on diversity, equity, inclusion, and accessibility (DEIA). As part of the DEIA Initiative, a Government-Wide Strategic Plan To Advance Diversity, Equity, and Accessibility In The Federal Workforce was released by OPM in November 2021. This new DEIA strategic plan directs agencies to prioritize a number of efforts to support sustainability and continued improvement on DEIA matters. The proposed rule can help Federal agencies realize the vision of the Federal government as a model employer in the areas of diversity, equity, and inclusion. There is evidence that people of color have less access to basic resources as compared to other segments of the American population. For example, Black women with records are most impacted by the high rate of unemployment for formerly incarcerated people.[10] By removing barriers to fair competition through the Fair Chance Act along with other initiatives, Federal agencies stand to gain a more diverse applicant pool, improve equity in the hiring process, and build or maintain a workforce fully representative of America.

Finally, another benefit of the proposed rule is increased transparency and accountability in the Federal hiring process. The regulations protect the rights of applicants who believe they have been subjected to a violation of 5 U.S.C. 9202 and holds accountable Federal employees found to have committed such a violation. This regulation should have a deterrent effect on supervisors, managers, and other employees involved in the hiring process to prevent them from engaging in activities that are in violation of the Fair Chance Act.

F. Request for Comment and Data

In addition to the questions posed in the regulatory analysis and given the limited information on the Federal Government's implementation on Ban the Box, OPM requests comment on the implementation and impacts of Ban the Box efforts in the private sectors. Such information will be useful for better understanding the impact of these regulations on hiring by Federal agencies. The types of information that OPM is interested in include, but are not limited to, the following:

- Based on what the private sector has done, what should OPM, Federal agencies, and the government as a whole hope to accomplish with implementation of these regulations?
- Has your organization's implementation of Ban the Box impacted and aided your organization's diversity, equity, inclusion, and accessibility efforts? If so, how?
- Does your hiring process include any proactive efforts or accommodations related to candidates who have a criminal history record? Have you taken any steps, such as streamlining or revising your application process to address barriers facing candidates who have a criminal history record?
- How many roles does your organization have that are currently open or will be open that can be filled by candidates with criminal history records? How many positions has your organization filled?
- How does your organization measure success with respect to hiring candidates with criminal history records? Do you have data or reports to share?
- To the extent your organization has data regarding the number of employees who have a criminal history record, what has been your experience with respect to those candidates and employee turnover? How does employee turnover for those with criminal history records compare to employee turnover for those without criminal history records?

[8] National Employment Law Project Fact Sheet, FAQ (December 17, 2019).

[9] Lee-Johnson, ''Give Job Applicants with Criminal Records a Fair Chance'' (September 21, 2020), and Society for Human Resources Management, ''2021 Getting Talent Back to Work Report'' (May 2021).

[10] National Employment Law Project Fact Sheet, FAQ (December 17, 2019).

- Has Ban the Box increased qualified applicants for hard-to-fill positions? If so, what types of positions?
- OPM recognizes that engaging in efforts to hire candidates with a criminal history record is not only an opportunity to diversify the federal government workforce but is also a chance to forge meaningful connections with job development experts in local communities. How has your organization partnered with local source partners to give you strategic access to talented individuals with criminal history records? What should OPM and federal agencies consider in this area?
- Are there actions that you have taken to better ensure that applicants with criminal history records can succeed once hired? How can OPM ensure federal agencies are ready to receive talented applicants who have criminal history records, once they receive conditional offers of employment?
- Many candidates with criminal history records who are qualified in terms of the skills they possess may not have previous job experience in the role, or may have a lengthy employment gap during a period of incarceration. As your organization recruits for your open roles, how have you focused on identifying candidates who, even though they may not have significant work experience, can demonstrate transferable skills that will make them successful in your organization?
- Some studies [11] suggest implementation of Ban the Box results in lower employment for certain groups. What should OPM and Federal agencies do to avoid these outcomes? Are there other studies to review and consider as part of the federal hiring process for these individuals to mitigate or avoid these outcomes?
- Are there additional ways that the Federal Government can be a model employer with respect to individuals with criminal history records?

G. List of Sources

Lee-Johnson, Margie. ''Give Job Applicants with Criminal Records a Fair Chance.'' *Harvard Business Review,* September 21, 2020. *https://hbr.org/2020/09/give-job-applicants-with-criminal-records-a-fair-chance?autocomplete=true*

National Employment Law Project. ''FAQ: Fair Chance to Compete for Jobs Act of 2019,'' December 2019. *https://s27147.pcdn.co/wp-content/uploads/Fact-Sheet-FAQ-Federal-Fair-Chance-Compete-Jobs-Act-2019.pdf*

National Employment Law Project. ''The Business Case: Becoming a Fair-Chance Employer,'' June 2016. *https://s27147.pcdn.co/wp-content/uploads/Business-Case-Fair-Chance-Employment.pdf*

Society for Human Resources Management. ''2021 Getting Talent Back to Work Report: A Workplace Survey on Hiring and Working with People with Criminal Records,'' May 2021. *https://www.gettingtalentbacktowork.org/wp-content/uploads/2021/05/2021-GTBTW_Report.pdf*

U.S. Department of Labor. ''Reducing Recidivism and Increasing Opportunity: Benefits and Costs of the RecycleForce Enhanced Transitional Jobs Program,'' June 2018. *https://www.mdrc.org/sites/default/files/ETJD_STED_Benefit_Cost_Technical_Supplement_508.pdf*

[11] *See* Amanda Agan, Sonja Starr, Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment, *The Quarterly Journal of Economics,* Volume 133, Issue 1, February 2018, Pages 191–235, *https://doi.org/10.1093/qje/qjx028 and* Doleac, Jennifer L., and Benjamin Hansen. ''The unintended consequences of ''ban the box'': Statistical discrimination and employment outcomes when criminal histories are hidden.'' *Journal of Labor Economics* 38.2 (2020): 321–374.

Executive Orders 13563 and 12866, Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget as a significant, but not economically significant, rule.

Regulatory Flexibility Act

The OPM Director certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date, as required by 5 U.S.C. 801. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521)

Notwithstanding any other provision of 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 of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule makes reference to an OMB approved collection of information subject to the PRA titled *Declaration for Federal Employment (OF 306),* OMB Control Number 3206–0182, which has been submitted to OMB for review. This form is completed by applicants who are under consideration for Federal or Federal contract employment and collects information about an applicant's selective service registration, military service, and general background. The information collected on this form is mainly used to determine a person's acceptability for Federal and Federal contract employment, and their retirement status and life insurance enrollment. The information on this form may be used in conducting an investigation to determine a person's suitability or ability to hold a security clearance, and it may be disclosed to authorized officials making similar, subsequent determinations. The OF 306 asks for

personal identifying data and information about violations of the law, past convictions, imprisonments, probations, parole, military court martial, delinquency on a Federal debt, Selective Service Registration, United States military service, Federal civilian or military retirement benefits received or applied for, and life insurance enrollment.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 315,478.

Total Annual Responses: 315,478.

Total Burden Hours: 78,870.

Interested persons are invited to send comments regarding burden estimates or any other aspect of this collection of information. OPM is soliciting comments to:

1. Evaluate the necessity and utility of the proposed information collection for the proper performance of the agency's functions, including whether the information will have practical utility;

2. evaluate the accuracy of the estimated burden, including the validity of the methodology and assumptions used;

3. enhance the quality, utility, and clarity of the information to be collected; and

4. use automated collection techniques or other forms of information technology to minimize the information collection burden. Submit comments on this collection of information no later than June 27, 2022, through *https://www/regulations.gov* and follow the instructions on the site.

A copy of the proposed information collection and the associated instructions is available at *https://www.opm.gov/forms/pdf_fill/of0306.pdf.* The systems of record notice for this collection is: *https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-govt-1-general-personnel-records.pdf.*

List of Subjects in 5 CFR Part 302, 317, 319, 330, 731, 754, and 920

Administrative practices and procedures, Government employees. U.S. Office of Personnel Management.

Office of Personnel Management

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is proposing to amend chapter I of title 5, Code of Federal Regulations, as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

■ 1. Revise the authority citation for part 302 to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3317, 3318, 3319, 3320, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq;* § 302.107 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 2. Add § 302.107 to subpart A to read as follows:

§ 302.107 Suitability inquiries regarding criminal history.

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

■ 3. Revise the authority citation for part 317 to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3592, 3593, 3595, 3596, 8414, and 8421. § 317.202 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 4. Add § 317.202 to subpart B to read as follows:

§ 317.202 Suitability inquiries regarding criminal history.

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

PART 319—EMPLOYMENT IN THE SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS

■ 5. Revise the authority citation for part 319 to read as follows:

Authority: 5 U.S.C. 1104, 3104, 3324, 3325, 5108, and 5376. § 319.106 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 6. Add § 319.106 to subpart A to read as follows:

§ 319.106 Suitability inquiries regarding criminal history.

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

■ 7. Revise the authority citation for part 330 to read as follows:

Authority: 5 U.S.C. 1104, 1302, 3301, 3302, 3304, and 3330; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218; Section 330.103 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; Section 330.401 also issued under 5 U.S.C. 3310; Subparts F and G also issued under Presidential Memorandum on Career Transition Assistance for Federal Employees, September 12, 1995; Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b). § 330.1301 also issued under 5 U.S.C. 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

■ 8. Revise subpart M to read as follows:

Subpart M—Timing of Background Investigations

§ 330.1300 Timing of suitability inquiries in competitive hiring.

(a) A hiring agency may not make specific inquiries concerning an applicant's credit background of the sort asked on the OF–306, Declaration for Federal Employment, or other forms used to conduct suitability investigations for Federal employment (*i.e.,* inquiries into an applicant's adverse credit history) unless the hiring agency has made a conditional offer of employment to the applicant. Agencies may make inquiries into an applicant's Selective Service registration, military service, citizenship status, where applicable, or previous work history, prior to making a conditional offer of employment to an applicant.

(b) However, in certain situations, agencies may have a business need to obtain information about the credit background of applicants earlier in the hiring process to determine if they meet the qualifications requirements or are suitable for the position being filled. If so, agencies must request an exception from the Office of Personnel Management in order to determine an applicant's ability to meet qualifications or suitability for Federal employment prior to making a conditional offer of employment to the applicant(s). OPM will grant exceptions only when the agency demonstrates specific job-related reasons why the agency needs to evaluate an applicant's adverse credit history earlier in the process. OPM will consider such factors as, but not limited to, the nature of the position being filled and whether a clean credit history record would be essential to the ability to perform one of the duties of the

position effectively. OPM may also consider positions for which the expense of completing the examination makes it appropriate to review an applicant's credit background at the outset of the process (*e.g.,* a position that requires that an applicant complete a rigorous training regimen and pass an examination based upon the training before their selection can be finalized). A hiring agency must request and receive an OPM-approved exception prior to issuing public notice for a position for which the agency will collect credit background information prior to completion of the assessment process and the making of a conditional offer of employment.

§ 330.1301 Suitability inquiries regarding criminal history.

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

PART 731—SUITABILITY

■ 9. Revise the authority citation for part 731 to read as follows:

Authority: 5 U.S.C. 1302, 3301, 7301, 9201—9206; Pub. L. 116–92, sec. 1122(b)(1); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended; E.O. 13467, 3 CFR, 2009 Comp., p. 198; E.O. 13488, 3 CFR, 2010 Comp., p. 189; 5 CFR, parts 1, 2 and 5; Presidential Memorandum on Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own, January 31, 2014.

■ 10. In § 731.103, revise paragraph (d)(1) to read as follows:

§ 731.103 Delegation to agencies.

* * * * *

(d)* * *

(1) Except where required by law, a hiring agency may not make specific inquiries concerning an applicant's criminal or credit background in oral or written form (including through the OF–306 or other forms used to conduct suitability investigations for Federal employment, USAJOBS, or any other electronic means) unless the hiring agency has made a conditional offer of employment to the applicant. Agencies may request an exception to the provision for making credit inquiries in advance of a conditional offer in accordance with the provisions in 5 CFR part 330 subpart M. For criminal inquiries prior to a conditional offer, this prohibition does not apply to applicants for positions excepted under 5 CFR 920.201(b). If an agency has a business need to obtain information about the criminal history of applicants for other positions earlier in the process, they must follow the guidance in part 920 which also addresses the provisions for requesting an exception from the Office of Personnel Management. Agencies may make inquiries into an applicant's Selective Service registration, military service, citizenship status, where applicable, or previous work history, prior to making a conditional offer of employment to an applicant.

■ 11. Add part 754 as to read follows:

PART 754—COMPLAINT PROCEDURES, ADVERSE ACTIONS, AND APPEALS FOR CRIMINAL HISTORY INQUIRIES PRIOR TO CONDITIONAL OFFER

Subpart A—Complaint Procedures

Sec.

Subpart B—Adverse Actions

Authority: 5 U.S.C. 554(a)(2), 1103(a)(5)(A), 1104(a)(2), 9201–9205, and Pub. L. 116–92, sec. 1122(b)(1).

Subpart A—Complaint Procedures

§ 754.101 Coverage.

(a) *Actions covered.* A complaint, or any other information, submitted by an applicant for an appointment to a civil service position relating to compliance with section 9202 of title 5, United States Code.

(b) *Definitions.* In this subpart, *agency, applicant, appointing authority, conditional offer, criminal history record information,* and *employee* have the meanings set forth in 5 CFR 920.101.

§ 754.102 Agency complaint process.

(a) *Complaint intake.* (1) Within 90 days of the effective date of this part, each agency must establish and publicize an accessible program for the agency to receive a complaint, or any other information, from an applicant, and any applicable supporting material, relating to the agency's compliance with section 9202 of title 5, United States Code and part 920 of this chapter, in accordance with the guidelines and standards established in this section and the issuances described in paragraph (d)(3) of this section.

(2) An applicant may submit a complaint, or any other information, to an agency within 30 calendar days of the date of the alleged non-compliance by an employee of an agency with section 9202 of title 5, United States Code.

(3) The agency shall extend the 30 calendar day time limit in paragraph (b) of this section when the applicant shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the non-compliance with 5 U.S.C. 9202 and part 920 of this chapter occurred, to consider a reasonable accommodation of a disability, or for other proper and adequate reasons considered by the agency.

(4) The agency must conduct outreach to inform an applicant of the procedure for submitting a complaint when it has reasonable cause to believe that the applicant is attempting to file a complaint.

(b) *Agency investigation.* (1) Acting under delegated authority from OPM and subject to the limitations and requirements of paragraph (d) of this section, the agency employing the employee against whom the complaint has been filed shall investigate the complaint, unless the employee is an administrative law judge appointed under 5 U.S.C. 3105. To carry out this function in an impartial manner, the same agency official(s) responsible for executing and advising on the recruitment action may not also be responsible for managing, advising, or overseeing the agency complaint process established in this section.

(2) In carrying out its delegated responsibilities under paragraph (b)(1) of this section, the agency shall develop an impartial and appropriate factual record adequate for OPM to make findings on the claims raised by any written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether non-compliance with 5 U.S.C. 9202 and part 920 of this chapter occurred. Agencies have discretion to determine the appropriate fact-finding methods that efficiently and thoroughly address the matters at issue.

(3) The agency must delegate to the investigator sufficient authority to secure the production, from agency employees and contractors, of documentary and testimonial evidence needed to investigate and report on the complaint.

(4) The agency shall complete its investigation within 60 calendar days of the date of the filing of the complaint.

(5) Within 30 calendar days of completing its investigation, the agency shall provide to OPM an administrative report. This report should include the

applicant's complaint, or any other information submitted by the applicant, the agency's factual findings, a complete copy of all information gathered during the investigation, and any other information that the agency believes OPM should consider. The report should be submitted to the Manager, Employee Accountability, Accountability and Workforce Relations, Employee Services, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

(c) *OPM adjudication.* (1) At OPM's discretion, OPM may request the agency provide additional information as necessary.

(2) OPM shall notify the agency and the subject(s) of the complaint in writing of its findings regarding the complaint, including any decision to initiate adverse action proceedings.

(d) *OPM oversight.* (1) OPM may revoke an agency's delegation under this section if an agency fails to conform to this section or OPM issuances as described in paragraph (d)(3) of this section.

(2) OPM retains jurisdiction to make final determinations and take actions regarding the receipt and investigation of complaints, or any other information; record-keeping; and reporting related to an allegation of noncompliance with 5 U.S.C. 9202 and part 920 of this chapter. Paragraphs (a) and (b) of this section notwithstanding, OPM may, in its discretion, exercise its jurisdiction under this section in any case it deems necessary.

(3) OPM may set forth policies, procedures, standards, and supplementary guidance for the implementation of this section in OPM issuances.

§ 754.103 Applicant representatives.

An applicant may select a representative of their choice to assist the applicant during the complaint process. An agency may disallow as an applicant's representative an individual whose activities as a representative would cause a conflict of interest or position; an agency employee who cannot be released from their official duties because of the priority needs of the Government; or an agency employee whose release would give rise to unreasonable costs to the Government.

Subpart B—Adverse Actions

§ 754.201 Coverage.

(a) *Actions covered.* This subpart applies to actions taken under 5 U.S.C. 9204.

(b) *Employees covered.* This subpart covers an employee of an agency as defined in 5 CFR 920.101.

(c) *Definitions.* In this subpart—

Civil penalty means a monetary penalty imposed on an employee of a covered agency when it has been determined the employee has violated the Fair Chance Act.

Day means a calendar day.

Director means the Director of OPM or the Director's designee.

Suspension means the placing of an employee of a covered agency in a temporary status without duties and pay when it has been determined the employee violated the Fair Chance Act.

§ 754.202 Penalty determination.

(a) *First violation.* If the Director or Director's designee determines that an employee of an agency has violated 5 U.S.C. 9202 and part 920 of this chapter, the Director or Director's designee, after OPM provides the procedural rights in § 754.203, shall issue to the employee a written warning that includes a description of the violation and the additional penalties that may apply for subsequent violations; and direct the agency to file such warning in the employee's official personnel record file.

(b) *Subsequent violations.* If the Director or Director's designee determines, after OPM provides the procedural rights in § 754.203, that an employee of an agency has committed a subsequent violation of 5 U.S.C. 9202 and part 920 of this chapter, the Director or Director's designee may take the following action:

(1) For a second violation, order a suspension of the employee for a period of not more than 7 days.

(2) For a third violation, order a suspension of the employee for a period of more than 7 days.

(3) For a fourth violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than $250, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(4) For a fifth violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than $500, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(5) For any subsequent violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than $1,000, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(c) *Duration of suspension and penalty amount.* The Director or the Director's Designee has discretion to determine the duration of a suspension and the amount of a penalty under this section, subject only to the minimum and maximum durations and amounts specified in this section.

(d) *Agency responsibilities.* An agency shall carry out an order of the Director to suspend an employee, or to collect and remit a civil penalty, pursuant to processing and recordkeeping instructions issued by OPM.

(1) The agency shall carry out the order of the Director to suspend the employee as soon as practicable.

(2) The agency shall carry out the order of the Director to collect and remit a civil penalty as soon as practicable, unless the employee timely appeals the action under § 754.204, in which case the agency shall collect and remit the civil penalty as soon as practicable after the Merit Systems Protection Board issues a final decision sustaining the action.

(e) *Administrative law judges.* Paragraphs (a) through (d) of this section do not apply if the Director or Director's designee determines that an administrative law judge has violated 5 U.S.C. 9202 and part 920 of this chapter. In any such case the Director or the Director's designee shall file a complaint with the Merit Systems Protection Board proposing an action set forth in 5 U.S.C. 9204 and describing with particularity the facts that support the proposed agency action, and the Board will determine whether the action is for good cause under its regulations in 5 CFR part 1201, subpart D.

§ 754.203 Procedures.

(a) *Notice of proposed action.* If the Director or Director's designee determines a violation of 5 U.S.C. 9202 and part 920 of this chapter has occurred, an employee against whom action is proposed under this subpart is entitled to at least 30 days' advance written notice. The notice must state the specific reason(s) for the proposed action and inform the employee of their right to review the material which is relied on to support the reasons for action given in the notice before any final decision is made by the Director or Director's designee.

(b) *Employee's answer.* (1) An employee may answer orally and in writing. The employee's agency must

give the employee a reasonable amount of official time to review the material relied on to support OPM's proposed action, to prepare and present an answer orally and in writing, and to secure affidavits, if the employee is in an active duty status. OPM may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the employee's answer, within such time as would be reasonable, but not less than 7 days.

(2) The Director or Director's Designee may designate an Office of Personnel Management official to hear the employee's oral answer, and confer authority on that person to make or recommend a final decision on the proposed adverse action.

(c) *Representation.* An employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from their official position would give rise to unreasonable costs or whose priority work assignments preclude their release.

(d) *OPM decision.* (1) In arriving at a decision, the Director or the Director's Designee will consider only the complaint, the applicant's supporting material, the agency's administrative file, the reasons specified in the notice of proposed action, and any oral and written answer by the employee or the employee's representative.

(2) The decision notice must specify in writing the reasons for the decision and advise the employee of any appeal rights.

(e) This section does not apply if the Director or Director's designee determines that an administrative law judge has violated 5 U.S.C. 9202 and part 920 of this chapter.

§ 754.204 Appeal rights.

(a) An employee against whom an action is taken by OPM under § 754.203 may appeal to the Merit Systems Protection Board, under the regulations of the Board, but only to the extent the action concerns suspensions for more than 14 days or combines a suspension and a civil penalty. An appeal must be filed by not later than 30 days after the effective date of the action. The procedures for filing an appeal with the Board are found at 5 CFR part 1201.

(b) If the Board finds that one or more of the charges brought by OPM against the employee is supported by a preponderance of the evidence, regardless of whether all specifications are sustained, it must affirm OPM's action. The Board may neither review whether the adverse action is for such cause as will promote the efficiency of the service, nor mitigate the duration of a suspension or the amount of a civil penalty ordered under this part.

(c) An appeal against OPM is the exclusive avenue of appeal. The employee has no right to file a separate appeal against the employing agency for processing a personnel action as ordered by OPM under § 754.202.

(d) OPM's action under § 754.202 is not subject to an agency's administrative grievance procedure or a negotiated grievance procedure under a collective bargaining agreement between an exclusive bargaining representative and any agency.

§ 754.205 Agency records.

The complaint, the applicant's supporting material, the agency's administrative file, the notice of the proposed action, the employee's written reply, if any, any summary or transcript of the employee's oral reply, if any, the notice of decision, and any order to the covered agency effecting the action together with any supporting material, must be maintained in an appropriate system of records under the Privacy Act.

PART 920—TIMING OF CRIMINAL HISTORY INQUIRIES

Subpart A—General Provisions

Subpart B—Timing of Inquiries Regarding Criminal History

Authority: 5 U.S.C. 1103(a)(5)(A), 9201–9206 and Pub. L. 116–92, sec. 1122(b)(1).

Subpart A—General Provisions

§ 920.101 Definitions.

For the purpose of this part:

Agency means—

(1) An Executive agency as such term is defined in 5 U.S.C. 105, including—

(i) An Executive department defined in 5 U.S.C. 101;

(ii) A Government corporation defined in 5 U.S.C. 103(1); and

(iii) An independent establishment defined in 5 U.S.C. 104, including the Government Accountability Office;

(2) A military department as defined in 5 U.S.C. 102;

(3) The United States Postal Service and the Postal Regulatory Commission; and

(4) Each component of the Executive Office of the President that is an independent establishment, or that has a position in the competitive service, with respect to an applicant for the position.

Applicant means a person who has applied to an agency under its procedures for accepting applications consistent with governmentwide regulations, as applicable.

Appointing authority means an employee in the executive branch of the Government of the United States that has authority to make appointments to positions in the civil service.

Conditional offer means an offer of employment in a position in the civil service that is conditioned upon the results of a criminal history inquiry.

Criminal history record information—(1) Except as provided in paragraphs (2) and (3) of this definition, has the meaning given the term in section 9101(a) of title 5, United States Code;

(2) Includes any information described in the first sentence of section 9101(a)(2) of title 5, United States Code, that has been sealed or expunged pursuant to law; and

(3) Includes information collected by a criminal justice agency, relating to an act or alleged act of juvenile delinquency, that is analogous to criminal history record information (including such information that has been sealed or expunged pursuant to law).

Employee means an ''employee'' as defined in 5 U.S.C. 2105 and an employee of the United States Postal Service or the Postal Regulatory Commission.

Political appointment means an appointment by the President without Senate confirmation (except those appointed under 5 CFR 213.3102(c)); an appointment to a position compensated under the Executive Schedule (5 U.S.C. 5312 through 5316); an appointment of a White House Fellow to be assigned as an assistant to a top-level Federal officer (5 CFR 213.3102(z)); a Schedule C appointment (5 CFR 213.3301, 213.3302); a noncareer, limited term, or limited emergency Senior Executive Service appointment (5 CFR part 317, subpart F); an appointee to serve in a political capacity under agency-specific authority; and a provisional political appointment.

§ 920.102 Positions covered by Fair Chance Act regulations.

(a) *Positions covered.* This part applies to all positions in the competitive service, excepted service, and Senior Executive Service in an agency.

(b) *Exempt positions.* For purposes of this part an exempt position is any position for which a hiring agency is required by statutory authority to make inquiries into an applicant's criminal history prior to extending an offer of employment to the applicant.

Subpart B—Timing of Inquiries Regarding Criminal History

§ 920.201 Limitations on criminal history inquiries.

(a) *Applicability.* (1) An employee of an agency may not request, in oral or written form (including through the Declaration for Federal Employment (Office of Personnel Management Optional Form 306) or any similar successor form, the USAJOBS internet website, or any other electronic means) that an applicant for an appointment to a position in the civil service disclose criminal history record information regarding the applicant before the appointing authority extends a conditional offer to the applicant. This includes the following points in the recruitment and hiring process:

(i) Initial application, through a job opportunity announcement on USAJOBS, or through any recruitment/public notification such as on the agency's website/social media, etc.;

(ii) After an agency receives an initial application through its back-end system, through shared service providers/recruiters/contractors, or orally or via email and other forms of electronic notification; and

(iii) Prior to, during, or after a job interview.

(2) This prohibition applies to agency personnel, including when they act through shared service providers, contractors involved in the agency's recruitment and hiring process, or automated systems (specific to the agency or governmentwide).

(b) *Exceptions for certain positions.* (1) The prohibition under paragraph (a) shall not apply with respect to an applicant for an appointment to a position:

(i) Which is exempt in accordance with § 920.102(b);

(ii) That requires a determination of eligibility for access to classified information;

(iii) Has been designated as a sensitive position under the Position Designation System issued by OPM and the Office of Director of National Intelligence, which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security;

(iv) Is a dual-status military technician position in which an applicant or employee is subject to a determination of eligibility for acceptance or retention in the armed forces, in connection with concurrent military membership; or

(v) Is a Federal law enforcement officer position meeting the definition in section 115(c) of title 18, U.S. Code.

(2) The prohibition under this paragraph (a) shall not apply with respect to an applicant for a political appointment.

(3) OPM may grant additional exceptions on a case-by-case basis only when an agency demonstrates specific job-related reasons why the agency needs to evaluate an applicant's criminal history for a position prior to making a conditional offer, giving due consideration to positions that involve transactions with minors, access to sensitive information, or managing financial transactions. OPM will consider such factors as, but not limited to, the nature of the position being filled and whether a clean criminal history record would be essential to the ability to perform one of the duties of the position effectively.

(c) *Notification to applicants.* Each agency must publicize to applicants the prohibition described in paragraph (a) of this section in job opportunity announcements and on agency websites/portals for positions that do not require a posting on USAJOBS, such as excepted service positions, and information on where it has posted its complaint intake process under part 754 of this chapter.

§ 920.202 Violations.

(a) An agency employee may not request, orally or in writing, information about an applicant's criminal history prior to making a conditional offer of employment to that applicant unless the position is exempted or excepted in accordance with § 920.201(b).

(b) A violation (or prohibited action) as defined in paragraph (a) of this section occurs when agency personnel, shared service providers, or contractors involved in the agency's recruitment and hiring process, either personally or through automated systems (specific to the agency or governmentwide), make oral or written requests prior to giving a conditional offer of employment—

(1) In a job opportunity announcement on USAJOBS or in any recruitment/public notification such as on the agency's website or social media;

(2) In communications sent after an agency receives an initial application, through an agency's talent acquisition system, shared service providers/recruiters/contractors, orally or in writing (including via email and other forms of electronic notification); or

(3) Prior to, during, or after a job interview or other applicant assessment.

(c) When a prohibited request, announcement, or communication is publicly posted or simultaneously distributed to multiple applicants, it constitutes a single violation.

(d) Any violation as defined in paragraph (a) of this section is subject to the complaint and penalty procedures in part 754 of this chapter.

[FR Doc. 2022–08975 Filed 4–26–22; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0434; Airspace Docket No. 19–AAL–69]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–260; Nome, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) T-route, T–260 in the vicinity of Nome, AK. The RNAV amendments are necessary due to the planned decommissioning of the Tin City, AK, (TNC) Non-Directional Beacons (NDB)/Distance Measuring Equipment (DME) and the Point Hope, AK, (PHO) NDB. Both NDBs will decommission as part of a large and comprehensive T-route modernization project for the state of Alaska. Although the Tin City, AK, (TNC) NDB will decommission, the co-located Distance Measuring Equipment (DME) will remain for use within the National Airspace System (NAS).

DATES: Comments must be received on or before June 13, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0434; Airspace Docket No. 19–AAL–69 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the NAS by lessoning the dependency on ground based navigation.

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 (FAA Docket No. FAA–2022–0434; Airspace Docket No. 19–AAL–69) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0434; Airspace Docket No. 19–AAL–69.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for 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 office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub L., 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive RNAV T-route modernization project in the state of Alaska. The project's mission statement is ''to modernize Alaska's Air Traffic Service route structure using satellite based navigation. Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

Industry and users have indicated a desire that the FAA transition the Alaskan enroute navigation structure away from any dependency on NDBs, and move to develop and improve the RNAV route structure. The FAA believes this request is time sensitive given the increasing number of NDBs that are currently and/or scheduled out of service, and the lack of an NDB acquisition, maintenance, or sustainment program, which forces aircraft flying under Instrument Flight Rules (IFR) that are without de-icing protection to fly at higher MEAs, with the potentially associated loss of safety.

The FAA is proposing to amend RNAV T-route T–260. This proposed action is necessary due to the planned decommissioning of the Tin City, AK, (TNC) NDB and the Point Hope, AK, (PHO) NDB. Both NDBs will decommission as part of the RNAV modernization effort for the state of Alaska. The FAA proposes to replace the TNC and PHO, AK NDBs with the FEDEV and VANTY waypoints (WPs), respectively. Although the TNC NDB will decommission, the co-located DME will remain for use within the NAS. Further, this proposed amendment action would improve the RNAV satellite-based air traffic network in Alaska by planning for the future connectivity of future RNAV T-routes.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–260 in the vicinity of Nome, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed RNAV T-route amendment is described below.

T–260: T–260 currently extends between the Point Hope, AK, (PHO) NDB and the NOME, AK, (OME) VHF Omnidirectional Radar/Distance Measuring Equipment (VOR/DME). The FAA proposes to replace the Point Hope, AK (PHO) NDB and the Tin City, AK, (TNC) NDB/DME with the VANTY and FEDEV WPs, respectively. The FAA also proposes to remove the COGNU, AK, WP from the legal description due to it having less than a 1 degree turn and is not required. As a result, T–260 would extend between the VANTY, AK, WP and the Nome, AK, VOR/DME.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would 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 proposed 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 Department of Transportation (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 proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 6011 United States Area Navigation Routes

* * * * *

T–260 Nome, AK (OME) to VANTY, AK [Amended]

Nome, AK (OME)	VOR/DME	(Lat. 64°29′06.39″ N, long. 165°15′11.43″ W)
FEDEV, AK	WP	(Lat. 65°33′37.84″ N, long. 167°55′18.90″ W)
VANTY, AK	WP	(Lat. 68°20′40.64″ N, long. 166°48′09.96 ″ W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08891 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0436; Airspace Docket No. 22–ASW–1]

RIN 2120–AA66

Proposed Amendment and Establishment of Air Traffic Service (ATS) Routes; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–198, V–212, V–556, and V–558; amend Area Navigation (RNAV) route T–256; and establish RNAV route T–466. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Eagle Lake, TX (ELA), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Eagle Lake VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before June 13, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0436; Airspace Docket No. 22–ASW–1 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

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 (FAA Docket No. FAA–2022–0436; Airspace Docket No. 22–ASW–1) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0436; Airspace Docket No. 22–ASW–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. 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 **ADDRESSES** section for 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 office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 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.

Background

The FAA is planning to decommission the Eagle Lake, TX, VOR in December 2022. The Eagle Lake VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Eagle Lake VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The ATS routes effected by the Eagle Lake VOR decommissioning are VOR Federal airways V–198, V–212, V–556, and V–558, and RNAV route T–256. The V–198, V–556, V–558, and T–256 ATS routes are affected directly with the Eagle Lake VOR being included in the route descriptions. Whereas, V–212 is affected based on the navigational guidance the Eagle Lake VOR provides to a segment of the airway between the extended service volume limit of the San Antonio, TX, VOR/Tactical Air Navigation (VORTAC) NAVAID (SEEDS fix) and the intersection of the San Antonio VORTAC and the Industry, TX, VORTAC radials (WEMAR fix). Except for T–256, the planned decommissioning of the Eagle Lake VOR results in the remaining ground-based NAVAID coverage in the area being insufficient to enable the continuity of the affected ATS routes. As such, modifications to V–198 and V–556 would result in creating or extending gaps in the airways and modifications to V–212 and V–558 would result in the airways being shortened. And, modifications to T–256 would include the Eagle Lake VOR/DME route point being removed from the route description.

To overcome the affected ATS route gaps or removed segments, instrument flight rules (IFR) traffic could use portions of adjacent VOR Federal airways V–68 and V–222 to circumnavigate the affected area, or receive air traffic control (ATC) radar vectors to fly through the affected area. Additionally, IFR pilots equipped with RNAV capabilities could use T–200, T–220, and T–256, and the new T–466 proposed in this action, or navigate point to point using the existing fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

Further, the FAA proposes to establish RNAV route T–466 between the San Angelo, TX, VORTAC and Sabine Pass, TX, VOR/DME. The proposed T-route would overlay the existing V–556 and, in part, mitigate the proposed removal of the V–556 segment between the Stonewall, TX, VORTAC and the Scholes, TX, VOR/DME. The new T-route would provide airspace users equipped with RNAV capabilities an enroute structure between the San Angelo, TX, area southeastward to the Galveston, TX, area and then northeastward to the Beaumont, TX, area, by transiting north of the San Antonio, TX, and New Braunfels, TX, areas and south of the Houston, TX, area. Lastly, the new T-route would support the FAA's NextGen efforts to modernize the NAS navigation system from a ground-based system to a satellite-based system.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–198, V–212, V–556, and V–558; amend RNAV route T–256; and establish RNAV route T–466 due to the planned decommissioning of the

Eagle Lake, TX, VOR. The proposed ATS route actions are described below.

V–198: V–198 currently extends between the San Simon, AZ, VORTAC and the Eagle Lake, TX, VOR/DME; and between the Sabine Pass, TX, VOR/DME and the Craig, FL, VORTAC. The FAA proposes to remove the route segment between the San Antonio, TX, VORTAC and the Eagle Lake, TX, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–212: V–212 currently extends between the San Antonio, TX, VORTAC and the Mc Comb, MS, VORTAC. The FAA proposes to remove the airway segment between the San Antonio, TX, VORTAC and the Industry, TX, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–556: V–556 currently extends between the San Angelo, TX, VORTAC and the Sabine Pass, TX, VOR/DME. The FAA proposes to remove the airway segment between the Stonewall, TX, VORTAC and the Scholes, TX, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–558: V–558 currently extends between the Llano, TX, VORTAC and the Eagle Lake, TX, VOR/DME. The FAA proposes to remove the airway segment between the Industry, TX, VORTAC and the Eagle Lake, TX, VOR/DME. The unaffected portions of the existing airway would remain as charted.

T–256: T–256 currently extends between the San Antonio, TX, VORTAC and the Sabine, TX, VOR/DME. The FAA proposes to remove the Eagle Lake, TX, VOR/DME route point from the description as it is on a straight segment of the route and does not change the route structure between the San Antonio, TX, VORTAC and the MOLLR, TX, waypoint (WP). Additionally, the FAA proposes to add a RNAV route segment overlaying V–194 between the Sabine, TX, VOR/DME and the DAFLY, LA, WP being established near the Lafayette, LA, VORTAC. The full route legal description is listed in ''The Proposed Amendment'' section, below.

T–466: T–466 is a proposed new RNAV route that would extend between the San Angelo, TX, VORTAC and the Sabine Pass, TX, VOR/DME. The T-route would overlay the current V–556 and, in part, mitigate the proposed removal of the V–556 segment between the Stonewall, TX, VORTAC and the Scholes, TX, VOR/DME. The new route would provide RNAV routing between the San Angelo, TX, area southeastward to the Galveston, TX, area and then northeastward to the Beaumont, TX, area. The full route legal description is listed in ''The Proposed Amendment'' section, below.

All NAVAID radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a), and RNAV T-routes are published in paragraph 6011 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 ATS routes listed in this document would 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 proposed 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 Department of Transportation (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 proposed rule, when promulgated, will 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

In consideration of the foregoing, 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–198 [Amended]

From San Simon, AZ; Columbus, NM; El Paso, TX; 6 miles wide INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide Hudspeth; 29 miles, 38 miles 82 MSL INT Hudspeth 109° and Fort Stockton, TX, 284° radials; 18 miles 82 MSL Fort Stockton; 20 miles, 116 miles 55 MSL Junction, TX; to San Antonio, TX. From Sabine Pass, TX; White Lake, LA; Tibby, LA; Harvey, LA; 69 miles, 33 miles 25 MSL Brookley, AL; INT Brookley 056° and Crestview, FL, 266° radials; Crestview; Marianna, FL; Seminole, FL; Greenville, FL; Taylor, FL; INT Taylor 093° and Craig, FL, 287° radials; to Craig.

* * * * *

V–212 [Amended]

From Industry, TX; Navasota, TX; INT Navasota 019° and Lufkin, TX, 250° radials; Lufkin; Alexandria, LA; to Mc Comb, MS.

* * * * *

V–556 [Amended]

From San Angelo, TX; INT San Angelo 181° and Junction, TX, 310° radials; Junction; to Stonewall, TX. From Scholes, TX; to Sabine Pass, TX.

* * * * *

V–558 [Amended]

From Llano, TX; INT Llano 088° and Centex, TX, 306° radials; Centex; to Industry, TX.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–256 San Antonio, TX (SAT) to DAFLY, LA [Amended]

San Antonio, TX (SAT)	VORTAC	(Lat. 29°38′38.51″ N, long. 098°27′40.74″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 095°16′35.83″ W)
Sabine Pass, TX (SBI)	VOR/DME	(Lat. 29°41′12.19″ N, long. 094°02′16.72″ W)

DAFLY, LA	WP	(Lat. 30°11′37.70″ N, long. 091°59′33.94″ W)

* * * * *

T–466 San Angelo, TX (SJT) to Sabine Pass, TX (SBI) [New]

San Angelo, TX (SJT)	VORTAC	(Lat. 31°22′29.84″ N, long. 100°27′17.53″ W)
CHILD, TX	WP	(Lat. 31°03′41.17″ N, long. 100°27′40.62″ W)
Junction, TX (JCT)	VORTAC	(Lat. 30°35′52.88″ N, long. 099°49′02.93″ W)
BETTI, TX	FIX	(Lat. 29°57′54.97″ N, long. 098°03′23.98″ W)
MARCS, TX	FIX	(Lat. 29°53′52.04″ N, long. 097°51′40.70″ W)
SEEDS, TX	FIX	(Lat. 29°39′31.94″ N, long. 097°14′58.66″ W)
LDRET, TX	WP	(Lat. 29°39′44.93″ N, long. 096°19′00.96″ W)
KEEDS, TX	WP	(Lat. 29°21′59.49″ N, long. 095°36′48.98″ W)
Scholes, TX (VUH)	VOR/DME	(Lat. 29°16′09.60″ N, long. 094°52′03.81″ W)
Sabine Pass, TX (SBI)	VOR/DME	(Lat. 29°41′12.19″ N, long. 094°02′16.72″ W)

Issued in Washington, DC, on April 21, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08890 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 83

[2231A2100DD/AAKC001030/A0A501010.999900]

RIN 1076–AF67

Federal Acknowledgment of American Indian Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule seeks input on continuation of an express prohibition on re-petitioning under the U.S. Department of the Interior's (Department) regulations for Federal acknowledgment of Indian Tribes. When first promulgated in 1978, the acknowledgment regulations did not provide a regulatory path that allowed re-petitioning, and since 1994, the regulations have expressly prohibited petitioners who have received a negative final determination from the Department from re-petitioning (ban). The most recent update to the regulations in 2015 continued this ban, but two Federal district courts held that the Department's stated reasons for implementing the ban, as articulated in the 2015 final rule updating the regulations (2015 final rule), were arbitrary and capricious, and remanded to the Department for further consideration. The Department has undertaken further consideration and is proposing to maintain the ban, albeit with revised justifications, in light of the Federal district courts' orders. The Department seeks input on this proposal and the basis for its proposal.

DATES: Please submit your comments by July 6, 2022. Consultation sessions with federally recognized Indian Tribes will be held on Thursday, June 2, 2022, 3 p.m. to 5 p.m. ET and Monday, June 6, 2022, 2 p.m. to 4 p.m. ET. A listening session for present, former, and prospective petitioners will be held on Thursday, June 9, 2022, 3 p.m. to 5 p.m. ET.

ADDRESSES: We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed below will not be included in the docket for this rulemaking. All comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. You may submit comments by any of the following methods:

- *Federal rulemaking portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: consultation@bia.gov.* Include the number 1076–AF67 in the subject line of the message.
- *Consultation with Indian Tribes.* The Department will conduct two virtual consultation sessions and will accept oral and written comments. Federally recognized Indian Tribes may register for the Thursday, June 2, 2022, 3 p.m. to 5 p.m. ET consultation session at: *https://www.zoomgov.com/meeting/register/vJIscu2prz4pHbtqqZn0-5f8oRU5jEYKGDg.* Federally recognized Indian Tribes may register for the Monday, June 6, 2022, 2 p.m. to 4 p.m. ET consultation session at: *https://www.zoomgov.com/meeting/register/vJIsdu-opjMtHR5nht0X2HKcjOh35Oz23SU.*
- Listening session for present, former, and prospective petitioners. The Department will host a listening session for present, former, and prospective petitioners and will accept oral and written comments. Present, former, and prospective petitioners may register for the Thursday, June 9, 2022, 3 p.m. to 5 p.m. ET listening session at: *https://www.zoomgov.com/meeting/register/vJIscOGpqj8uG09-rMrR2FeecAzGmJmf78s.*

FOR FURTHER INFORMATION CONTACT: Steven Mullen, Federal Register Liaison, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, (202) 924–2650, *RACA@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Congress granted the Assistant Secretary—Indian Affairs (then, the Commissioner of Indian Affairs) authority to ''have management of all

Indian affairs and of all matters arising out of Indian relations.'' [1] This authority includes the authority to administratively acknowledge Indian Tribes.[2] The Congressional findings that supported the Federally Recognized Indian Tribe List Act of 1994 expressly acknowledged that Indian Tribes could be recognized ''by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe,' '' and described the relationship that the United States has with federally recognized Indian Tribes.[3]

II. History of This Rulemaking

The regulations that codify the process through which a group may petition the Department for acknowledgment as a federally recognized Indian Tribe are at 25 CFR part 83 (part 83). The regulations require groups petitioning for Federal acknowledgment to meet seven mandatory criteria, the satisfaction of which has been central to the Federal acknowledgment process since its inception.[4] The Department refers to the seven criteria as the (a) ''Indian Entity Identification'' criterion, (b) ''Community'' criterion, (c) ''Political Authority'' criterion, (d) ''Governing Document'' criterion, (e) ''Descent'' criterion, (f) ''Unique Membership'' criterion, and (g) ''Congressional Termination'' criterion.[5]

First promulgated in 1978 at 25 CFR part 54 (1978 regulations), the Federal acknowledgment regulations were subsequently revised in 1994 and moved to part 83 (1994 regulations). The 1978 regulations did not provide a regulatory path that allowed re-petitioning, and since 1994, part 83 has expressly prohibited petitioners who have received a negative final determination from the Department from re-petitioning under part 83.[6]

In a 2014 notice of proposed rulemaking (2014 proposed rule), the Department proposed giving previously denied petitioners a limited opportunity to re-petition.[7] The 2014 proposed rule proposed to allow re-petitioning only if:

- Any third parties that participated as a party in an administrative reconsideration or Federal Court appeal concerning the petitioner has consented in writing to the re-petitioning; and
- The petitioner proves, by a preponderance of the evidence, that either:
  - A change from the previous version of the regulations to the current version of the regulations warrants reconsideration of the final determination; or
  - The ''reasonable likelihood'' standard was misapplied in the final determination.[8]

In the preamble of the 2014 proposed rule, the Department explained that the requirement of third-party consent would ''recognize[ ] the equitable interests of third parties that expended sometimes significant resources to participate in the adjudication [of a final determination in a reconsideration or appeal] and have since developed reliance interests in the outcome of such adjudication.'' [9] The Department did not discuss the extent to which the third-party consent condition might limit the number of re-petitioners.[10]

Similarly, the Department did not specify the extent to which the other conditions listed above—requiring a denied petitioner to prove that either a change in the regulations or a misapplication of the reasonable likelihood standard warrants reconsideration—might limit the number of re-petitioners. However, as a general matter, the Department noted that ''the changes to the regulations are generally intended to provide uniformity based on previous decisions,'' so the circumstances in which re-petitioning might be ''appropriate'' would be ''limited.'' [11] The proposed rule did not identify any change to the seven mandatory criteria that ''would likely change [any negative] previous final determination[s].'' [12]

Ultimately, in the 2015 final rule updating part 83, the Department expressly continued the ban.[13] In the preamble of the rule, the Department explained that ''[t]he final rule promotes consistency, expressly providing that evidence or methodology that was sufficient to satisfy any particular criterion in a previous positive decision on that criterion will be sufficient to satisfy the criterion for a present petitioner.'' [14] Additionally, the Department explained that ''[t]he Department has petitions pending that have never been reviewed'' and that ''[a]llowing for re-petitioning by denied petitioners would be unfair to petitioners who have not yet had a review.'' [15] Finally, the Department explained that re-petitioning ''would hinder the goals of increasing efficiency and timeliness by imposing the additional workload associated with re-petitions on the Department, and [the Office of Federal Acknowledgment] in particular.'' [16]

In 2020, two Federal district courts—one in a case brought by a former petitioner seeking acknowledgement as the Chinook Indian Nation [17] and one in a case brought by a former petitioner seeking acknowledgement as the Burt Lake Band of Ottawa and Chippewa Indians [18]—held that the Department's stated reasons for implementing the ban, as articulated in the preamble to the 2015 final rule revising part 83,[19] were arbitrary and capricious under the Administrative Procedure Act (APA). As an initial matter, both courts agreed with the Department that the Department's authority over Indian affairs generally authorized a re-petition ban.[20] In addition, both courts noted that their review is highly deferential to the agency's decision under applicable

[1] 25 U.S.C. 2 and 9, and 43 U.S.C. 1457.

[2] *See, e.g., Muwekma Ohlone Tribe* v. *Salazar,* 708 F.3d 209, 211 (D.C. Cir. 2013); *James* v. *United States Dep't of Health & Human Servs.,* 824 F.2d 1132, 1137 (D.C. Cir. 1987).

[3] *See* Public Law 103–454, Sec. 103(2), (3), (8) (Nov. 2, 1994).

[4] 25 CFR 83.11(a)–(g) (2015 version of the criteria); *id.* § 83.7(a)–(g) (1994) (1994 version); *id.* § 54.7(a)–(g) (1978) (1978 version).

[5] 25 CFR 83.5.

[6] 25 CFR 83.3(f) (1994); 59 FR 9280, 9294 (Feb. 25, 1994).

[7] 79 FR 30766, 30767 (May 29, 2014).

[8] 25 CFR 83.4(b)(1) (proposed 2014); *see also* 79 FR 30774 (containing the proposed provision).

[9] 79 FR 30767.

[10] *See Burt Lake Band of Ottawa and Chippewa Indians* v. *Bernhardt,* No. 17–0038 (ABJ), 2020 WL 1451566, at *11 (D.D.C. Mar. 25, 2020) (noting that the record ''does not provide statistics to show . . . how many [petitioners] would be able to re-apply under the limited proposed exception''). On reconsideration, the Department has identified eleven denied petitioners that would have been subject to the third-party consent condition under the 2014 proposed rule: Duwamish Indian Tribe, Tolowa Nation, Nipmuc Nation (Hassanamisco Band), Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, Eastern Pequot Indians of Connecticut, Paucatuck Eastern Pequot Indians of Connecticut, Schaghticoke Tribal Nation, Golden Hill Paugussett Tribe, Snohomish Tribe of Indians, Chinook Indian Tribe/Chinook Nation, and Ramapough Mountain Indians, Inc.

[11] 79 FR 30767.

[12] *Id.*

[13] 25 CFR 83.4(d); *see* 80 FR 37861, 37888–89 (July 1, 2015).

[14] 80 FR 37875.

[15] *Id.*

[16] *Id.*

[17] *Chinook Indian Nation* v. *Bernhardt,* No. 3:17–cv–05668–RBL, 2020 WL 128563 (W.D. Wash. Jan. 10, 2020).

[18] *Burt Lake Band of Ottawa and Chippewa Indians* v. *Bernhardt,* No. 17–0038 (ABJ), 2020 WL 1451566 (D.D.C. Mar. 25, 2020).

[19] 80 FR 37861 (July 1, 2015).

[20] *Chinook,* 2020 WL 128563, at *6 (stating that ''the Court agrees with Department of the Interior (DOI) that its expansive power over Indian affairs encompasses the re-petition ban'' (citation omitted)); *Burt Lake,* 2020 WL 1451566, at *5 (stating that ''the regulation [banning re-petitioning] comports with the agency's authority'').

tenets of administrative law.[21] As a result, the narrow question left for the courts to decide was whether the Department, in retaining the ban in the 2015 final rule, ''examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' '' [22]

Both courts concluded that the Department had not done so. The *Chinook* court held that the Department's reasons were ''illogical, conclusory, and unsupported by the administrative record,'' as well as not ''rationally connect[ed] . . . to the evidence in the record.'' [23] Similarly, the *Burt Lake* court concluded that the Department's reasons were ''neither well-reasoned nor rationally connected to the facts in the record.'' [24] Both courts found that despite the Department's argument that the 2015 revisions to part 83 did not change any substantive criteria other than those specifically identified, the Department had nevertheless failed to explain why, in light of those and other revisions and after having proposed a limited re-petition process in the 2014 proposed rule, the Department could permissibly maintain the ban.[25] The *Chinook* court focused in particular on a provision introduced in the 2015 final rule that sought to promote consistent implementation of the criteria and stated that ''[t]here is no reason why new petitioners should be entitled to this 'consistency' while past petitioners are not.'' [26] More generally, the *Burt Lake* court linked reform of the [F]ederal acknowledgment process with an ''opportunity to re-petition and to seek to satisfy the new criterion.'' [27] Neither the *Chinook* nor *Burt Lake* courts struck down the 2015 final rule in whole or in part. Rather, both courts remanded the ban to the Department for further consideration.

On December 18, 2020, the Department announced its intent to reconsider the ban and invited federally recognized Indian Tribes to consult on whether to retain the ban or allow for re-petitioning. On February 25, 2021, the Department held a Tribal consultation session and solicited written comments on the ban through March 31, 2021. In response, the Department received 19 comments from federally recognized Indian Tribes, non-federally recognized groups, an inter-Tribal organization representing both federally recognized and State recognized Indian Tribes, various State and town representatives in Connecticut, and individuals. A majority of the commenters opposed the ban.

Following the comment period, the Department reviewed all comments and identified three options: (1) Keeping the ban in place; (2) creating a fact-based or time-limited avenue for re-petitioning; and (3) giving denied petitioners an opportunity to re-petition with few or no limitations. After considering each of these options, the history of the ban, the Federal district court opinions noted above, the comments received (which, as noted above, were predominantly opposed to the ban), and the legal foundation for the ban, the Department is proposing a continuation of the ban, for the reasons described here. The Department invites comments, particularly from denied petitioners, on its proposed approach as well as its reasoning.

III. Basis for Proposed Rule

The Department is proposing to continue the ban on re-petitioning, albeit with a revised justifications given the *Chinook* and *Burt Lake* courts' conclusion that the explanation for implementing the ban in the 2015 final rule was arbitrary and capricious. The Department is proposing to continue the ban for five main reasons: (1) The Department's previous negative final determinations are substantively sound and the Department is allowed to revise its regulations without reevaluating past final agency actions issued under the previous versions of those regulations; (2) denied petitioners received due process by virtue of the multiple administrative and Federal court avenues through which to challenge both the process and substance of a negative part 83 final determination; (3) the changes adopted in the Department's 2015 final rule do not warrant re-petitioning; (4) third parties and the Department have legitimate interests in the finality of the Department's final determinations; and (5) a denied petitioner's claimed availability of new evidence is not a compelling basis to allow re-petitioning. Each of these reasons is explained in more detail here.

A. The Department's Previous Negative Final Determinations Are Substantively Sound and the Department Is Allowed To Revise Its Regulations Without Reevaluating Past Final Agency Actions Issued Under the Previous Versions of Those Regulations

The Department proposes to retain the ban on re-petitioning on the grounds that its previous negative final determinations are substantively sound, and the Department should be able to maintain the ability to improve its regulations without being required to reexamine previous decisions. In the 2015 final rule, the Department noted that the Federal acknowledgment process ''has been criticized as 'broken' and in need of reform'' for being ''too slow (a petition can take decades to be decided), expensive, burdensome, inefficient, intrusive, less than transparent and unpredictable.'' [28] While the Department has reformed various aspects of part 83, the Department has maintained the validity of the seven mandatory criteria. Indeed, throughout the preamble of the 2015 final rule, the Department emphasized the part 83 process's integrity and substantive rigor.[29]

In support of the Department's proposed approach, we note that each of the Department's 34 negative determinations was based on an exhaustive review of the facts and claims specific to each petitioner and a deliberate application of the criteria, resulting in a well-reasoned, legally defensible outcome. The Department's efforts in the 2015 final rule ''to address assertions of arbitrariness,'' [30] among other criticism, do not amount to an admission that its previous final determinations were somehow defective and, therefore, now deserving of reconsideration. Indeed, if an agency's revision of regulations amounted to an admission that previous determinations were defective, an agency would never revise its regulations.

Complaints that the Federal acknowledgment process under the previous versions of the regulations was ''too slow . . . , expensive, burdensome, inefficient, intrusive, less than transparent and unpredictable,'' [31] primarily concern procedural aspects of the process. The Department has

[21] *Chinook,* 2020 WL 128563, at *7 (citation omitted); *Burt Lake,* 2020 WL 1451566, at *6 (citation omitted).

[22] *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines* v. *United States,* 371 U.S. 156, 168 (1962)).

[23] *Chinook,* 2020 WL 128563, at *8.

[24] *Burt Lake,* 2020 WL 1451566, at *12.

[25] *See Chinook,* 2020 WL 128563, at *4–5 (identifying five ''notable'' changes in the 2015 regulations); *Burt Lake,* 2020 WL 1451566, at *9 (highlighting two changes that the court deemed ''not minor'').

[26] *Chinook,* 2020 WL 128563, at *8.

[27] *Burt Lake,* 2020 WL 1451566, at *10.

[28] *See id.* at 37862.

[29] *See, e.g., id.* at 37863 (explaining why the 2015 final rule's reduced documentary burden for satisfying criteria (b) and (c) will not compromise the existing ''integrity and rigor of the process'').

[30] *Id.*

[31] *Id.* at 37862.

consistently defended, and courts have consistently upheld, the Department's final determinations on the merits.[32] By contrast, the cases in which courts have sided with denied petitioners have primarily concerned not the merits of the Department's evaluations but issues relating to process,[33] which the Department has continued to address through its reforms, as discussed elsewhere.

Further, a rule requiring the Department to reevaluate its negative determinations after any amendment to part 83, no matter the strength of those determinations, the due process already afforded to the denied petitioners, the improbability of reversal, or legitimate interests in finality (discussed below), would hamper the Department's ability to improve the Federal acknowledgement process. The mere fact that the regulations changed does not inherently require Departmental reconsideration of previous decisions. Indeed, such an approach would effectively render an agency unable to modify regulations for concern that all decisions prior to amendment would need to be redecided.

[32] *See Muwekma Ohlone Tribe* v. *Salazar,* 708 F.3d 209, 220–23 (D.C. Cir. 2013) (holding that the Department's final determination finding insufficient evidence for criteria (a) and (b) was not arbitrary and capricious); *Miami Nation of Indians of Ind., Inc.* v. *U.S. Dep't of the Interior,* 255 F.3d 342, 349 (7th Cir. 2001) (holding that the Department did not arbitrarily disregard evidence alleged to support a positive finding); *Ramapough Mountain Indians, Inc.* v. *Norton,* 25 Fed. App'x 2, 3 (D.C. Cir. 2001) (holding that the Department permissibly concluded that the petitioner failed to meet criterion (e) because of a lack of documentation); *Tolowa Nation* v. *United States,* 380 F. Supp. 3d 959, 961 (N.D. Cal. 2019) (holding that the Department's determination that the petitioner failed to satisfy criterion (b) did not violate the APA); *Nipmuc Nation* v. *Zinke,* 305 F. Supp. 3d 257, 271–77 (D. Mass. 2018) (holding that the Department's determination finding that the petitioner failed to meet criteria (a)–(c) and (e) was not arbitrary or capricious); *Schaghticoke Tribal Nation* v. *Kempthorne,* 587 F. Supp. 2d 389, 412–18 (D. Conn. 2008); *Miami Nation of Indians of Ind., Inc.* v. *Babbitt,* 112 F. Supp. 2d 742, 758 (N.D. Ind. 2000) (upholding the underlying validity of part 83 writ large), *aff'd sub nom. Miami Nation of Indians of Ind., Inc.* v. *U.S. Dep't of the Interior,* 255 F.3d 342 (7th Cir. 2001).

[33] *See Greene* v. *Babbitt,* 64 F.3d 1266, 1275 (9th Cir. 2005) (affirming a ruling in favor of the Samish Indian Nation, which had challenged the adequacy of due process under the 1978 regulations); *Hansen* v. *Salazar,* No. C08–0717–JCC, 2013 WL 1192607, at *11 (W.D. Wash. Mar. 22, 2013) (holding that the AS–IA's final determination denying the Duwamish Indian Tribe's petition for Federal acknowledgment was arbitrary and capricious because the Department had evaluated the petition under only the 1978 regulations, even though it had evaluated a contemporaneous petition under both the 1978 and 1994 regulations).

B. Denied Petitioners Received Due Process

The Department proposes a no re-petitioning approach because in the event that a denied petitioner claims that the Department inconsistently or otherwise unfairly applied the criteria to its petition, that petitioner already had the opportunity to raise such a claim in a timely manner during administrative reconsideration or judicial review of its negative determination. Having had such an opportunity, our approach is that previously denied petitioners should not be entitled to another evaluation under the 2015 regulations.

Since the inception of the Federal acknowledgment process, the Department has ensured that petitioners have multiple opportunities to submit and revise their petitions, receive and respond to technical assistance from Office of Federal Acknowledgment (OFA), address deficiencies in their materials, and supplement their evidence, all before receiving a proposed finding and, ultimately, a final determination.[34] Indeed, one of the reasons why the Federal acknowledgment process can be so lengthy is that petitioners often take many years to prepare their petitions, supplementing them with supporting documentation before deeming them complete and ready for Departmental review.

Prior to issuance of a final determination, our regulations have always allowed petitioners to challenge a negative proposed finding by presenting factual or legal arguments and evidence relied upon in the proposed finding in various administrative processes.[35] Following issuance of a final determination, petitioners denied under the 1994 regulations had the option to seek reconsideration with the Interior Board of Indian Appeals (IBIA),[36] while the 1978 regulations permitted the Secretary of the Interior to order administrative reconsideration.[37] Both the 1978 and 1994 regulations permitted reconsideration in response to a concern that the Department erroneously evaluated evidence.[38] The 1994 regulations further allowed denied petitioners to allege that ''there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria.'' [39] We believe that such provisions, permitting either the Secretary or the IBIA to review the merits of a negative final determination, provided due process protections for aggrieved petitioners.

Furthermore, a denied petitioner alleging an APA, constitutional, or other violation in its final determination had the opportunity to seek judicial review. To the extent that petitioners did not challenge a negative final determination in court, the Department proposes not to create a re-petition process as a substitute for a timely APA claim.

C. The Changes Adopted in the Department's 2015 Final Rule Do Not Warrant Re-Petitioning at This Time

The Department proposes to not allow for re-petitioning under the 2015 regulations because the Department believes the changes do not warrant re-petitioning. First, none of the 2015 final rule's changes to each of the seven mandatory criteria justify re-petitioning, and the 2015 final rule did not change the reasonable likelihood standard that the Department applies in evaluating petitions for Federal acknowledgment. Further, even if the outcome of any of the Department's previous determinations would be different under the 2015 regulations, the Department believes it retains the authority to revise its regulations without reevaluating its previous determinations.

1. None of the 2015 Final Rule's Changes to the Seven Mandatory Criteria Justify Re-Petitioning

According to the Federal district court that decided *Chinook* and remanded the ban to the Department for further consideration, some or all of the changes in the 2015 final rule constitute ''significant revisions that could prove dispositive for some re-petitioners.'' [40] Although the *Chinook* court did not specify whether or how any such revision would affect any specific petitioner, the court identified changes in the 2015 final rule that it deemed

[34] *See* 59 FR 9280, 9291 (Feb. 25, 1994) (explaining that ''petitioners who were denied went through several stages of review with multiple opportunities to develop and submit evidence''); *see also* 25 CFR 83.10(c)(1) (1994) (giving a petitioner additional technical assistance upon request prior to active consideration of the petition).

[35] 25 CFR 83.10(i) (1994); *id.* § 54.9(g) (1978). *See also James,* 824 F.2d at 1136 (describing a review under the 1978 regulations in which the Department initially issued a negative proposed finding to the Wampanoag Tribe of Gay Head (Aquinnah), but after ''accept[ing] additional evidence challenging the proposed finding and after reconsidering the matter,'' issued a final determination acknowledging the petitioner).

[36] 25 CFR 83.11 (1994).

[37] *Id.* § 54.10 (1978).

[38] *Id.* § 83.11(d)(2) (1994); *Id.* § 54.10(c)(2) (1978).

[39] *Id.* § 83.11(d)(4) (1994).

[40] *Chinook,* 2020 WL 128563, at *8.

''notable'': (1) A new ''evaluation start date for criteria (b) [(Community)] and (c) [(Political Authority)]''; (2) a new ability ''to rely on self-identification as an Indian tribe'' for criterion (a) (Indian Entity Identification); (3) an ''automatic satisfaction of criterion (e) [(Descent)] . . . through evidence of 'a tribal roll directed by Congress or prepared by the Secretary . . . unless significant countervailing evidence establishes that the tribal roll is substantively inaccurate' ''; and (4) a ''[l]oosening [of] the requirements for criterion (f) [(Unique Membership)].'' [41] Additionally, the *Burt Lake* court likewise remanded the ban to the Department and identified another change in the 2015 final rule that it deemed ''not minor'': The change in how the Department counts the number of marriages within a petitioner for the purpose of evaluating criterion (b) (Community).[42]

This section of the proposed rule primarily seeks to explain that the changes that the *Chinook* and *Burt Lake* courts identified as potentially significant would not result in the reversal of the Department's previous negative final determinations.

i. The New Evaluation Start Date of 1900 for Criteria (b) (Community) and (c) (Political Authority)

In the 2015 final rule, the Department provided a thorough, well-reasoned explanation as to why the Department ''does not classify the start date change, from 1789 or the time of first sustained contact to 1900, as a substantive change to the existing criteria,'' [43] and the Department adopts that explanation here. Aside from reducing the documentary burden on petitioners, the Department reasoned that a 1900 start date for criteria (b) (Community) and (c) (Political Authority) is appropriate because ''the time since 1900 has been shown to be an effective and reliable demonstration for historical times for criterion (a)'' (Indian Entity Identification), and ''utilization of [a 1900 start date for criterion (a)] for over 20 years has demonstrated that the date maintains the rigor of the criteria.'' [44] In explaining why the 1900 start date will not compromise the rigor of the process, the Department stated that ''1900 [was] squarely during the allotment and assimilation period of Federal policy that was particularly difficult for tribal governments,'' when ''there was little benefit and some risk to openly functioning as a tribal community and government.'' [45]

The Department proposes to not allow re-petitioning because the change to the start date for criteria (b) (Community) and (c) (Political Authority) would not result in the reversal of any previous negative determination. None of the 34 denied petitioners received a negative determination based solely on a failure to satisfy criterion (b) or (c) for the historical period (pre-1900). That is, every petitioner that failed to satisfy criterion (b) or (c) for the historical period also failed to satisfy the criterion for the period from 1900 until the present.[46] Therefore, the change in the start date for criteria (b) and (c) would not lead to a different outcome for any denied petitioner.

ii. The New Ability To Rely on Evidence of Self-Identification as an Indian Tribe for Criterion (a) (Indian Entity Identification)

In the 2015 final rule, the Department characterized the change in criterion (a) as substantive.[47] Nevertheless, the change does not compel the Department to allow re-petitioning because none of the Department's negative determination hinged on criterion (a) alone.[48] Specifically, every denied petitioner that failed to satisfy criterion (a) failed to satisfy criteria (b) and (c) as well.[49] A reversal of a negative conclusion on criterion (a) in a previous determination would not change the overall negative result, given that a petitioner must satisfy all seven mandatory criteria.[50]

iii. The Satisfaction of Criterion (e) (Descent) Through Evidence of a Tribal Roll Directed by Congress or Prepared by the Secretary

In the 2015 final rule, the Department explained that ''[t]he final criterion (e) remains substantively unchanged from the current criterion (e).'' [51] Although the revised language of the criterion emphasizes the ''great weight'' that the Department places ''on applicable tribal Federal rolls prepared at the direction of Congress or by the Department,'' the rule explains that the revision ''codifies past practice.'' [52] As the 2015 final rule points out, since the inception of the Federal acknowledgment regulations, the Department has consistently relied on evidence of such rolls in evaluating whether a petitioner satisfies criterion (e).[53] The change in § 83.11(e)(1) ensures that the Department will continue to do so.

iv. The Deletion of the Requirement in Criterion (f) (Unique Membership) That the Petitioner's Members ''not maintain a bilateral political relationship with'' a Federally Recognized Indian Tribe

Under the 1994 regulations, criterion (f) listed three conditions that, if all met, exempted a petitioner from the requirement that ''[t]he membership of the petitioning group [be] composed principally of persons who are not members of any acknowledged North American Indian tribe.'' [54] The conditions were as follows: (1) ''The [petitioner] . . . has functioned throughout history until the present as a separate and autonomous Indian tribal entity''; (2) ''its members do not maintain a bilateral political relationship with the acknowledged tribe;'' and (3) ''its members have provided written confirmation of their membership in the petitioning group.'' [55] The 2015 revision of part 83 deleted the second condition in this list but maintained the first and the third.[56]

[41] *Id.* at *4–5 (citations omitted).

[42] *Burt Lake,* 2020 WL 1451566, at *9.

[43] 80 FR 37863 (July 1, 2015); *see also id.* at 37868–69.

[44] *Id.* at 37863.

[45] *Id.* at 37869.

[46] *Cf. id.* at 37863 (explaining that the converse is also true: ''based on [the Department's] experience in nearly 40 years of implementing the regulations, every group that has proven its existence from 1900 forward has successfully proven its existence prior to that time as well'').

[47] *Id.* at 37863.

[48] *See id.* at 37866 (noting the point raised by some commenters that ''because no petitioner has been denied solely on [criterion (a)], it is of limited value'').

[49] Based on the Department's review on reconsideration, there are 22 denied petitioners that did not meet criterion (a), all of which also did not meet at least one other criterion. They are the Duwamish Indian Tribe, Georgia Tribe of Eastern Cherokees, Inc., Juaneno Band of Mission Indians, Steilacoom Tribe, Nipmuc Nation (Hassanamisco Band), Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, St. Francis/Sokoki Band of Abenakis of Vermont, Golden Hill Paugussett Tribe, Snohomish Tribe of Indians, Muwekma Ohlone Tribe of San Francisco Bay, Chinook Indian Tribe/Chinook Nation, MaChis Lower AL Creek Indian Tribe, Tchinouk Indians, Southeastern Cherokee Confederacy, Northwest Cherokee Wolf Band, Red Clay Inter tribal Indian Band, United Lumbee Nation of NC and America, Principal Creek Indian Nation, Kaweah Indian Nation, Munsee Thames River Delaware, Lower Muskogee Creek Tribe-East of the Mississippi, and Creeks East of the Mississippi.

[50] *See Ramapough Mountain Indians,* 25 Fed. App'x at 3–4 (declining to address the petitioner's arguments relating to criterion (b), after upholding the Department's conclusion that the petitioner failed to meet criterion (e), ''because to receive Federal recognition [the petitioner] had to demonstrate that it met all seven of the criteria in section 83.7'').

[51] 80 FR 37866 (July 1, 2015).

[52] *Id.* at 37867.

[53] *Id.* (discussing the Department's reliance on rolls and censuses prepared by Federal agency officials in reaching a favorable conclusion on criterion (e) for the Timbisha Shoshone Tribe's positive final determination).

[54] 25 CFR 83.7(f) (1994).

[55] *Id.*

[56] 80 FR 37891 (July 1, 2015).

In the preamble of the 2015 final rule, the Department adequately explained the rationale behind deleting that condition.[57] In short, the Department's evaluation of whether a group can establish a substantially continuous Tribal existence, demonstrate that it has functioned as an autonomous entity throughout history until the present, and thus qualify for Federal acknowledgment, does not hinge on a petitioner's demonstration that its members eschew bilateral relationships with an acknowledged Indian Tribe. No previous final determination (whether negative or positive) has hinged on that specific determination.[58] Given that that condition was non-essential, its deletion did not affect any previous petitioner's rights or determination and its deletion does not counsel in favor of allowing re-petitioning.

v. The Change in How the Department Counts the Number of Marriages Within a Petitioner for Criterion (b) (Community)

To satisfy criterion (b) under the 2015 regulations, a petitioner must ''comprise[ ] a distinct community and demonstrate[ ] that it existed as a community from 1900 until the present.'' [59] Like the 1994 regulations, the 2015 regulations list various kinds of evidence that a petitioner can rely on to demonstrate such community, including ''[r]ates or patterns of known marriages within the entity'' [60] and ''[s]ocial relationships connecting individual members.'' [61] Under both the 1994 and 2015 regulations, certain kinds of evidence, standing alone, are sufficient to satisfy criterion (b) at a given point in time.[62] One such kind of evidence under the 2015 regulations is evidence demonstrating that ''[a]t least 50 percent of the members of the entity were married to other members of the entity.'' [63] That provision is analogous to one in the 1994 regulations, which allowed petitioners to satisfy criterion (b) at a given point in time through evidence demonstrating that ''[a]t least 50 percent of the marriages in the group are between members of the group.'' [64]

The different language in the provisions quoted above reflects a difference in methodology. Whereas Departmental practice under the 1994 regulations required counting the overall number of marriages within a petitioner, the Department under the 2015 regulations counts instead ''the number of petitioner members who are married to others in the petitioning group.'' Although the rule characterizes the change as substantive,[65] given that it represents a change in OFA's actual evidentiary approach (as opposed to a procedural process or codification of unwritten but consistent past practice), the Department noted in the 2015 final rule that either approach of counting marriages is valid: The approach used in the 1994 regulations or the approach used in the 2015 regulations.[66] Consequently, to the extent that any of the Department's conclusions on criterion (b) in previous determinations applied the 1994 regulations' method of counting marriages, the Department proposes that those conclusions were fair and remain valid, and the change in method should not serve as a basis for re-petitioning. Furthermore, the Department has not identified any negative determination in which the switch in method would reverse the Department's conclusion.

vi. The Inclusion of a New Provision Under Criteria (b) (Community) and (c) (Political Authority) Stating That Evidence of ''[l]and set aside by a State for petitioner, or collective ancestors of the petitioner,'' May Be Relied on to Satisfy Those Criteria [67]

In the 2015 final rule, the Department stated that the addition of the provision quoted above does not reflect a substantive change in the criteria.[68] Rather, ''this change is simply meant to be explicit about the value and relevance of certain evidence.'' [69] The list of evidence under criterion (c)(1), where the new provision is located, is not exhaustive; rather, the items listed are only examples of what the Department will accept, and has accepted in the past. The Department also emphasized that even if the existence of such lands ''may generate evidence of community and political influence/authority,'' such lands ''are not determinative for these two criteria.'' [70] That is, such evidence acts as one of many factors relevant to a positive determination.

2. The 2015 Final Rule Did Not Change the Reasonable Likelihood Standard That the Department Applies in Evaluating Petitions for Federal Acknowledgment

When the Department revised the Federal acknowledgment regulations in 1994, it introduced language clarifying the burden of proof that the Department applies in determining whether evidence satisfies the seven mandatory criteria. In § 83.6(d) (1994), the Department explained that ''[a] criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.'' [71] The so-called ''reasonable likelihood'' standard did not create a new evidentiary standard; rather, it ''codif[ied] current practices'' applied under the 1978 regulations as well.[72]

The 2015 regulations retained the reasonable likelihood standard, in language virtually identical to that in the 1994 regulations, stating that ''[t]he Department will consider a criterion . . . to be met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.'' [73] Notwithstanding that express continuity from 1978 to 1994 to 2015, the plaintiffs in the *Chinook* and *Burt Lake* litigation argued that a separate provision introduced in the 2015 regulations, located at § 83.10(a)(4), changed the reasonable likelihood standard by reducing the burden of proof for petitioners proceeding under the 2015 regulations. Section 83.10(a)(4) states that ''[e]vidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous decision will be sufficient to satisfy the criterion for a present petitioner.''

By its plain terms, § 83.10(a)(4) expressly ''provides that if there is a prior decision finding that evidence or methodology was sufficient to satisfy any particular criterion in a previous petition, the Department will find that evidence or methodology sufficient to satisfy the criterion for a present petitioner. In other words, a petitioner today satisfies the standards of evidence or baseline requirements of a criterion if that type or amount of evidence was sufficient in a previous decision.'' [74] The Department's inclusion of § 83.10(a)(4) in the 2015 regulations should not be interpreted as an admission that the Department weighed evidence or applied methodology in an

[57] *See id.* at 37873.

[58] *See id.* (explaining that the San Juan Southern Paiute Tribe of Arizona met the essential requirement for Federal acknowledgment—''operat[ing] as a separate politically autonomous community on a substantially continuous basis''—''even though its members had census numbers with a federally recognized tribe,'' the Navajo Nation (citing Notice of Final Determination That the San Juan Southern Paiute Tribe Exists as an Indian Tribe, 54 FR 51502, 51504 (Dec. 15, 1989))).

[59] 25 CFR 83.11(b); 80 FR 37890 (July 1, 2015).

[60] 25 CFR 83.11(b)(1)(i).

[61] *Id.* § 83.11(b)(1)(ii).

[62] *Id.* § 83.11(b)(2); *id.* § 83.7(b)(2) (1994).

[63] *Id.* § 83.11(b)(2)(ii).

[64] *Id.* § 83.7(b)(2)(ii) (1994).

[65] 80 FR 37863 (July 1, 2015).

[66] *Id.* at 37870.

[71] 59 FR 9295 (February 25, 1994).

[72] *Id.* at 9280.

[73] 25 CFR 83.10(a).

[74] 80 FR 37865 (July 1, 2015).

inconsistent manner in its past determinations. Rather, it is simply an assurance of consistency going forward.

The Department decided to provide such assurance in the 2015 final rule because it aligned with the Department's stated goal in the 2015 final rule to promote consistency.

The 2015 final rule's inclusion of § 83.10(a)(4)—and the decision not to define the term ''reasonable likelihood'' in a novel way in the 2015 final rule—promotes consistency with the Department's past applications of the reasonable likelihood standard, in furtherance of the Department's stated goals, and, more broadly, promotes consistency with the Department's previous determinations.[75] In clarifying the Department's understanding and application of this standard, § 83.10(a)(4) addresses a concern raised by some commenters that the Department was allegedly applying an ''increasingly burdensome application of the criteria'' over time.[76]

D. Third Parties and the Department Have Legitimate Interests in the Finality of the Department's Final Determinations

1. Third Parties Have Legitimate Interests in Finality

In the preamble of the 2015 final rule, the Department explained that numerous commenters argued that re-petitioning would ''undermine[ ] finality and certainty'' and ''[be] unfair to stakeholders.'' [77] Although the Department referred to those comments in the final rule, in rejecting the Department's stated reasons for retaining the ban under the APA, the *Chinook* court stated that the Department failed to incorporate those potentially appropriate concerns into its justifications for the ban.[78]

Upon reconsideration, the Department proposes to consider those third-party interests as compelling in favor of retaining the ban.

For decades, third parties with interests in the Department's Federal acknowledgment process have relied on the finality of the Department's final determinations. These third parties include federally recognized Indian Tribes, States, local governments, other actual or potential part 83 petitioners, and the public at large. Since the initial promulgation of the Federal acknowledgment regulations, the Department's final determinations have constituted final agency action, subject to administrative reconsideration or judicial review under generally understood principles of administrative law.[79] Third parties have an understanding of how the process works based on the step-by-step description in part 83 culminating in the issuance of a final determination.

The ban has been a longstanding feature of the process, underscoring the seriousness of the Department's evaluation, legitimizing the substantive rigor of the process, and ensuring, as a matter of law, the finality of the Department's final determinations. While denied petitioners may argue the changes in the 2015 final rule might change the result of a negative final determination, such arguments do not warrant undermining the finality of the Department's final determinations and disregarding the interests of third parties in finality.

And the Department proposes that those interests are significant. Federal acknowledgment is one of the most significantly consequential actions the Department takes in any context. Placement on the list of federally recognized Indian Tribes establishes a government-to-government relationship between the petitioner and the United States that has innumerable consequences for the newly acknowledged Indian Tribe and for third parties. For the Department and other Federal agencies, it requires that the newly acknowledged Indian Tribe be made eligible for all Federal benefits and programs benefitting Indians, that the agencies include those entities in any relevant Tribal consultation, and that the agencies consider the sovereign rights of those entities when making taking agency actions.[80] For other recognized Indian Tribes, it makes the newly acknowledged Indian Tribe eligible for Tribal-specific Federal resources. For States and localities, acknowledgment changes legal considerations including Tribal sovereign immunity and environmental regulation. Similar concerns affect individuals who choose to live or seek employment within the newly acknowledged Indian Tribe's jurisdiction or choose to become members of the newly acknowledged Indian Tribe. The depth of these consequences underscores the reason that the Department has historically allowed limited third-party participation in the part 83 process, and emphasizes the interests that third parties have in administrative finality so that relevant government agencies (Federal, State, and Tribal) and individuals may reasonably settle expectations as to whether a given petitioner may or may not still participate in the part 83 process.

The compelling third-party interests in precluding re-petitioning and any ensuing litigation of issues already decided should give the Department's final determinations preclusive effect. The Supreme Court has ''long favored application of the common-law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality.'' [81] Although the 2014 proposed rule would have conditioned re-petitioning on the consent of ''[a]ny third parties that participated as a party in an administrative reconsideration or Federal Court appeal concerning the petitioner,'' [82] the 2015 final rule's blanket ban aligns more closely with the well-established, common-law principle of administrative final action preclusion and the repose that it provides. Additionally, such protection extends to a greater number of third parties with significant interests in the outcomes of requests to re-petition.

2. The Department Has Legitimate Interests in Finality

i. The Burden on the Department

The Department proposes this approach on the belief that it has a legitimate interest in the finality of its final determinations. Rules of preclusion serve not only to prevent an unjust imposition ''upon those who have already shouldered their burdens'' but also to prevent the drain on ''resources of an adjudicatory system

[75] *Id.* at 37875.

[76] *Id.* at 37865; *see also id.* at 37862 (''This clarification ensures that a criterion is not applied in a manner that raises the bar for each subsequent petitioner.'').

[77] *Id.* at 37874.

[78] *Chinook,* 2020 WL 128563, at *9 (''The Court does not judge the appropriateness of these goals, but if they actually motivated DOI's decision the[ ] agency should have said so directly.'').

[79] *See* 25 CFR 54.10(a) (1978) (''The Assistant Secretary's decision shall be final for the Department . . . .''); 25 CFR 83.10(o) (1994) (''The determination to decline to acknowledge that the petitioner is an Indian tribe shall be final for the Department.''); *id.* § 83.44 (''The AS–IA's final determination is final for the Department and is a final agency action under the [APA].'').

[80] E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, 67249–50 (Nov. 6, 2000) (ordering Federal agencies to develop procedures for ''regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications'').

[81] *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino,* 501 U.S. 104, 107 (1991); *see also Golden Hill Paugussett Tribe of Indians* v. *Rell,* 463 F. Supp. 2d 192, 200 (D. Conn. 2006) (concluding that a final determination on Federal acknowledgment is an '' 'adjudicative' one, sufficient for application of the collateral estoppel doctrine'').

[82] 79 FR 30774 (May 29, 2014) (proposed § 83.4(b)(1)).

with disputes resisting resolution.'' [83] ''The principle holds true when a court has resolved an issue, and should do so equally when the issue has been decided by an administrative agency . . . which acts in a judicial capacity.'' [84]

The *Burt Lake* court observed that re-petitioning would not pose a burden on OFA given that, under the 2014 proposed rule, the Office of Hearings and Appeals (OHA) (and not OFA) would have been the office deciding whether to allow re-petitioning.[85] However, the proposed rule would have permitted OHA to ''receive pleadings, hold hearings, and request evidence from OFA'' prior to issuing a decision on re-petitioning.[86] Despite the court's holding, then, the 2014 proposed rule (even if implemented) could still have involved significant OFA involvement in OHA's review of a request to re-petition.

Furthermore, any re-petition request approved by OHA would have required OFA's reevaluation of the petitioner's claims. To the extent that the *Burt Lake* court presumed that OFA's reevaluation would be somehow limited in scope—the court notes that ''re-petitioners would only be able to submit new materials to the agency''—nothing in the 2014 proposed rule indicates that re-petitioners would have been treated any differently from first-time petitioners under part 83.[87] Rather, upon successful completion of OHA's threshold review, re-petitioners would have had to submit a documented petition pursuant to § 83.21, just like first-time petitioners, and proceed through the Federal acknowledgment process accordingly. In short, the burden on the Department would be significant.[88]

The Department, in reconsidering the ban after the *Burt Lake* and *Chinook* decisions, considered alternatives to the ban. One such alternative was a limited evaluation of re-petitions akin to OHA's threshold review under the 2014 proposed rule, focusing on new claims and any supplemental submission of materials relevant to a previously failed criterion. However, on reconsideration, the Department proposes that even a limited reevaluation would undermine the integrity of the Federal acknowledgment process. Contrary to the *Chinook* court's observation that ''OFA would only have to re-consider the aspects of the original decision that were identified as erroneous,'' [89] such an evaluation would fall short of the Department's standard requiring ''thorough and deliberate evaluations,'' given the serious nature of granting or denying a petition for Federal acknowledgment.[90] Many prospective re-petitioners received determinations that are decades old, and in the intervening time, a denied petitioner's materials, including materials relating to criteria that the petitioner had previously satisfied, could have changed significantly, affecting the petitioner's ability to satisfy those criteria at present. For example, under the 2015 regulations at § 83.11(b) and (c), a petitioner must satisfy criterion (b) (Community) and criterion (c) (Political Influence or Authority) ''from 1900 until the present.'' [91] Even if a petitioner had satisfied those criteria decades ago, and OFA's prior conclusions regarding those criteria were not identified by the petitioner as erroneous in its request to re-petition, the necessity of a thorough and deliberate evaluation would compel OFA to reevaluate those criteria for the present period, accounting for the most recent decades for which OFA has incomplete information. That is, allowing limited re-petitioning would not be as simple as grafting OFA's reconsideration of denied criteria onto a previously positive determination—rather, OFA would presumably need to reevaluate the entirety of the petitioner's evidence to avoid acknowledging groups who, over time, lost compliance with previously-satisfied regulatory criteria.

In another example, a petitioner's membership may change even within a relatively short time span, therefore affecting compliance with criterion (f) (Unique Membership) at § 83.11(f). A change in membership, in turn, could affect the Department's prior conclusion on criterion (e) (Descent) at § 83.11(e), which requires a petitioner to demonstrate that its membership ''consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).'' [92]

Further, OFA would need to evaluate a re-petitioner's underlying claim to be the previous petitioner in the first instance. The Department has dealt with several cases involving dueling or otherwise overlapping petitioner claims to the same membership or historical predecessor. If the Department allowed re-petitioning, prior to getting to the merits of a re-petition request under any model, OFA would have to ensure that the re-petitioner was, in fact, the original petitioner.

In sum, an abbreviated evaluation for re-petitioners would compromise the substantive rigor of the Federal acknowledgment process.

ii. Timeliness and Efficiency

Furthermore, the Department proposes that even a limited avenue for re-petitioning would threaten the Department's ability to process existing and future petitions in a timely manner, undermining a key goal of the 2015 revision to ''increase timeliness and efficiency.'' [93] The *Chinook* court stated that if the Department was ''concerned about pending petitions, it would have been simple to give them priority,'' sending re-petitions to the back of the line.[94] However, that statement does not account for the likely significant, time-sensitive administrative burden that the Department—and OFA especially—would incur as a result of allowing re-petitioning.

For example, and putting aside the burdens associated with processing re-petitions in the first instance, the creation of a re-petitioning process could potentially lead to a marked increase in the number of requests that the Department receives pursuant to the Freedom of Information Act (FOIA). When interacting with both petitioners and interested third parties, OFA has taken the position that part 83 materials submitted to the Department become Federal records for FOIA purposes and cannot simply be turned over to non-Federal parties (even petitioners) upon request. As a result, prospective re-petitioners or interested third parties likely would need to submit FOIA

[83] *Solimino,* 501 U.S. at 107–08 (1991) (citing *Parklane Hosiery Co.* v. *Shore,* 439 U.S. 322, 326 (1979)).

[84] *Id.* at 108 (citation omitted).

[85] *Burt Lake,* 2020 WL 1451566, at *12 (citations omitted).

[86] 79 FR 30767 (May 29, 2014) (proposed § 83.4(b)(2)(ii)).

[87] *Burt Lake,* 2020 WL 1451566, at 11 (citing 79 FR 30774 (May 29, 2014)).

[88] *See* Barbara N. Coen, *Tribal Status Decision Making: A Federal Perspective on Acknowledgment,* 37 New Eng. L. Rev. 491, 495 (2003) (''The result of the process is a decision based on an extensive factual analysis, with administrative records currently ranging in excess of 30,000 pages to over 100,000 pages.'' (citing *Work of the Department of the Interior's Branch of Acknowledgment and Research within the Bureau of Indian Affairs: Hearing Before the S. Comm. on Indian Affs.,* 107th Cong. 2, 19–20 (2002) (statement of Michael R. Smith, Dir., Office of Tribal Servs., U.S. Dep't of the Interior))).

[89] *Chinook,* 2020 WL 128563, at *9.

[90] 70 FR 16513, 16514 (March 31, 2005) (explaining that the Secretary placed importance on '' 'thorough and deliberate evaluations' because acknowledgment decisions 'must be equitable and defensible' '' (quoting Memorandum from Gale Norton, Sec'y of the Interior, U.S. Dep't of the Interior, to David Anderson, Assistant Sec'y—Indian Affs., U.S. Dep't of the Interior (Apr. 1, 2004))).

[91] 25 CFR 83.11(a), (b).

[92] *Id.* § 83.11(e).

[93] 80 FR 37862 (July 1, 2015).

[94] *Chinook,* 2020 WL 128563, at *9.

requests for copies of records relating to the Department's previous final determinations in order to analyze evidence or methodology that the Department deemed sufficient or insufficient to satisfy criteria in previous determinations. While OFA maintains a list of the limited public documents associated with part 83 petitions, see generally *https://www.bia.gov/as-ia/ofa/decided-cases,* this does not include the voluminous amount of evidentiary materials part 83 petitioners submit throughout the process. Because FOIA contains statutory time limits,[95] the Department would have to prioritize responding to such requests, a potentially significant undertaking involving the review of thousands of records, many decades old.

The Department's concern about the effect of such an administrative burden is not speculative. A 2001 report of the United States General Accounting Office noted that technical staff within the Bureau of Indian Affairs (now housed within OFA) had estimated that they spent up to 40 percent of their time on administrative responsibilities, and on responding to FOIA requests in particular, limiting their time spent evaluating part 83 petitions.[96] While the Department has taken steps to alleviate that burden (for example, by hiring and training FOIA contractors), the Department has a legitimate interest in allocating resources efficiently.

Besides an increase in FOIA requests, another likely burden on OFA stemming from re-petitioning would be increased litigation. Assuming that any re-petition process would include threshold eligibility requirements, the denial of a request to re-petition would constitute a final agency action subject to APA review.[97] Similarly, an approved re-petition would presumably be subject to all applicable administrative appellate options and, if denied, APA review by the courts. The Department's interests in administrative finality extend to interests in avoiding the perpetual threat of litigation, particularly in a process that has already guaranteed petitioners significant administrative or judicial appeal opportunities and, as discussed below, legislative remedies as well.

E. Claimed Availability of New Evidence Does Not Justify Allowing Re-Petitioning

In the preamble of the 2015 final rule, the Department noted that certain commenters supported an opportunity to re-petition if ''there is significant new evidence.'' [98] By choosing to retain the ban, the Department necessarily rejected that basis for re-petitioning and proposes to do so again now.

We propose that the potential availability of new evidence does not justify re-petitioning. First, echoing the discussion above regarding the due process already afforded to denied petitioners, under every version of the regulations, denied petitioners had ample opportunities to supplement their petitions with new evidence throughout the Federal acknowledgment process,[99] including after the Department's issuance of a proposed finding [100] and on reconsideration.[101] Additionally, during the Department's evaluation, OFA staff often conducted their own research to supplement that of the petitioners,[102] especially for the purpose of addressing deficiencies or gaps in the petitioners' submitted materials.[103]

Second, if the Department were to allow re-petitioning based on new evidence, we propose that it would be difficult to establish defensible limiting principles for how such re-petitioning would look in practice. Re-petitioners could claim that any time limit on the ability to submit a petition based on new evidence would be inherently arbitrary given that the availability of such evidence is not static but could be discovered at any point and from any source depending on the expertise of the individual charged with collecting it.

Finally, in recent years, Congress has confirmed its willingness to recognize Indian Tribes outside of part 83.[104] As the Department noted in the preamble of the 1994 final rule introducing the ban, ''[d]enied petitioners still have the opportunity to seek legislative recognition if substantial new evidence develops.'' [105] The Department invites comments on its reasoning and on alternative perspectives.

IV. Summary of the Proposed Rule

This proposed rule makes no changes to the regulatory text at 25 CFR part 83, and proposes to make no change specifically to § 83.4(d), which sets out the ban. Changes are made to the legal authority citation because 25 U.S.C. 479a–1 has been renumbered to 25 U.S.C. 5131 and Public Law 103–454 Sec. 103 (Nov. 2, 1994) has been reprinted in the United States Code at 25 U.S.C. 5130 note (Congressional Findings).

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based

[95] *See generally* U.S. Dep't of Just., Guide to the Freedom of Information Act, Procedural Requirements 32–36 (2019), *https://www.justice.gov/oip/page/file/1199421/download.*

[96] U.S. Gov't Accountability Off., GAO–02–49, Indian Issues: Improvements Needed in Tribal Recognition Process 16 (2001).

[97] *See Palacios* v. *Spencer,* 267 F. Supp. 3d 1, 7 (D.D.C. 2017) (explaining that if a party seeking review ''alleged new evidence or changed circumstances that were not previously before the agency, then the agency's denial [of reconsideration] is reviewable as a final agency action'') (citation and internal quotation marks omitted)), *aff'd in part, appeal dismissed in part,* 906 F.3d 124 (D.C. Cir. 2018); *see also* 79 FR 30774 (proposed 25 CFR 83.4(b)(3)) (''The OHA judge's decision whether to allow re-petitioning is final for the Department and is a final agency action under the [APA]'').

[98] 80 FR 37875 (July 1, 2015).

[99] *See* 59 FR 9291 (justifying the introduction of the ban by explaining, in part, that ''[t]hose petitioners who were denied went through several stages of review with multiple opportunities to develop and submit evidence.'').

[100] 25 CFR 83.10(i) (1994) (allowing the petitioner or any individual or organization challenging or supporting a proposed finding to submit arguments and evidence to the AS–IA rebutting or supporting the finding); *id.*§ 54.9(g) (1978) (allowing any individual or organization challenging a proposed finding ''to present factual or legal arguments and evidence to rebut the evidence relied on'').

[101] *Id.* § 83.11(d)(1) (1994) (allowing petitioners to request reconsideration of a final determination with the IBIA by alleging that ''there is new evidence that could affect the determination''); *id.* § 54.10(c)(1) (1978) (allowing the Secretary of the Interior to request reconsideration of a final determination if the opinion ''[w]ould be changed by significant new evidence which he has received subsequent to the publication of the decision'').

[102] *See id.* § 83.10(a) (1994) (permitting the AS–IA to initiate research for any purpose relative to analyzing a documented petition); *id.* § 54.9(a) (1978) (same).

[103] *See* 65 FR 7052 (February 11, 2000); *see also* 70 FR 16513, 16515 (March 31, 2005) (encouraging petitioners to consult with OFA staff, in part, to reduce the number of deficiencies noted in a technical assistance letter).

[104] *See, e.g.,* National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92, sec. 2870, 133 Stat. 1198, 1907–09 (2019) (extending Federal recognition to the Little Shell Tribe of Chippewa Indians of Montana); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, 132 Stat. 40 (2018) (extending Federal recognition to six Indian Tribes located in Virginia).

[105] 59 FR 9291 (February 25, 1994).

on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities because it makes no change to the status quo.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act because this rule affects only entities that have previously petitioned, and been denied, Federal acknowledgment as an Indian Tribe and that may again seek to become acknowledged as an Indian Tribe. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector because this rule affects entities that have previously petitioned, and been denied, Federal acknowledgment as an Indian Tribe and that may again seek to become acknowledged as an Indian Tribe. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have hosted consultation with federally recognized Indian Tribes in preparation of this proposed rule. The Department is hosting additional consultation sessions with Tribes as described in the **DATES** and **ADDRESSES** sections of this document.

I. Paperwork Reduction Act

OMB Control No. 1076–0104 currently authorizes the collection of information related to petitions for Federal acknowledgment contained in 25 CFR part 83, with an expiration of October 31, 2021. This rule requires no change to that approved information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

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:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. 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 the **ADDRESSES** section. 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 you find unclear, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

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.

List of Subjects in 25 CFR Part 83

Administrative practice and procedure, Indians—tribal government.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR part 83 as follows:

PART 83—PROCEDURES FOR FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES

■ 1. Revise the authority citation for part 83 to read:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 5131; 25 U.S.C. 5130 note (Congressional Findings); and 43 U.S.C. 1457.

■ 2. In § 83.4, republish paragraph (d) to read as follows:

§ 83.4 Who cannot be acknowledged under this part?

* * * * *

(d) An entity that previously petitioned and was denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title (including reconstituted, splinter, spin-off, or component groups who were once part of previously denied petitioners).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–08488 Filed 4–26–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[REG–118913–21]

RIN 1545–BQ22

Estate and Gift Taxes; Limitation on the Special Rule Regarding a Difference in the Basic Exclusion Amount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the Estate Tax Regulations relating to the basic exclusion amount (BEA) applicable to the computation of Federal estate and gift taxes. The proposed regulations affect the estates of decedents dying after a reduction in the BEA who made certain types of gifts after 2017 and before a reduction in the BEA.

DATES: Written or electronic comments and requests for a public hearing must be received by July 26, 2022. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–118913–21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–118913–21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John D. MacEachen at (202) 317–6859; concerning submissions of comments, the public hearing, and the access code to attend the hearing by telephone, Regina Johnson at (202) 317–5177 (not toll-free numbers) or by sending an email to *Publichearings@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 11061 of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2091 (2017) (TCJA), amended section 2010(c)(3) of the Internal Revenue Code (Code) to provide that, for decedents dying and gifts made after December 31, 2017, and before January 1, 2026, the BEA is increased by $5 million to $10 million as adjusted for inflation (increased BEA). Under the TCJA, on January 1, 2026, the BEA will revert to $5 million as adjusted for inflation.

Section 11061 of the TCJA also added new section 2001(g)(2) to the general statute of the Code that imposes the Federal estate tax. Section 2001(g)(2) grants the Secretary of the Treasury or her delegate (Secretary) authority to prescribe such regulations as may be necessary or appropriate to carry out section 2001 with respect to any difference between the BEA applicable at the time of a decedent's death and the BEA applicable with respect to any gifts made by the decedent. This specific authority is in addition to the Secretary's preexisting authority under section 2010(c)(6) to prescribe such regulations as may be necessary or appropriate to carry out section 2010(c).

On November 26, 2019, the Treasury Department and the IRS published final regulations under section 2010 (TD 9884) in the **Federal Register** (84 FR 64995) to address situations described in section 2001(g)(2) (final regulations). The final regulations adopted § 20.2010–1(c), a special rule (special rule) applicable in cases where the credit against the estate tax that is attributable to the BEA is less at the date of death than the sum of the credits attributable to the BEA allowable in computing gift tax payable within the meaning of section 2001(b)(2) with regard to the decedent's lifetime gifts. In such cases, the portion of the credit against the net tentative estate tax that is attributable to the BEA is based on the sum of the credits attributable to the BEA allowable in computing gift tax payable regarding the decedent's lifetime gifts. The rule ensures that the estate of a donor is not taxed on completed gifts that, as a result of the increased BEA, were free of gift tax when made. The preamble to the final regulations stated that further consideration would be given to the issue of whether gifts that are not true inter vivos transfers, but rather are includible in the gross estate, should be excepted from the special rule, and that any proposal addressing this issue would benefit from notice and comment.

This document contains proposed amendments to the Estate Tax Regulations (26 CFR part 20) relating to the BEA described in section 2010(c)(3) of the Code (proposed regulations), for which purpose the final regulations reserved § 20.2010–1(c)(3). The special rule currently does not distinguish between: (i) Completed gifts that are treated as adjusted taxable gifts for estate tax purposes and that, by definition, are not included in the donor's gross estate; and (ii) completed gifts that are treated as testamentary transfers for estate tax purposes and are included in the donor's gross estate (includible gift). The Code and the regulations, however, do distinguish between these two types of transfers. Section 2001(b) (flush language) excludes from the term ''adjusted taxable gifts'' gifts that are includible in the gross estate. Section 2701(e)(6) and § 25.2701–5 similarly remove from adjusted taxable gifts transfers includible in the gross estate that previously were subject to the special valuation rules of section 2701. See also § 25.2702–6 (excluding from adjusted taxable gifts certain transfers includible in the gross estate that previously were subject to the special valuation rules of section 2702) and Rev. Rul. 84–25, 1984–1 C.B. 191 (excluding from adjusted taxable gifts completed transfers that will be satisfied with assets includible in the gross estate). In keeping with the statutory distinction between completed gifts that are treated as adjusted taxable gifts and completed gifts that are treated as testamentary transfers, these proposed regulations generally would deny the benefit of the special rule to includible gifts.

Regardless of whether a gift is treated as an adjusted taxable gift or as an includible gift for estate tax purposes,

the Code ensures that the gift is treated consistently with respect to the credits allowable in the year in which the gift was made. See discussion of the five statutory steps of the estate tax computation in part III, *Federal Estate Tax Computation Generally,* in the Background section of the preamble to the notice of proposed rulemaking under section 2010 (REG–106706–18) published in the **Federal Register** (83 FR 59343) on November 23, 2018. The exclusion from adjusted taxable gifts of transfers includible in the gross estate does not affect the second step of the estate tax computation, the determination of a hypothetical gift tax referred to as the gift tax payable. Gift tax payable is based upon all post-1976 taxable gifts, whether or not included in the gross estate. See sections 2001(b)(2) and (g)(1), requiring the determination of a hypothetical gift tax on all post-1976 taxable gifts, which is a gift tax reduced, but not to below zero, by the credit amounts allowable in the years of the gifts. Both the hypothetical gift tax and the credit amounts are computed using the gift tax rates in effect at the date of death. Thus, for purposes of computing the estate tax, an includible gift receives credit for all credit amounts, including those attributable to the increased BEA, allowable in the years in which the gift was made.

A commenter recommended consideration of whether the special rule should apply to taxable gifts made during an increased BEA period that are essentially testamentary and thus are included in the gross estate rather than in adjusted taxable gifts. See discussion in part 6, *Anti-Abuse Rule,* of the Summary of Comments and Explanation of Revisions in the final regulations. If such transfers are subject to the special rule, they can be made in a manner designed to make the increased BEA available against the donor's estate tax despite the fact that the donor has retained the beneficial use of or the control of the transferred property. Examples of such transfers include gifts subject to a retained life estate or subject to other powers or interests as described in sections 2035 through 2038 and 2042 of the Code, gifts made by enforceable promise as described in Rev. Rul. 84–25, *supra,* and gifts subject to the special valuation rules of sections 2701 and 2702. In recommending an exception to the special rule, the commenter cautioned that attention should also be given to the potential to work around an exception that relies solely on whether gifts are includible in the gross estate. For example, a donor may attempt to make the increased BEA available against the estate tax under the special rule by the removal shortly before the donor's death of the donor's beneficial use of or the control of the transferred property. Examples of these types of transfers include the elimination by a third party, shortly before the donor's death, of the interests or powers that otherwise would have resulted in the inclusion of the transferred interest or property in the donor's gross estate; the payment shortly before death of a gift made by enforceable promise as described in Rev. Rul. 84–25, *supra;* and the transfer shortly before death of a section 2701 interest within the meaning of § 25.2701–5(a)(4) or a section 2702 interest within the meaning of § 25.2702–6(a)(1).

The purpose of the special rule is to ensure that bona fide inter vivos transfers of property are consistently treated as a transfer of property by gift for both gift and estate tax purposes. Bona fide inter vivos gifts are subject to the gift tax based on the values, gift tax rates, and exclusions applicable as of the date of the gift. While such a gift is treated as an adjusted taxable gift for purposes of determining the estate tax rate to be applied to the value of the taxable estate, the gift is not includible in the donor's gross estate at death and is not subject to the estate tax. The special rule avoids the imposition of the estate tax on the gift by ensuring that the gifted property is treated solely as an adjusted taxable gift and not also as property includible in the gross estate.

Unlike an adjusted taxable gift, however, a gift of property that is includible in the donor's gross estate is subject to estate tax based on the values, estate tax rates, and exclusions applicable as of the date of death. The Code itself ensures that an includible gift is not treated as both an adjusted taxable gift and an inclusion in the gross estate. See section 2001(b) (flush language), excluding from ''adjusted taxable gifts'' gifts that are includible in the gross estate. The Code also ensures that an includible gift receives credit for any credit amounts allowable in the years in which the gift was made. See sections 2001(b)(2) and (g)(1). The treatment of an includible gift for estate tax purposes results in the correct outcome without any application of the special rule: The property is included in the gross estate and subject to the BEA in effect at the donor's death.

There is a subset of includible gifts that the Code treats in a different fashion, but still in a way that results in the correct outcome without the application of the special rule. That subset consists of gifts made during an increased BEA period that are essentially testamentary, but the entire value of which is deductible for gift tax purposes by reason of the charitable or marital deduction (or both). Such transfers are excluded from adjusted taxable gifts because they never were taxable gifts in the first place. See section 2503(a), defining taxable gifts as the total amount of gifts made during the calendar year less the deductions provided in sections 2522 and 2523 for charitable and marital gifts, respectively. As a result of the exclusion of charitable and marital gifts from taxable gifts, and thus from adjusted taxable gifts, there would be no credits allocable to these gifts attributable to the BEA in computing gift tax payable within the meaning of section 2001(b)(2). Because no BEA is applicable to the deductible gifts, there will be no difference between the BEA applicable to these gifts attributable to the increased BEA and the BEA applicable to the decedent's estate. As a result, there is no possibility of inconsistent gift and estate taxation of such an includible gift, and thus no need for the application of the special rule.

Without additional rules, however, the application of the special rule to includible gifts results in securing the benefit of the increased BEA in circumstances where the donor continues to have the title, possession, use, benefit, control, or enjoyment of the transferred property during life. In those circumstances, there is no possibility of the inclusion of the gift in adjusted taxable gifts at the death of the donor, and therefore no need for the application of the special rule to transfers of such property. In those circumstances, it is appropriate that the amount includible or treated as includible as part of the gross estate (rather than as an adjusted taxable gift) is subject to estate tax with the benefit of only the BEA available at the date of death. Section 2001(g)(2) directs the Secretary to prescribe such regulations as may be necessary or appropriate to carry out section 2001 with respect to any difference between the BEA applicable at the time of the decedent's death and the BEA applicable with respect to any gifts made by the decedent. Given the plain language of the Code describing the computation of the estate tax and directing that certain transfers, including transfers made within three years of death that otherwise would have been includible in the gross estate, are treated as testamentary transfers and not as adjusted taxable gifts, it would be inappropriate to apply the special rule

to includible gifts. This is particularly true where the inter vivos transfers are not true bona fide transfers in which the decedent ''absolutely, unequivocally, irrevocably, and without possible reservations, parts with all of his title and all of his possession and all of his enjoyment of the transferred property.'' *Commissioner* v. *Church's Estate,* 335 U.S. 632, 645 (1949). To prevent this inappropriate result, these proposed regulations would create an exception to the special rule applicable to includible gifts.

The same commenter suggested that any exception to the special rule relating to transfers within the scope of section 2701 be specifically addressed in § 25.2701–5. This suggestion is not adopted. Section 25.2701–5(a)(3) provides rules under which the estate of a decedent who made a transfer subject to section 2701 may reduce the decedent's adjusted taxable gifts in a manner similar to that of section 2001(b) so as to eliminate the amount duplicated in the transfer tax base. The amount of the reduction in adjusted taxable gifts is determined under § 25.2701–5(b). See also § 25.2702–6(b), providing a similar rule for certain interests previously subject to section 2702. Both §§ 25.2701–5 and 25.2702–6 address only the amount of adjusted taxable gifts but, with the exception of § 25.2701–5(e)(3), do not address the amount of the credits allowable in the multiple steps necessary to determine the estate tax. As previously discussed, the effect of the estate tax computation is to provide the decedent the benefit of any credit amounts allowable in the years of the gifts, determined at date of death gift tax rates, including the credit amount attributable to a section 2701 or 2702 transfer that was free of gift tax when made as a result of the increased BEA, regardless of whether the amount of adjusted taxable gifts is later reduced for estate tax purposes. Thus, while a reduction in the amount of adjusted taxable gifts eliminates amounts duplicated in the transfer tax base, it neither changes the existence of the transfer nor frees up the credit allocable to that transfer. See, *e.g.,* the Background section of the preamble to Adjustments Under Special Valuation Rules (TD 8536), published in the **Federal Register** (59 FR 23152) on May 5, 1994, explaining that the § 25.2701–5 regulations do not ''purge'' a section 2701 transfer as if it had not occurred, but rather mitigate the effect of double taxation through a reduction in a decedent's adjusted taxable gifts.

As noted earlier, § 25.2701–5(e)(3) permits an adjustment to both the adjusted taxable gifts and gift tax payable of a consenting spouse. In the case of an election under section 2513 to split a section 2701 transfer with the donor's spouse, a later testamentary transfer of the section 2701 interest is treated as made solely by the donor spouse. The consenting spouse's adjusted taxable gifts and gift tax payable are each reduced to eliminate any remaining effect of the section 2701 interest on the consenting spouse in a manner that is generally consistent with the principles of sections 2001(d) and (e) (pertaining to the treatment of split gifts in the computation of the estate tax). This exception has no application to the donor spouse, who remains subject to the general rule of § 25.2701–5(a)(3). Thus, it is not necessary to address differences in the BEA in either § 25.2701–5 or § 25.2702–6(b).

Explanation of Provisions

Pursuant to sections 2010(c)(6) and 2001(g)(2) of the Code, the proposed regulations would add proposed § 20.2010–1(c)(3) to provide an exception to the special rule for transfers that are includible in the gross estate or are treated as includible in the gross estate for purposes of section 2001(b), including for example gifts subject to a retained life estate or subject to other powers or interests as described in sections 2035 through 2038 and 2042 of the Code regardless of whether the transfer was deductible pursuant to section 2522 or 2523, gifts made by enforceable promise, and other amounts that are duplicated in the transfer tax base, including a section 2701 interest within the meaning of § 25.2701–5(a)(4) and a section 2702 interest within the meaning of § 25.2702–6(a)(1). The exception to the special rule also would apply to transfers that would be described in the preceding sentence but for the transfer, elimination, or relinquishment within 18 months of the donor's date of death of the interest or power that would have caused inclusion in the gross estate, effectively allowing the donor to retain the enjoyment of the property for life. In addition to transfers, eliminations, or relinquishments by the donor, examples include the elimination, by a third party having the power to eliminate or extinguish the interest or power, of the interests or powers that otherwise would have resulted in inclusion of transferred property in the donor's gross estate; the payment of a gift made by enforceable promise as described in Rev. Rul. 84–25, *supra;* and the transfer of a section 2701 interest within the meaning of § 25.2701–5(a)(4) or a section 2702 interest within the meaning of § 25.2702–6(a)(1). For purposes of the preceding sentence, such transfers, eliminations, and relinquishments include those effectuated by the donor, the donor in conjunction with any other person, or by any other person, but do not include those effectuated by the expiration of the period described in the original instrument of transfer, whether by a death or the lapse of time.

The special rule, however, would continue to apply to transfers includible in the gross estate when the taxable amount of the gift is not material, that is, the taxable amount is 5 percent or less of the total amount of the transfer, valued as of the date of the transfer. Compare section 2037(a)(2), excluding from the gross estate property subject to a reversionary interest where the value of such interest immediately before death is 5 percent or less of the value of the transferred property; and section 2042(2), excluding from the term ''incidents of ownership'' reversionary interests where the value of such interest immediately before death is 5 percent or less of the value of the life insurance policy. See also section 673(a), treating the grantor as the owner for income tax purposes of any portion of a trust in which the grantor's reversionary interest exceeds 5 percent of the value of such portion as of the date of inception of that portion of the trust. This bright-line exception to the special rule is proposed in lieu of a facts and circumstances determination of whether a particular transfer was intended to take advantage of the increased BEA without depriving the donor of the use and enjoyment of the property.

The proposed exception to the special rule may be illustrated by the following example. Assume that when the BEA was $11.4 million, a donor gratuitously transferred the donor's enforceable $9 million promissory note to the donor's child. The transfer constituted a completed gift of $9 million. On the donor's death, the assets that are to be used to satisfy the note are part of the donor's gross estate, with the result that the note is treated as includible in the gross estate for purposes of section 2001(b). Thus, the $9 million gift is excluded from adjusted taxable gifts in computing the tentative estate tax under section 2001(b)(1). Nonetheless, if the donor dies after a statutory reduction in the BEA to $6.8 million, the credit to be applied in computing the estate tax is the credit based upon the $6.8 million of the BEA allowable as of the date of death.

Applicability Date

Once these regulations have been published as final regulations, it is

proposed that these regulations be applicable to the estates of decedents dying on or after April 27, 2022. The special rule will not be needed until the basic exclusion amount has been decreased by statute; under current law, that is scheduled to occur for the estates of decedents dying after 2025. However, if such a decrease is enacted on or after April 27, 2022 but before the issuance of final regulations, the best way to ensure that all estates will be subject to the same rules is to make this proposed exception to the special rule applicable to the estates of decedents dying on or after April 27, 2022.

Special Analyses

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations apply to donors of gifts made after 2017 and to the estates of donors dying after a reduction in the BEA, and implement a change in the amount that is excluded from estate tax. Neither an individual nor the estate of a deceased individual is a small entity within the meaning of 5 U.S.C. 601(6). Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely (in the manner described under the **ADDRESSES** heading) to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a hearing are strongly encouraged to be submitted electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Rev. Rul. 84–25, 1984–1 C.B. 191, and Announcement 2020–4, 2020–17 IRB 1, are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is John D. MacEachen, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Par. 1.** The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 20.2010–1 also issued under 26 U.S.C. 2001(g)(2) and 26 U.S.C. 2010(c)(6).

* * * * *

■ **Par. 2.** Section 20.2010–1 is amended by:

■ 1. Adding paragraph (c)(3); and

■ 2. Revising the first sentence of paragraph (f)(2) and adding a sentence after the second sentence.

The revision and additions read as follows:

§ 20.2010–1 Unified credit against estate tax; in general.

* * * * *

(c) * * *

(3) *Exception to the special rule*—(i) *Transfers to which the special rule does not apply.* Except as provided in paragraph (c)(3)(ii) of this section, the special rule of paragraph (c) of this section does not apply to transfers includible in the gross estate, or treated as includible in the gross estate for purposes of section 2001(b), including without limitation the following transfers:

(A) Transfers includible in the gross estate pursuant to section 2035, 2036, 2037, 2038, or 2042, regardless of whether all or any part of the transfer was deductible pursuant to section 2522 or 2523;

(B) Transfers made by enforceable promise to the extent they remain unsatisfied as of the date of death;

(C) Transfers described in § 25.2701–5(a)(4) or § 25.2702–6(a)(1) of this chapter; and

(D) Transfers that would have been described in paragraph (c)(3)(i)(A), (B), or (C) of this section but for the transfer, relinquishment, or elimination of an interest, power, or property, effectuated within 18 months of the date of the decedent's death by the decedent alone, by the decedent in conjunction with any other person, or by any other person.

(ii) *Transfers to which the special rule continues to apply.* Notwithstanding paragraph (c)(3)(i) of this section, the special rule of paragraph (c) of this section applies to the following transfers:

(A) Transfers includible in the gross estate in which the value of the taxable portion of the transfer, determined as of the date of the transfer, was 5 percent or less of the total value of the transfer; and

(B) Transfers, relinquishments, or eliminations described in paragraph (c)(3)(i)(D) of this section effectuated by the termination of the durational period described in the original instrument of transfer by either the mere passage of time or the death of any person.

(iii) *Examples.* In each example, the basic exclusion amount on the date of the gift was $11.4 million, the basic exclusion amount on the date of death is $6.8 million, and both amounts include hypothetical inflation adjustments. The donor's executor does not elect to use the alternate valuation date and, unless otherwise stated, the donor never married and made no other gifts during life.

(A) *Example 1.* Individual A made a completed gift of A's promissory note in the amount of $9 million. The note remained unpaid as of the date of A's death. The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate for purposes of section 2001(b) and is not included in A's adjusted taxable

gifts. Because the note is treated as includible in the gross estate and does not qualify for the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section, the exception to the special rule found in paragraph (c)(3) of this section applies to the gift of the note. The credit to be applied for purposes of computing A's estate tax is based on the $6.8 million basic exclusion amount as of A's date of death, subject to the limitation of section 2010(d). The result would be the same if A or a person empowered to act on A's behalf had paid the note within the 18 months prior to the date of A's death.

(B) *Example 2.* Assume that the facts are the same as in paragraph (c)(3)(iii)(A) of this section (*Example 1*) except that A's promissory note had a value of $2 million and, on the same date that A made the gift of the promissory note, A also made a gift of $9 million in cash. The cash gift was paid immediately, whereas the $2 million note remained unpaid as of the date of A's death. The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate for purposes of section 2001(b) and is not included in A's adjusted taxable gifts. Because the $2 million note is treated as includible in the gross estate and does not qualify for the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section, the exception to the special rule found in paragraph (c)(3) of this section applies to the gift of the note. On the other hand, the $9 million cash gift was paid immediately, and no portion of that gift is includible or treated as includible in the gross estate. Because the amount allowable as a credit in computing the gift tax payable on A's $9 million cash gift exceeds the credit based on the $6.8 million basic exclusion amount allowable on A's date of death, the special rule of paragraph (c) of this section applies to that gift. The credit to be applied for purposes of computing A's estate tax is based on a basic exclusion amount of $9 million, the amount used to determine the credit allowable in computing the gift tax payable on A's $9 million cash gift.

(C) *Example 3.* Assume that the facts are the same as in paragraph (c)(3)(iii)(A) of this section (*Example 1*) except that, prior to A's gift of the note, the executor of the estate of A's predeceased spouse elected, pursuant to § 20.2010–2, to allow A to take into account the predeceased spouse's $2 million DSUE amount. Assume further that A's promissory note had a value of $2 million on the date of the gift, and that A made a gift of $9 million in cash a few days later. The cash gift was paid immediately, whereas the $2 million note remained unpaid as of the date of A's death. The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate for purposes of section 2001(b) and is not included in A's adjusted taxable gifts. Because A's DSUE amount was sufficient to shield the gift of the note from gift tax, no basic exclusion amount was applicable to the $2 million gift pursuant to paragraph (c)(1)(ii)(A) of this section and the special rule of paragraph (c) of this section does not apply to that gift. On the other hand, the $9 million cash gift was paid immediately, and no portion of that gift is includible or treated as includible in the gross estate. Because the amount allowable as a credit in computing the gift tax payable on A's $9 million cash gift exceeds the credit based on the $6.8 million basic exclusion amount allowable on A's date of death, the special rule of paragraph (c) of this section applies to that gift. The credit to be applied for purposes of computing A's estate tax is based on A's $11 million applicable exclusion amount, consisting of the $2 million DSUE amount plus the $9 million amount used to determine the credit allowable in computing the gift tax payable on A's $9 million cash gift.

(D) *Example 4.* Individual B transferred $9 million to a grantor retained annuity trust (GRAT), retaining a qualified annuity interest within the meaning of § 25.2702–3(b) of this chapter valued at $8,550,000. The taxable portion of the transfer valued as of the date of the transfer was $450,000. B died during the term of the GRAT. The entire GRAT corpus is includible in the gross estate pursuant to § 20.2036–1(c)(2). Because the value of the taxable portion of the transfer was 5 percent or less of the total value of the transfer determined as of the date of the gift, the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section is met and the exception to the special rule found in paragraph (c)(3) of this section does not apply to the gift. However, because the total of the amounts allowable as a credit in computing the gift tax payable on B's post-1976 gift of $450,000 is less than the credit based on the $6.8 million basic exclusion amount allowable on B's date of death, the special rule of paragraph (c) of this section does not apply to the gift. The credit to be applied for purposes of computing B's estate tax is based on the $6.8 million basic exclusion amount as of B's date of death, subject to the limitation of section 2010(d).

(E) *Example 5.* Assume that the facts are the same as in paragraph (c)(3)(iii)(D) of this section (*Example 4*) except that B's qualified annuity interest is valued at $8 million. The taxable portion of the transfer valued as of the date of the transfer was $1 million. Because the value of the taxable portion of the transfer was more than 5 percent of the total value of the transfer determined as of the date of the gift, the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section is not met and the exception to the special rule found in paragraph (c)(3) of this section applies to the gift. The credit to be applied for purposes of computing B's estate tax is based on the $6.8 million basic exclusion amount as of B's date of death, subject to the limitation of section 2010(d).

(F) *Example 6.* Assume that the facts are the same as in paragraph (c)(3)(iii)(D) of this section (*Example 4*) except that B's qualified annuity interest is valued at $2 million. The taxable portion of the transfer valued as of the date of the transfer was $7 million. B survived the term of the GRAT. Because B survived the original unaltered term of the GRAT, no part of the value of the assets transferred to the GRAT is includible in B's gross estate, and the exception to the special rule found in paragraph (c)(3) of this section does not apply to the gift. Moreover, because the amount allowable as a credit in computing the gift tax payable on B's $7 million gift exceeds the credit based on the $6.8 million basic exclusion amount allowable on B's date of death, the special rule of paragraph (c) of this section applies to the gift. The credit to be applied for purposes of computing B's estate tax is based on a basic exclusion amount of $7 million, the amount used to determine the credit allowable in computing the gift tax payable on B's transfer to the GRAT.

(G) *Example 7.* Individual C transferred $9 million to a grantor retained income trust (GRIT), retaining an income interest valued at $0 pursuant to section 2702(a)(2)(A). The taxable portion of the transfer valued as of the date of the transfer was $9 million. C died during the term of the GRIT. The entire GRIT corpus is includible in C's gross estate pursuant to section 2036(a)(1) because C retained the right to receive all of the income of the GRIT. Because the transferred assets are includible in the gross estate and do not qualify for the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section, the exception to the special rule found in paragraph (c)(3) of this section

applies to the gift. The credit to be applied for purposes of computing C's estate tax is based on the $6.8 million basic exclusion amount as of C's date of death, subject to the limitation of section 2010(d).

* * * * *

(f) * * *

(2) *Exceptions.* Except as specifically provided in this paragraph (f)(2), paragraphs (c) and (e)(3) of this section apply to estates of decedents dying on or after November 26, 2019. * * * Paragraph (c)(3) of this section is applicable to the estates of decedents dying on or after April 27, 2022.

* * * * *

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2022–08865 Filed 4–26–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0122]

RIN 1625–AA08

Special Local Regulation; Nanticoke River, Sharptown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule to establish temporary special local regulations for certain waters of the Nanticoke River. The rulemaking was initiated to establish a special local regulation during the ''Sharptown Regatta,'' a marine event to be held on certain waters of the Nanticoke River at Sharptown, MD. The proposed rule is being withdrawn because it is no longer necessary. The event sponsor will no longer be conducting the power boat racing event.

DATES: The Coast Guard is withdrawing the proposed rule for the event scheduled from noon to 5 p.m. on May 13, 2022, from 10 a.m. to 5 p.m. on May 14, 2022, and from 10 a.m. to 5 p.m. on May 15, 2022, and published on March 14, 2022, (87 FR 14193) as of April 27, 2022.

ADDRESSES: To view the docket for this withdrawn rulemaking, go to *https://www.regulations.gov,* type USCG–2022–0122 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Mr. Ron Houck, Waterways Management Division, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576– 2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background Information and Regulatory History

On March 14, 2022, we published an NPRM entitled ''Special Local Regulation; Nanticoke River, Sharptown, MD'' in the **Federal Register** (87 FR 14193). The Coast Guard proposed to establish a temporary special local regulation for certain navigable waters of the Nanticoke River from 11 a.m. on May 13, 2022, through 6 p.m. on May 15, 2022. This action was necessary to provide for the safety of life on these waters during a power boat racing event on May 14, 2022, and May 15, 2022, as well as pre-race practice on May 13, 2022. This rulemaking would have prohibited persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

Withdrawal

The proposed rule is being withdrawn due to the regulated area no longer being necessary because the event sponsor will no longer be conducting the power boat racing event.

Authority

We issue this notice of withdrawal under the authority of 46 U.S.C. 70041.

Dated: April 21, 2022.

James R. Bendle,

Commander, U.S. Coast Guard, Acting Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–08905 Filed 4–26–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0186]

RIN 1625–AA08

Special Local Regulation; East River 4th of July Fireworks, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a special local regulation on the navigable waters of the East River and New York Harbor, New York, NY, for vessel management for the annual 4th of July fireworks displays. This special local regulation allows the Coast Guard to control vessel movement and prohibit all vessel traffic from entering the fireworks barge buffer zone, establish four separate viewing areas, and a moving protection zone around the barges while they are loaded with pyrotechnics. This rule is necessary to provide for the safety of life on the navigable waters immediately before, during, and after a fireworks display that involves multiple barge launch sites on a highly congested waterway. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0186 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email MST1 Stacy Stevenson, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4197, email *D01-SMB-SecNY-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 7, 2022, the Coast Guard received an Application for Marine Event for the annual 4th of July fireworks display. The Captain of the Port New York (COTP) has determined that this event in close proximity to marine traffic poses a significant risk to public safety and property. The special local regulation proposed mimics those limited access areas established for 4th of July in previous years, with the addition of a moving protection zone

around the loaded fireworks barges that will be enforced from the point of departure from the loading facility until placement in show position. As in previous years, a buffer zone will be established around the barges and four separate viewing areas that will separate vessels based on length. Multiple fireworks displays will commence simultaneously producing a relatively large fallout zone over the East River during a time when the East River and New York Harbor experiences heavy vessel congestion which necessitates the need for the control of vessel movement immediately before, during, and after this display.

The combination of multiple simultaneous fireworks displays on the East River where a significant increase of recreational vessel traffic is anticipated has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this proposed rule would establish a moving protection zone around the loaded fireworks barges, a buffer zone around the barges while they are in show position, and four separate viewing areas separating vessels by size. The purpose of this proposed rulemaking is to ensure the safety of participants, non-participants, and transiting vessels on the navigable waters in the vicinity of the fireworks display and the spectator zone before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under the authority of 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a special local regulation annually on July 4th or July 5th from 5:30 p.m. through 11:30 p.m. This special local regulation will include a moving protection zone excluding all vessels from entering within a 25-yard radius from each loaded fireworks barge from the point of departure from the loading facility, during the transit of the New York Harbor, and until the placement in show position on the East River. The buffer zone will exclude all nonparticipating vessels from the area surrounding the barges immediately before, during, and after the display. Four separate viewing areas will be established that will separate vessels based on vessel length.

BILLING CODE 9110–04–P

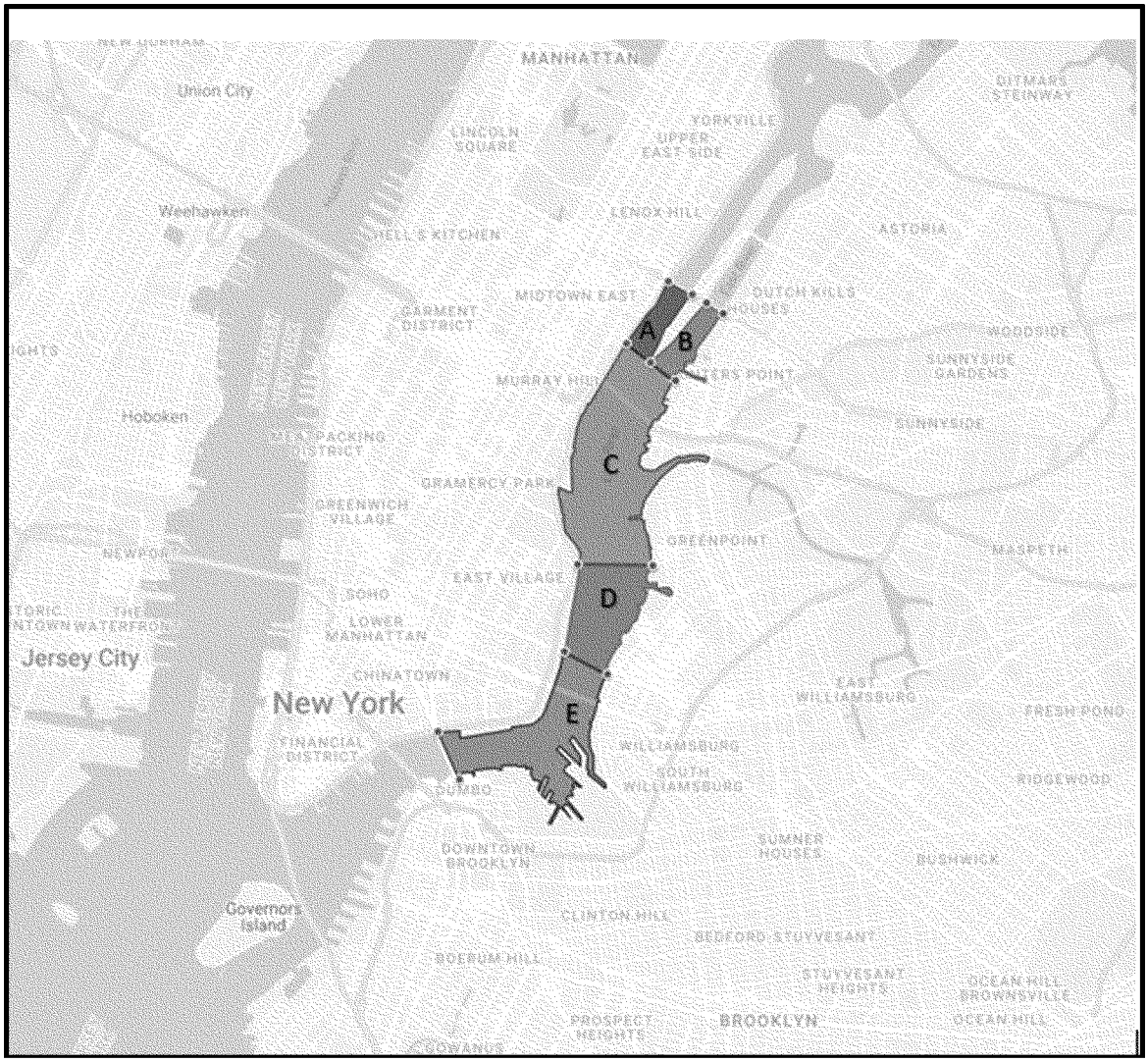

Illustration showing location of regulated areas.

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The duration of the areas are intended to ensure the safety of vessels, participants, spectators, and those transiting the area during the fireworks display. Navigation rules shall apply at all times within the areas. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the special local regulation. The special local regulation is limited in duration and to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via public Broadcast Notice to Mariners to ensure the special local regulation will result in minimum impact. Mariners will therefore be able to transit outside the periods of enforcement of the special local regulation. Additionally, mariners may be able to transit during a portion of the enforcement period with approval from the COTP or designated representative. The entities most likely affected are commercial vessels and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. The maritime public will be advised in advance of this special local regulation via Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area lasting under 6 hours that would limit persons or vessels from transiting a portion of the East River during the scheduled event. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0186 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.110 to read as follows:

§ 100.110 East River 4th of July Fireworks, East River, Manhattan, NY.

(a) *Regulated areas.* The regulations in this section apply to the following areas:

(1) *Area ALPHA:* All navigable waters of the East River, between the east shore of Manhattan and the west shore of Roosevelt Island south of the Ed Koch Queensboro Bridge encompassed by a line connecting the following points beginning at 40°45′31.46″ N, 73°57′31.42″ W, along the shore to 40°45′6.80″ N, 73°57′53.45″ W, east to Roosevelt Island at 40°44′59.42″ N, 73°57′40.57″ W, along the west shore of Roosevelt island to the Ed Koch Queensboro Bridge at 40°45′26.02″ N, 73°57′19.15″ W, and back to the point of origin.

(2) *Area BRAVO:* All navigable waters of the East River, between the west shore of Queens and the east shore of Roosevelt Island south of the Ed Koch Queensboro Bridge encompassed by a line connecting the following points beginning at 40°45′22.89″ N, 73°57′12.06″ W, along the western shore of Roosevelt Island to 40°44′59.42″ N, 73°57′40.57″ W, east to 40°44′52.25″ N, 73°57′28.08″ W, north along the west shore to the Ed Koch Queensboro Bridge at 40°45′18.82″ N, 73°57′2.91″ W, and back to the point of origin.

(3) *Area CHARLIE:* All navigable waters of the East River encompassed by a line connecting the following points beginning at 40°45′6.80″ N, 73°57′53.45″ W, then south along the shore of Manhattan to 40°43′40.29″ N, 73°58′18.37″ W, across the East River to Brooklyn at 40°43′39.68″ N, 73°57′39.74″ W, then north along the east shore of the East River to 40°44′52.25″ N, 73°57′28.08″ W including the navigable waters of Newtown Creek to the Pulaski Bridge, back to the point of origin.

(4) *Area DELTA:* All navigable waters of the East River encompassed by a line connecting the following points beginning at 40°43′40.29″ N, 73°58′18.37″ W, then south along the shore of Manhattan to 40°43′06″ N, 073°58′25″ W, across the East River to Brooklyn at 40°42′57.34″ N, 73°58′3.03″ W, and north along the shore of Brooklyn to 40°42′15.87″ N, 73°59′19.60″ W, then along the shore of Brooklyn to 40°42′57.34″ N, 73°58′3.03″ W, and then back to the point of origin.

(5) *Area ECHO:* All navigable waters of the East River encompassed by a line connecting the following points beginning at 40°43′06″ N, 073°58′25″ W, then along the shore to the Manhattan Bridge at 40°42′34.74″ N, 73°59′30.65″ W, across the East River to Brooklyn at 40°42′15.87″ N, 73°59′19.60″ W, then along the Brooklyn side of the East River to 40°42′57.34″ N, 73°58′3.03″ W, and then back to the point of origin. These coordinates are based on (NAD 83).

(6) *Moving Protection Zone:* A moving protection zone on all navigable waters within a 50 yard radius of the participating barges while they are loaded with explosive material will be enforced from the point of departure within the COTP New York zone until placement at the intended destination. The point of departure will be determined each year prior to enforcement of the moving protection zone and the details will be released through a Broadcast Notice to Mariners.

(b) *Definitions.* As used in this section:

Designated Representative is any Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer or other officer operating a Coast Guard vessel and a Federal, State and local officer designated by or assisting the Captain of the Port (COTP) New York in the enforcement of this section.

Official Patrol Vessel means any Coast Guard, Coast Guard Auxiliary, Federal, State or local law enforcement vessel assigned or approved by the COTP New York to assist in the enforcement of this section.

Spectator means a person or vessel not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations.* (1) In accordance with the special local regulations in section 100.35 of this part, entry into, transiting, or anchoring within the limited access area is prohibited, unless authorized by the COTP or a designated representative.

(2) All vessels that are authorized by the COTP or a designated representative to enter the limited access areas established by this section must adhere to the following restrictions:

(i) Area ALPHA access is limited to vessels greater than or equal to 20 meters (65.6ft) in length.

(ii) Area BRAVO access is limited to vessels less than 20 meters (65.6ft) in length.

(iii) All vessels are prohibited from entering area CHARLIE without permission from the COTP or a designated representative.

(iv) Area DELTA access is limited to vessels less than 20 meters (65.6ft) in length.

(v) Area ECHO access is limited to vessels greater than or equal to 20 meters (65.6ft) in length.

(vi) All vessels are prohibited from entering the moving protection zone without permission from the COTP or a designated representative.

(vii) Vessels desiring to utilize any of these limited access areas must enter the area by 7:30 p.m.

(3) During periods of enforcement all persons and vessels in the limited access areas must comply with all lawful orders and directions from the COTP New York or the COTP New York's designated representative.

(4) Vessel operators desiring to enter or operate within a limited access area should contact the COTP New York at (718) 354–4356 or on VHF 16 to obtain permission.

(5) Spectators or other vessels must not anchor, block, loiter or impede the transit of event participants or official patrol vessels in the limited access area during the effective dates and times unless authorized by COTP New York or designated representative.

(6) The COTP or a representative will inform the public through local notice to mariners and/or Broadcast Notices to Mariners of the enforcement period for the regulated area as well as any changes of the enforcement times.

(d) *Enforcement period.* This section will be enforced annually on July 4, from 5:30 p.m. to 11:30 p.m. In the event the fireworks display is postponed due to inclement weather, this section will be enforced on July 5, from 5:30 p.m. to 11:30 p.m.

Dated: April 11, 2022.

Z. Merchant,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2022–08944 Filed 4–26–22; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0082]

RIN 1625–AA87

Security Zone; Naval Submarine Base New London, Groton, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to modify the security zone boundaries surrounding Naval Submarine Base New London in Groton, CT. The proposed amendment to the security zone is to encompass the entire operational area of the Naval Submarine Base. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0082 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician 2nd Class Mark Paget, Waterways Management Division, Sector Long Island Sound; telephone: (203) 468–4583; email: *Mark.A.Paget@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Long Island Sound
CT Connecticut
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On August 15, 2003 the Coast Guard published a final rule entitled ''Regulated Navigation Areas, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone'' in the **Federal Register** (68 FR 48798). With this rule we added 33 CFR 165.153 creating a regulated navigation area establishing a speed restriction in the vicinity of Naval Submarine Base New London and the Lower Thames River.

Later, on February 10, 2012, the Coast Guard published a final rule entitled ''Special Local Regulations; Safety and Security Zones; Recurring Events in Captain of the Port Long Island Sound Zone'' in the **Federal Register** (77 FR 6955). With this rule we added 33 CFR 100.100 and revised §§ 165.151 and 165.154. The changes removed 37 regulated areas, established 33 new safety zones, three special local regulations, one security zone, and consolidatde and simplified these regulations.

The Naval Submarine Base New London, Groton, CT, is the home to a portion of the U.S. Navy's Fast Attack Nuclear Submarines. During a recent security assessment of the base, it was determined that the existing security zone does not adequately cover the entirety of naval assets, piers, or planned pier extension projects. Therefore, Naval Submarine Base New London has requested to expand the existing security zone to safeguard its waterfront facility and its naval vessels while moored from destruction, loss, or injury from sabotage or other subversive acts, or other causes of a similar nature.

The purpose of this rulemaking is to modify and expand the existing security zone cited in 33 CFR 165.154(a)(3). The Captain of the Port Long Island Sound (COTP) proposes to modify current points in the boundary of the security zone. This would allow the zone to completely encompass the security barriers and allow room for planned pier expansion projects.

III. Discussion of Proposed Rule

Part 165 of 33 CFR contains specific regulated navigation areas and limited access areas to prescribe general regulations for different types of limited or controlled access areas and regulated navigation areas and list specific areas and their boundaries. Section 165.154 establishes Safety and Security Zones: Captain of the Port Long Island Sound Zone.

The Coast Guard proposes to modify the location of the existing security zone listed in 33 CFR 165.154(a)(3) Safety and Security Zones: Captain of the Port Long Island Sound Zone, to expand the zone, as indicated in the illustration below. This expansion would allow the zone to completely encompass the security barriers and allow room to expand piers as required.

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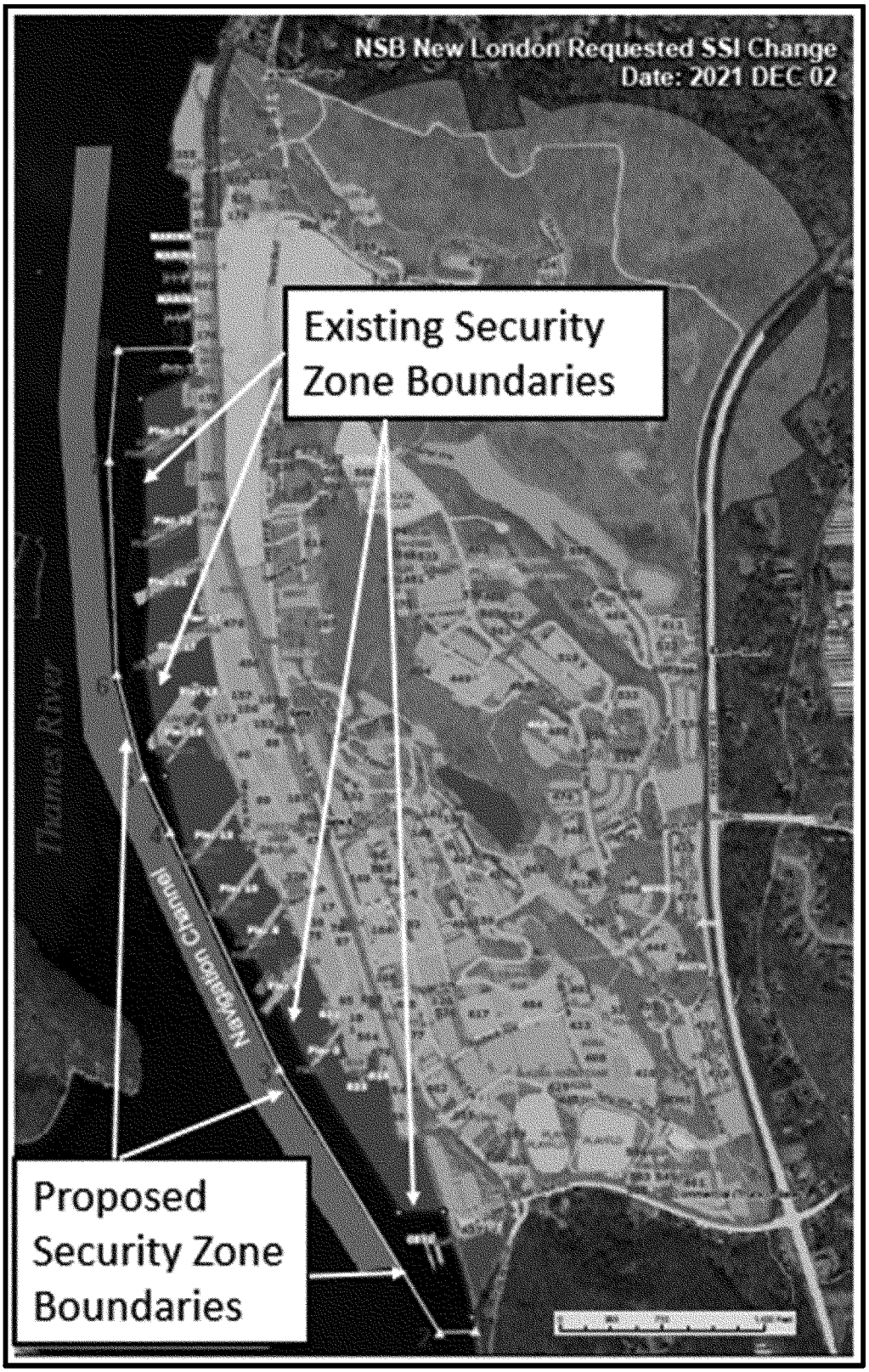

Illustration showing current and proposed security zones. A color version of this illustration is available in the docket.

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IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the security zone. Vessel traffic would be able to safely transit around the security zone which would impact a small designated area of the Thames River.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a security zone to limit access near Naval Submarine Base New London, Groton, CT. Normally such actions are categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0082 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public

comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

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

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

■ 2. Amend § 165.154 by revising paragraph (a)(3) to read as follows:

§ 165.154 Safety and Security Zones; Captain of the Port Long Island Sound Zone Safety and Security Zones.

(a) * * *

(3) *Naval Submarine Base New London, Groton, CT* (i) *Location.* All navigable waters of the Thames River, from surface to bottom, West of Naval Submarine Base New London, Groton, CT, enclosed by a line beginning at a point on the shoreline at 41°23′7.9″ N, 072°05′13.7″ W; then to 41°23′7.9″ N, 072°05′16.9″ W; then to 41°22′50.3″ N, 072°05′30.8″ W; then to 41°23′42.9″ N, 072°05′40.1″ W; then to 41°23′46.7″ N, 072°05′42.3″ W; then to 41°23′53.9″ N, 072°05′44.5″ W; then to 41°24′8.7″ N, 072°05′44.5″ W; then to 41°24′16.2″ N, 072°05′43.4″ W; then to a point on the shoreline 41°24′16.2″ N, 072°05′36.4″ W; then along the shoreline to the point of beginning (NAD 83).

(ii) [Reserved]

* * * * *

Dated: April 21, 2022.

E.J. Van Camp,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2022–08933 Filed 4–26–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0610; FRL–9081–01–R4]

Air Plan Approval; NC; NC BART Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a North Carolina State Implementation Plan (SIP) revision, submitted through a letter dated April 13, 2021, proposing changes to North Carolina's SIP-approved rule addressing best available retrofit technology (BART) for regional haze. EPA proposes to approve North Carolina's SIP revision because the changes are consistent with Clean Air Act (CAA or Act) requirements.

DATES: Comments must be received on or before May 27, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0610, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via telephone at (404) 562–9031 or electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Regional Haze and Regional Haze SIPs

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particulate matter ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form $PM_{2.5}$ which impairs visibility by scattering and absorbing light. Visibility impairment (*i.e.,* light scattering) reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects (including premature death, heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms) and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, anthropogenic impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I federal areas. Congress added section 169B to the CAA in 1990 to address regional haze issues, and EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308,[1] on July 1, 1999.[2] The RHR established a requirement to submit a regional haze SIP which applies to all 50 states, the

[1] In addition to the generally applicable regional haze provisions at 40 CFR 51.308, EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are therefore not relevant here.

[2] *See* 64 FR 35714 (July 1, 1999). On January 10, 2017, EPA promulgated revisions to the RHR that apply for the second and subsequent implementation periods. *See* 82 FR 3078.

District of Columbia, and the Virgin Islands.[3]

To address regional haze visibility impairment, the RHR established an iterative planning process that requires states in which Class I areas are located and states from which emissions may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area to periodically submit SIP revisions to address regional haze visibility impairment.[4] Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' and the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility-impairing pollutants install and operate BART, as discussed further in Section I.B, below.[5] States' first regional haze SIPs were due by December 17, 2007, with subsequent SIP submissions containing revised long-term strategies originally due July 31, 2018, and every ten years thereafter.[6]

B. BART

1. Statutory and Regulatory Requirements

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the national visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate ''Best Available Retrofit Technology'' as determined by the state. On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in the BART evaluation process. Under the RHR and the BART Guidelines, the BART evaluation process consists of three steps: (1) An identification of all BART-eligible sources, (2) an assessment of whether the BART-eligible sources are subject to BART, and (3) a determination of the BART controls.[7]

States must conduct BART determinations for all ''BART-eligible'' sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area, or in the alternative, adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is generally encouraged, but not required, to follow the BART Guidelines in other aspects.[8]

A regional haze SIP must include source-specific BART emissions limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169A(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a)(2).

States undertook the BART determination process during the first implementation period. The BART requirement was a one-time requirement. BART-eligible sources may need to be re-assessed for additional controls in future implementation periods under the CAA's reasonable progress provisions. States should treat BART-eligible sources the same as other reasonable progress sources going forward. *See* 81 FR 26942, 26947 (May 4, 2016).

2. Summary of BART Sources in North Carolina

In the State's December 17, 2007, regional haze plan for the first implementation period, North Carolina identified 17 BART-eligible sources (six electric generating units (EGUs) and eleven non-EGUs) in the State. The non-EGUs submitted BART-exemption modeling demonstrations for NO_X, SO_2, and particulate matter (PM) as applicable to individual facilities. Nine of the 11 non-EGU sources demonstrated that they are not subject to BART by modeling less than the State's BART-exemption visibility impact threshold of 0.5 deciviews. The EGUs relied on the Clean Air Interstate Rule (CAIR)[9] as a BART alternative for NO_X and SO_2 and submitted BART-exemption modeling demonstrations for PM. All of the EGUs demonstrated that they are not subject to BART for PM by modeling less than the State's BART-exemption threshold. *See* 77 FR 11858, 11874 (February 28, 2012).

North Carolina found that two non-EGUs (Blue Ridge Paper and PCS Phosphate) had modeled visibility impacts greater than the State's 0.5 deciview BART contribution threshold. Therefore, these two facilities were found subject to BART and submitted State permit applications including their proposed BART determinations. PCS Phosphate subsequently shut down its two sulfuric acid units subject to BART and these units were not further evaluated. For Blue Ridge Paper, North Carolina determined and EPA agreed that BART for the subject-to-BART units (two recovery furnaces, their associated smelt dissolving tanks, and the black liquor oxidation system) is the existing emissions control systems in place at the time of that determination. *See* 77 FR at 11874–75.

[3] 40 CFR 51.300(b).

[4] *See* 42 U.S.C. 7491(b)(2); 40 CFR 51.308(b) and (f); see also 64 FR 35768 (July 1, 1999). EPA established in the RHR that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area;'' therefore, all states must submit regional haze SIPs. *See* 64 FR 35721. In addition to each of the 50 states, EPA also concluded that the Virgin Islands and District of Columbia contain a Class I area and/or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. *See* 40 CFR 51.300(b) and (d)(3).

[5] *See* 42 U.S.C. 7491(b)(2)(A); 40 CFR 51.308(d) and (e).

[6] *See* 40 CFR 51.308(b). The 2017 RHR revisions changed the second period SIP due date from July 31, 2018, to July 31, 2021, and maintained the existing schedules for the subsequent implementation periods. *See* 40 CFR 51.308(f).

[7] *See* 40 CFR 51.308(e); BART Guidelines at I.F.

[8] For additional details regarding the three steps of the BART evaluation process, *see, e.g.,* 85 FR 47134, 47136–37 (August 4, 2020).

[9] CAIR created regional cap-and-trade programs to reduce SO_2 and NO_X emissions in 28 eastern states (and the District of Columbia), including North Carolina, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone national ambient air quality standards (NAAQS) or the 1997 $PM_{2.5}$ NAAQS. CAIR is no longer in effect is no longer in effect and has since been replaced by the Cross-State Air Pollution Rule (CSAPR). CSAPR requires substantial reductions of SO_2 and NO_X emissions from EGUs in 27 states in the Eastern United States that significantly contribute to downwind nonattainment of the 1997 $PM_{2.5}$ and ozone NAAQS, 2006 $PM_{2.5}$ NAAQS, and the 2008 8-hour ozone NAAQS. As discussed in Section II.B, below, EPA subsequently approved North Carolina's reliance on its Clean Smokestacks Act as a BART alternative in lieu of CAIR. *See* 81 FR 32652 (May 24, 2016).

II. Summary and EPA's Evaluation of North Carolina's SIP Revision

A. Summary of North Carolina's SIP Revision

Through a letter dated April 13, 2021, and submitted to EPA on April 14, 2021, North Carolina submitted a SIP revision to modify its SIP-approved rule at 15A North Carolina Administrative Code (NCAC) 02D .0543, *Best Available Retrofit Technology* (NC BART Rule), which applies to BART-eligible sources. EPA incorporated this rule into North Carolina's SIP as part of EPA's limited approval action on the State's regional haze plan for the first implementation period. *See* 77 FR 38185 (June 27, 2012).

The proposed revisions to the NC BART Rule include the following changes. The submission removes 15A NCAC 02D .0543(g) because it is outdated, requiring the submission of BART permit applications by September 1, 2006. The submission also removes 15A NCAC 02D .0543(i) which required owners or operators of BART-eligible sources required to adopt BART controls in North Carolina to have installed and begun operation of the BART controls by December 31, 2012. The revision also renumbers .0543(h) to .0543(g) and removes the statement that EGUs covered under and complying with 15A NCAC 02D .2400, *Clean Air Interstate Rules,* are considered to be in compliance with the BART requirements for NO_X and SO_2 under the NC BART Rule. Additionally, the revisions update the provisions for accessing EPA's *Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities* in a renumbered provision under 15A NCAC 02D .0543(h) (formerly provision (j)). The submission also includes non-substantive punctuation and wording changes.

B. EPA's Evaluation of North Carolina's SIP Revision

1. NC BART Rule Revisions

North Carolina elected to adopt the NC BART Rule to establish BART requirements in response to federal requirements that states address BART in their initial regional haze SIPs. The CAA and RHR do not require states to develop state BART rules for incorporation into their SIPs. Thus, changes to the NC BART Rule are approvable as long as North Carolina continues to implement and enforce BART and the changes are otherwise consistent with federal BART requirements. EPA proposes to find that the rule changes are approvable for the reasons discussed below.

Regarding the removal of provisions under 15A NCAC 02D .0543, EPA preliminarily agrees that provisions (g) and (i) can be removed because the State-established due dates of September 1, 2006, and December 31, 2012, for submission of BART permit applications and installation and operation of BART, respectively, have since passed and all subject sources have met those requirements. Furthermore, the rule continues to require the owner or operator of a BART-subject emissions unit to install, operate, and maintain BART as approved by the State after BART is incorporated into the unit's permit under 15A NCAC 02Q. *See* 15A NCAC 02D .0543(f).

EPA preliminarily concurs with the removal of the reference to 15A NCAC 02D .2400, *Clean Air Interstate Rules,* as a means to satisfy BART for SO_2 and NO_X for covered EGUs in North Carolina because EPA approved a SIP revision on October 31, 2014, allowing the State to rely on its Clean Smokestacks Act as an alternative to BART to satisfy BART requirements for BART-eligible EGUs formerly subject to CAIR. *See* 81 FR 32652 (May 24, 2016).[10]

EPA preliminarily concurs with the remainder of the changes to the rule because they are editorial revisions that do not alter the substance of the NC BART Rule.

For the reasons described above, EPA preliminarily concludes that the NC BART Rule changes do not alter the State's authority and ability to continue to implement and enforce BART in North Carolina, are consistent with federal BART requirements, and do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement.[11]

2. Federal Land Manager (FLM) Review

In accordance with 40 CFR 51.308(i)(4), Section 11 of the State's December 17, 2007, regional haze SIP contains procedures for continuing consultation between the State and FLMs on the implementation of the State's visibility protection program. North Carolina provided the SIP revision to the FLMs to review pursuant to the State's regional haze SIP and 40 CFR 51.308(i)(2), and the FLMs have not provided any comments.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference North Carolina rule 15A NCAC 02D .0543 entitled ''*Best Available Retrofit Technology*,'' state effective November 1, 2020, which removes outdated provisions and makes minor editorial changes. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA proposes to approve the SIP revision containing changes to 15 NCAC 02D .0543 because they are consistent with the BART requirements set forth in the RHR and CAA and the applicable requirements in CAA section 110.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

[10] To view EPA's full analysis of the October 31, 2014, North Carolina SIP revision and additional details regarding the relationship between BART and EPA's transport rules, see the notice of proposed rulemaking at 81 FR 19519 (April 5, 2016).

[11] *See* CAA Section 110(l).

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 19, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–08899 Filed 4–26–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 81
Wednesday, April 27, 2022

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

Forest Service

Allegheny Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Allegheny Resource Advisory Committee (RAC) will hold two virtual meetings by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Allegheny National Forest within Forest County, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/allegheny/workingtogether/advisorycommittees.*

DATES: The meetings will be held on:

- May 20, 2022, 10:00 a.m.–2:00 p.m., Eastern Daylight Time, and
- May 25, 2022, 10:00 a.m.–2:00 p.m., Eastern Daylight Time.

All RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meetings are open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or can be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Richard Hatfield, Designated Federal Officer (DFO), by phone at 814–363–6098 or email at *richard.hatfield@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meetings are to:

1. Add, remove, or edit the agenda items, as needed,
2. Hear from Title II project proponents and discuss Title II project proposals; and
3. Make funding recommendations on Title II projects.

The meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by May 13, 2022, to be scheduled on the agenda for a particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Richard Hatfield, 29 Forest Service Drive, Bradford, PA 16701 or by email to *richard.hatfield@usda.gov.*

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, 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).

Dated: April 21, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–08900 Filed 4–26–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–825]

White Grape Juice Concentrate From Argentina: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 20, 2022.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2022, the Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of white grape juice concentrate (WGJC) from Argentina filed in proper form on behalf of Delano Growers Grape Products, LLC (the petitioner), a domestic producer of

WGJC.[1] The Petition was accompanied by a countervailing duty (CVD) petition concerning imports of WGJC from Argentina.[2]

Between April 5 and 14, 2022, Commerce requested supplemental information pertaining to certain aspects of the Petition.[3] The petitioner filed timely responses to each request.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of WGJC from Argentina are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the WGJC industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigation.[5]

Period of Investigation

Because the Petition was filed on March 31, 2022, the period of investigation (POI) for this LTFV investigation is January 1, 2021, through December 31, 2021, pursuant to 19 CFR 351.204(b)(1).

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated March 31, 2022 (the Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of White Grape Juice Concentrate from Argentina: Supplemental Questions,'' dated April 5, 2022 (General Issues Questionnaire); ''Second Supplemental Questions,'' dated April 14, 2022; and AD Supplemental Questionnaires, dated April 5 and 14, 2022.

[4] *See* Petitioner's Letters, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 13, 2022 (First General Issues Supplement); ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 14, 2022 (Second General Issues Supplement); ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 11, 2022; ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 11, 2022 (Updated Declarations); and ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 15, 2022.

[5] *See infra,* section titled ''Determination of Industry Support for the Petition.''

Scope of the Investigation

The product covered by this investigation is WGJC from Argentina. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On April 5, 2022, Commerce requested further information from the petitioner regarding the proposed scope, to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On April 13, 2022, the petitioner provided a narrative clarification regarding the scope.[7] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects the products for which the domestic industry is seeking relief.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on May 10, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 20, 2022, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of this investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of this investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD and CVD investigations.

[6] *See* General Issues Questionnaire.

[7] *See* First General Issues Supplement at 2.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically filed document must be received successfully in its entirety by the time and date on which it is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of WGJC to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe WGJC, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on May 10, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on May 20, 2022, which is ten calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the LTFV investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[14] Based on our analysis of the information submitted on the record, we have determined that WGJC, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided the total volume of grapes it crushed for WGJC during crop year 2020 (*i.e.,* August 2020–July 2021).[16] The petitioner also provided the total volume of grapes crushed for concentrate during crop year 2020, as reported by the U.S. Department of Agriculture's National Agricultural Statistics Service (USDA NASS) in its July 29, 2021, *2020 Errata to the California Grape Crush Report* (*July 2021 USDA Grape Crush Report*).[17] Because the data in the *July 2021 USDA Grape Crush Report* reflect the total volume of grapes crushed for concentrate, including other concentrate products that are not part of the domestic like product, the petitioner adjusted the volume reported in the *July 2021 USDA Grape Crush Report* in order to estimate the total volume of grapes crushed for WGJC.[18] The petitioner then compared its own volume of grapes crushed for WGJC to the estimated total volume of grapes crushed for WGJC in crop year 2020.[19] We relied on data provided by the petitioner for purposes of measuring industry support.[20]

On April 11, 2022, the Government of Argentina (GOA) raised industry support comments during the consultations held regarding the CVD Petition.[21]

Our review of the data provided in the Petition, Exhibit 10 Declaration, the First General Issues Supplement, the Updated Declarations, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[22] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[23] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[24] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Petition at 16–20.

[15] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: White Grape Juice Concentrate from Argentina (AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering White Grape Juice Concentrate from Argentina (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

[16] *See* Petition at 5 and 9–10; *see also* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated March 31, 2022 (Exhibit 10 Declaration); and Updated Declarations at Exhibit 10.

[17] *See* Petition at 5–8 and Exhibits 21 and 22.

[18] *Id.* at 5–8 and Exhibits 14 and 22; *see also* First General Issues Supplement at Answer to Question 6; and Updated Declarations at Exhibit 14.

[19] *See* Petition at 8–10.

[20] *Id.* at 5–11 and Exhibits 14, 21, and 22; *see also* Exhibit 10 Declaration; First General Issues Supplement at 2–4 and Answer to Question 6; and Updated Declarations at Exhibits 10 and 14. For further discussion, *see* Attachment II of the AD Initiation Checklist.

[21] *See* Memorandum, ''Countervailing Duty Petition on Imports of White Grape Juice Concentrate from the Republic of Argentina: Consultations with Officials from the Government of Argentina,'' dated April 20, 2022.

[22] *See* Petition at 5–11 and Exhibits 14 and 22; *see also* Exhibit 10 Declaration; First General Issues Supplement at 3–4; and Updated Declarations at Exhibits 10 and 14. For further discussion, *see* Attachment II of the AD Initiation Checklist.

[23] *See* Attachment II of the AD Initiation Checklist; *see also* section 732(c)(4)(D) of the Act.

[24] *See* Attachment II of the AD Initiation Checklist.

because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[25] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[26]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[27]

The petitioner contends that the industry's injured condition is illustrated by underselling and price suppression; lost sales and revenues; decline in the U.S. industry's production over the years; inventory carryover into the next crush year; removal of grape vine acreage, which impacts the petitioner's ability to operate at full capacity; the loss of producers of WGJC and grape growers; and the magnitude of the alleged dumping margin.[28] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[29]

Allegations of Sales at LTFV

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate this LTFV investigation of imports of WGJC from Argentina. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Argentina AD Initiation Checklist.

U.S. Price

The petitioner established export price (EP) based on pricing information for a sale, or offer for sale, of WGJC produced in and exported from Argentina during the POI. To calculate an ex-factory, net U.S. price, the petitioner deducted movement and other expenses.[30]

Normal Value Based on Constructed Value[31]

The petitioner stated it was unable to obtain home market or third country prices for WGJC to use as a basis for NV. Therefore, the petitioner calculated NV based on constructed value (CV).[32]

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[33] In calculating the cost of manufacturing, the petitioner relied on its own production experience and input consumption rates as a U.S. WGJC producer, valued using publicly available information, where applicable.[34] In calculating selling, general, and administrative expenses, the petitioner relied on its own financial statements for the year ended June 30, 2021. For the profit ratio, the petitioner relied upon the 2020 financial statements of a producer of wine in Argentina.[35]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of WGJC from Argentina are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to CV in accordance with section 773 of the Act, the estimated dumping margin for WGJC from Argentina covered by this initiation is 101.26 percent.[36]

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating this LTFV investigation to determine whether imports of WGJC from Argentina are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner identified eight companies in Argentina as producers and/or exporters of WGJC.[37] Following standard practice in LTFV investigations involving market economy countries, in the event that Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigation,'' in the appendix to this notice.

On April 18, 2022, Commerce released CBP data on imports of WGJC from Argentina under administrative protective order (APO) to all parties with access to information protected by APO, and indicated that interested parties wishing to comment on the CBP data must do so within three business days after the publication date of the notice of initiation of this investigation.[38] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://enforcement.trade.gov/apo.*

Comments on CBP data and respondent selection must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

[25] *Id.*

[26] *Id.*

[27] *See* Petition at 21 and Exhibit 6.

[28] *Id.* at 20–34 and Exhibits 2, 5–8, 13, 23–24, and 32–34; *see also* Exhibit 10 Declaration; Updated Declarations at Exhibits 10 and 14; First General Issues Supplement at 1–10 and Answer to Question 17, Supplemental to Exhibits 10 and 33, and Updated Exhibit 10; Second General Issues Supplement at 1–6 and Updated Declaration of Jeff Bitter, Supplemental Exhibits 1–3, and Updated Supplement to Exhibit 10; and Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 19, 2022 (Exhibit 37 Declaration).

[29] *See* AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering White Grape Juice Concentrate from Argentina.

[30] *See* AD Initiation Checklist.

[31] In accordance with section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[32] *See* AD Initiation Checklist.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See* Petition at 15 and Exhibit 4.

[38] *See* Memorandum, ''Release of U.S. Customs and Border Protection Data,'' dated April 18, 2022.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the GOA via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of WGJC from Argentina are materially injuring, or threatening material injury to, a U.S. industry.[39] A negative ITC determination will result in the investigation being terminated.[40] Otherwise, this LTFV investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[41] 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.[42] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating 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 a respondent's initial section D questionnaire response.

Extension of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we 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, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances, we will grant untimely filed requests for the extension of time limits. Parties should review Commerce's regulations concerning factual information prior to submitting factual information in this investigation.[43]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[44] Parties must use the certification formats provided in 19 CFR 351.303(g).[45] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by the filing a letter of appearance as discussed). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[46]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 20, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers white grape juice concentrate with a Brix level of 65 to 68, whether in frozen or non-frozen forms. White grape juice concentrate is concentrated grape juice produced from grapes of the Vitis vinifera L. species with a white flesh, including fresh market table grapes and raisin grapes (*e.g.,* Thompson Seedless), as well as several varietals of wine grapes (*e.g.,* Chardonnay, Chenin Blanc, Sauvignon Blanc, Colombard, *etc.*). The scope of this investigation covers white grape juice concentrate regardless of whether it has been certified as kosher, organic, or organic

[39] *See* section 733(a) of the Act.

[40] *Id.*

[41] *See* 19 CFR 351.301(b).

[42] *See* 19 CFR 351.301(b)(2).

[43] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[44] *See* section 782(b) of the Act.

[45] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[46] *See Temporary Rule.*

kosher. The white grape juice concentrate subject to this investigation consists of 100 percent grape juice with no other types of juice intermixed and no additional sugars or additives included.

The scope does not cover white grape juice concentrate produced from grapes of the Vitis labrusca species (*e.g.,* Niagara).

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2009.69.0040 and 2009.69.0060. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2022–08951 Filed 4–26–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Stilbenic Optical Brightening Agents From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Teh Fong Min International Co., Ltd. (TFM), the sole producer and/or exporter subject to this administrative review, made sales of stilbenic optical brightening agents (OBAs) at less than normal value during the period of review (POR) May 1, 2020, through April 30, 2021. We invite interested parties to comment on these preliminary results.

DATES: Applicable April 27, 2022.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2012, we published in the **Federal Register** an antidumping duty order on OBAs from Taiwan.[1] On May 3, 2021, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On July 6, 2021, based on a timely request for an administrative review, Commerce initiated the administrative review of the *Order* with respect to TFM.[3] On January 10, 2022, we extended the due date for the preliminary results of this review by 120 days to no later than May 31, 2022.[4]

A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the *Order* are OBAs. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Administrative Review

We preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2020, through April 30, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Teh Fong Min International Co., Ltd	12.02

Disclosure and Public Comment

We intend to disclose the calculations performed in connection with these preliminary results to interested parties within five days after public announcement of the preliminary results.[6]

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[7] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should

[1] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27419 (May 10, 2012) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 23346 (May 3, 2021).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 35481, 41544 (July 6, 2021); *see also* Archroma U.S., Inc.'s Letter, ''Archroma U.S., Inc.'s Request for Administrative Review of Certain Stilbenic Optical Brightening Agents from Taiwan, Case No. A–583–848, POR 5/1/20–4/30/21,'' dated May 17, 2021.

[4] *See* Memorandum, ''Stilbenic Optical Brightening Agents from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2020–2021,'' dated January 10, 2022.

[5] *See* Memorandum, ''Certain Stilbenic Optical Brightening Agents from Taiwan: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon completion of the final results, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If the weighted-average dumping margin for TFM is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[11] If TFM's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[12]

For entries of subject merchandise during the POR produced by TFM for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate (*i.e.,* 6.19 percent) [13] if there is no rate for the intermediate company(ies) involved in the transaction.[14]

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 the notice of final results of administrative review for all shipments of OBAs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for TFM will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior 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 is, 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 be the all-others rate established in the less-than-fair-value investigation for this proceeding, *i.e.,* 6.19 percent.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary 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 occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: April 21, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–08948 Filed 4–26–22; 8:45 am]
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[11] *See 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).

[12] *Id.* at 8102–03; *see also* 19 CFR 351.106(c)(2).

[13] *See Order,* 77 FR 27420.

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order,* 77 FR 27420.

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a virtual meeting via WebEx on Thursday May 12, 2022, hosted by the U.S. Department of Commerce. The meeting is open to the public with registration instructions provided below.

DATES: May 12, 2022, from 2:00 p.m. to 3:30 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must register in advance with the REEEAC Designated Federal Officer (DFO) Cora Dickson at the contact information below by 5:00 p.m. EST on Friday, May 6, in order to pre-register, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

ADDRESSES: To register, please contact Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* Registered participants will be emailed the login information for the meeting, which will be conducted via WebEx.

FOR FURTHER INFORMATION CONTACT: Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), on July 14, 2010. The REEEAC was re-chartered most recently on June 5, 2020. The REEEAC provides the Secretary of Commerce with advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency

products and services. More information about the Committee, including the list of appointed members for this charter, is published online at *http://trade.gov/reeeac.*

On May 12, 2022, the REEEAC will hold the eighth meeting of its current charter term. The Committee will discuss major issues affecting the competitiveness of the U.S. renewable energy and energy efficiency industries, covering four broad themes: Trade promotion and market access, global decarbonization, clean energy supply chains, and technology and innovation. The Committee will also review recommendations developed by subcommittees in these areas. To receive an agenda please make a request to REEEAC DFO Cora Dickson per above. The agenda will be made available no later than May 6, 2022.

The Committee meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATE** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact REEEAC DFO Cora Dickson using the contact information above and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5:00 p.m. EST on Friday, May 6, 2022. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Cora Dickson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted via email to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Cora Dickson, DFO, Office of Energy and Environmental Industries, U.S. Department of Commerce; *Cora.Dickson@trade.gov.* To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5:00 p.m. EST on Friday, May 6, 2022. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 90 days following the meeting.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2022–08987 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–833, A–421–815, A–455–806, A–469–825]

Certain Preserved Mushrooms From France, the Netherlands, Poland, and Spain: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 20, 2022.

FOR FURTHER INFORMATION CONTACT: Andre Gziryan (France), Benjamin A. Smith (the Netherlands), Whitley Herndon (Poland), or Katherine Johnson (Spain), AD/CVD Operations, Offices I, III, V, and VIII, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2201, (202) 482–2181, (202) 482–6274, or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 31, 2022, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of certain preserved mushrooms (preserved mushrooms) from France, the Netherlands, Poland, and Spain filed in proper form on behalf of Giorgio Foods, Inc. (the petitioner), a domestic producer of preserved mushrooms.[1]

Between April 5 and 12, 2022, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[2] The petitioner filed responses to the supplemental questionnaires on April 8 and 13, 2022.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of preserved mushrooms from France, the Netherlands, Poland, and Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the preserved mushroom industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[4]

Periods of Investigation

Because the Petitions were filed on March 31, 2022, the period of investigation (POI) for these LTFV investigations is January 1, 2021, through December 31, 2021, pursuant to 19 CFR 351.204(b)(1).[5]

[1] *See* Petitioner's Letter, ''Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain: Petition for the Imposition of Antidumping Duties,'' dated March 31, 2022 (the Petitions).

[2] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Certain Preserved Mushrooms from France: Supplemental Questions,'' dated April 5, 2022 (General Issues Questionnaire); and Country-Specific Questionnaires: France Supplemental, Netherlands Supplemental, Poland Supplemental, and Spain Supplemental, dated April 5, 2022; *see also* Memoranda, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Preserved Mushrooms from France, Netherlands and Poland: Phone Call with Counsel to the Petitioner,'' dated April 12, 2022; and ''Petition for the Imposition of Antidumping Duties on Imports of Certain Preserved Mushrooms from Spain: Phone Call with Counsel to the Petitioner,'' dated April 12, 2022 (collectively, April 12, 2022 Memoranda).

[3] *See* Petitioner's Letters, ''Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain—Petitioner's Supplement to Volume I Relating to Request for the Imposition of Antidumping Duties on Imports from France, Netherlands, Poland, and Spain,'' dated April 8, 2022 (General Issues Supplement); Petitioner's Country-Specific Supplemental Responses, dated April 8, 2022; and ''Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain—Petitioner's Second Supplement to Volume V Relating to Request for the Imposition of Antidumping Duties on Imports from Spain,'' dated April 13, 2022 (Spain Second Supplement).

[4] *See infra,* section titled ''Determination of Industry Support for the Petitions.''

[5] *See* 19 CFR 351.204(b)(1).

Scope of the Investigations

The product covered by these investigations is preserved mushrooms from France, the Netherlands, Poland, and Spain. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On April 5 and 12, 2022, Commerce requested further information and clarification from the petitioner regarding the proposed scope, to ensure that the scope language in the Petitions is an accurate reflection of the product for which the domestic industry is seeking relief.[6] On April 8, 2022, the petitioner revised the scope.[7] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on May 10, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 20, 2022, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of these investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[10] An electronically-filed document must be received successfully in its entirety by the time and date on which it is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[11]

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of preserved mushrooms to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe preserved mushrooms, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on May 10, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on May 20, 2022, which is ten calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In

[6] *See* General Issues Questionnaire; *see also* April 12, 2022 Memoranda.

[7] *See* General Issues Supplement at 4 and Exhibit GEN–12.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[12] *See* section 771(10) of the Act.

addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[14] Based on our analysis of the information submitted on the record, we have determined that preserved mushrooms, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own 2021 production of the domestic like product.[16] In addition, the petitioner estimated the 2021 production of Sunny Dell Foods, LLC, the other U.S. producer of the domestic like product in 2021.[17] The petitioner then compared its production to the total volume of preserved mushrooms produced by the U.S. industry.[18] We relied on the data provided by the petitioner for purposes of measuring industry support.[19]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[20] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[23] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[24]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[25]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share, underselling and price depression and/or suppression; declining U.S. shipments; plant closures and layoffs; low capacity utilization; low operating income; lost sales and revenues; and weak financial performance.[26] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[27]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate these LTFV investigations on imports of preserved mushrooms from France, the Netherlands, Poland, and Spain. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD initiation checklists.

U.S. Price

For France, the Netherlands, Poland, and Spain, the petitioner based export price (EP) on the average unit values of publicly available import data.[28] To calculate an ex-factory, net EP, the petitioner then deducted expenses associated with inland freight incurred within each respective country.[29]

Normal Value[30]

For France, the Netherlands, Poland, and Spain, the petitioner based normal value (NV) on home market prices obtained through market research for preserved mushrooms produced in and sold, or offered for sale, in each country during the applicable time period.[31] For Spain, the petitioner provided information indicating that the home market prices it obtained through market research were below the cost of production (COP) and, therefore, the petitioner also calculated NV based on constructed value (CV).[32] For further

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[14] *See* Petitions at Volume I at 9–10.

[15] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklists: Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petitions Covering Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain (Attachment II). These checklists are dated concurrently with this notice and on file electronically via ACCESS.

[16] *See* Petitions at Volume I at 3–4.

[17] *Id.* at 4 and Exhibit GEN–1.

[18] *Id.* at 4.

[19] *Id.* at 2–4 and Exhibit GEN–1; *see also* General Issues Supplement at 4–5 and Exhibit GEN–13.

[20] *Id.* For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[21] *Id.; see also* section 732(c)(4)(D) of the Act.

[22] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[23] *Id.*

[24] *Id.*

[25] *See* Petitions at Volume I at 11 and Exhibit GEN–7.

[26] *Id.* at 12–26 and Exhibits GEN–2 through GEN–4, and GEN–8 through GEN–10; *see also* General Issues Supplement at 5–6 and Exhibit GEN–14.

[27] *See* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain (Attachment III).

[28] *See* Country-Specific AD Initiation Checklists.

[29] *Id.*

[30] In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[31] *See* Country-Specific AD Initiation Checklists.

[32] *See* Spain AD Initiation Checklist.

discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Normal Value Based on Constructed Value

As noted above, the petitioner provided information indicating that the prices charged for preserved mushrooms produced in and sold, or offered for sale, in Spain were below the COP; therefore, for Spain, the petitioner also calculated NV based on CV.[33] Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing (COM); selling, general, and administrative expenses; financial expenses; and profit.[34] In calculating the COM, the petitioner stated that it did not have access to the actual production costs in Spain of preserved mushrooms because such information is not publicly available.[35] Therefore, the petitioner relied on its own production experience and input consumption rates, adjusted for known differences, and valued inputs using publicly available information on costs specific to Spain during the proposed POI.[36] In calculating selling, general, and administrative expenses; financial expenses; and profit ratios, the petitioner relied on the financial statements of producers of preserved mushrooms or comparable merchandise in Spain.[37]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of preserved mushrooms from France, the Netherlands, Poland, and Spain are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for preserved mushrooms from each of the countries covered by this initiation are as follows: (1) France—124.41 percent to 360.88 percent; (2) the Netherlands—120.88 percent to 146.59 percent; (3) Poland—20.07 percent to 30.01 percent; and (4) Spain—17.21 percent to 156.59 percent.[38]

Initiation of LTFV Investigations

Based upon our examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating these LTFV investigations to determine whether imports of preserved mushrooms from France, the Netherlands, Poland, and Spain are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioner identified four companies in France, six companies in the Netherlands, five companies in Poland, and seven companies in Spain as producers and/or exporters of preserved mushrooms.[39] Following standard practice in LTFV investigations involving market economy countries, in the event that Commerce determines that the number of exporters or producers in any individual case is large such that it cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigations,'' in the appendix.

On April 18 and 19, 2022, Commerce released CBP data on U.S. imports of preserved mushrooms from France, the Netherlands, Poland, and Spain under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data and/or respondent selection must do so within three business days after the publication date of the notice of initiation of these investigations.[40] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Comments on CBP data and respondent selection must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://enforcement.trade.gov/apo.*

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of France, the Netherlands, Poland, and Spain via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of preserved mushrooms from France, the Netherlands, Poland, and Spain are materially injuring, or threatening material injury to, a U.S. industry.[41] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[42] Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[43] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *See* Country-Specific AD Initiation Checklists.

[39] *See* Petitions at Volume I at 8 and Exhibit GEN–5; *see also* General Issues Supplement at 2 and Exhibit GEN–11.

[40] *See* Memoranda, ''Antidumping Duty Petition on Imports of Preserved Mushrooms from the Netherlands: Release of U.S. Customs and Border Protection Data,'' dated April 18, 2022; ''Antidumping Duty Petition on Imports of Preserved Mushrooms from Poland: Release of U.S. Customs and Border Protection Data,'' dated April 18, 2022; ''Antidumping Duty Petition on Imports of Preserved Mushrooms from Spain: Release of U.S. Customs and Border Protection Data,'' dated April 18, 2022; and ''Antidumping Duty Petition on Imports of Preserved Mushrooms from France: Release of U.S. Customs and Border Protection Data,'' dated April 19, 2022.

[41] *See* section 733(a) of the Act.

[42] *Id.*

[43] *See* 19 CFR 351.301(b).

already on the record that the factual information seeks to rebut, clarify, or correct.[44] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating 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 a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we 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, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; Commerce will grant untimely filed requests for the extension of time limits only in limited cases where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning factual information prior to submitting factual information in these investigations.[45]

Certification Requirements

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.[46] Parties must use the certification formats provided in 19 CFR 351.303(g).[47] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance as discussed). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[48]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

[44] *See* 19 CFR 351.301(b)(2).

[45] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[46] *See* section 782(b) of the Act.

[47] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[48] *See Temporary Rule.*

Dated: April 20, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under these investigations are the genus *Agaricus.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to these investigations is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. 2022–08947 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–826]

White Grape Juice Concentrate From the Republic of Argentina: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 20, 2022.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2022, the Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of white grape juice concentrate (WGJC) from Argentina filed in proper form on behalf of Delano Growers Grape Products, LLC (the petitioner), a domestic producer of WGJC.[1] The Petition was accompanied by an antidumping duty (AD) petition concerning imports of WGJC from Argentina.[2]

On April 5, 13, and 14, 2022, Commerce requested supplemental information pertaining to certain aspects of the Petition.[3] The petitioner filed timely responses to these requests between April 11 and 14, 2022.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Argentina (GOA) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of WGJC in Argentina, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing WGJC in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for the alleged program on which we are initiating a CVD investigation, the Petition was accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[5]

Period of Investigation

Because the Petition was filed on March 31, 2022, the period of investigation (POI) is January 1, 2021, through December 31, 2021.[6]

Scope of the Investigation

The merchandise covered by this investigation is WGJC from Argentina. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On April 5, 2022, Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the product for which the industry is seeking relief.[7] On April 13, 2022, the petitioner provided a narrative clarification regarding the scope.[8] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects the products for which the domestic industry is seeking relief.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) May 10, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 20, 2022, which is ten calendar days from the initial deadline.

Commerce requests that any factual information the parties consider relevant to the scope of this investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of this investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOA of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD petition.[13] The GOA requested

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated March 31, 2022 (the Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petition for the Imposition of Countervailing Duties on Imports of White Grape Juice Concentrate from Argentina: Supplemental Questions,'' dated April 5, 2022; ''Petition for the Imposition of Countervailing Duties on Imports of White Grape Juice Concentrate from Argentina: Second Supplemental Questionnaire,'' dated April 13, 2022; ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of White Grape Juice Concentrate from Argentina: Supplemental Questions,'' dated April 5, 2022 (General Issues Supplemental); and ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of White Grape Juice Concentrate from Argentina: Second Supplemental Questions,'' dated April 14, 2022.

[4] *See* Petitioner's Letters, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 11, 2022; ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 11, 2022 (Updated Declarations); ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 13, 2022 (First General Issues Supplement); ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 14, 2022 (Second General Issues Supplement); and ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 14, 2022, referencing questions regarding alleged CVD programs.

[5] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* General Issues Supplemental at 4.

[8] *See* First General Issues Supplement at 2.

[9] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27323 (May 19, 1977) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[13] *See* Commerce's Letter, ''Countervailing Duty Petition on White Grape Juice Concentrate from the Argentine Republic: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated April 4, 2022.

consultations,[14] which were held via video conference on April 11, 2022.[15]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[16] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[17]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[18] Based on our analysis of the information submitted on the record, we have determined that WGJC, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided the total volume of grapes it crushed for WGJC during crop year 2020 (*i.e.,* August 2020–July 2021).[20] The petitioner also provided the total volume of grapes crushed for concentrate during crop year 2020, reported by the U.S. Department of Agriculture's National Agricultural Statistics Service (USDA NASS) in its July 29, 2021, *2020 Errata to the California Grape Crush Report* (*July 2021 USDA Grape Crush Report*).[21] Because the data in the *July 2021 USDA Grape Crush Report* reflect the total volume of grapes crushed for concentrate, including other concentrate products that are not part of the domestic like product, the petitioner adjusted the volume reported in the *July 2021 USDA Grape Crush Report* in order to estimate the total volume of grapes crushed for WGJC.[22] The petitioner then compared its own volume of grapes crushed for WGJC to the estimated total volume of grapes crushed for WGJC in crop year 2020.[23] We relied on data provided by the petitioner for purposes of measuring industry support.[24]

On April 11, 2022, the GOA raised industry support comments during the consultations held regarding the CVD Petition.[25]

Our review of the data provided in the Petition, Exhibit 10 Declaration, the First General Issues Supplement, the Updated Declarations, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[26] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[27] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[28] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry

[14] *See* GOA's Letter, ''Countervailing Duty Petition on White Grape Juice Concentrate from the Argentine Republic: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated April 5, 2022.

[15] *See* Memorandum, ''Countervailing Duty Petition on Imports of White Grape Juice Concentrate from the Republic of Argentina: Consultations with Officials from the Government of Argentina,'' dated April 20, 2022 (CVD Consultations Memorandum).

[16] *See* section 771(10) of the Act.

[17] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[18] *See* Petition at 16–20.

[19] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: White Grape Juice Concentrate from Argentina (Argentina CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering White Grape Juice Concentrate from Argentina (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

[20] *See* Petition at 5 and 9–10; *see also* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated March 31, 2022 (Exhibit 10 Declaration); and Updated Declarations at Exhibit 10.

[21] *See* Petition at 5–8 and Exhibits 21 and 22.

[22] *Id.* at 5–8 and Exhibits 14 and 22; *see also* First General Issues Supplement at Answer to Question 6; and Updated Declarations at Exhibit 14.

[23] *See* Petition at 8–10.

[24] *Id.* at 5–11 and Exhibits 14, 21, and 22; *see also* Exhibit 10 Declaration; First General Issues Supplement at 2–4 and Answer to Question 6; and Updated Declarations at Exhibit 14. For further discussion, *see* Attachment II of the Argentina CVD Initiation Checklist.

[25] *See* CVD Consultations Memorandum at Attachment.

[26] *See* Petition at 5–11 and Exhibits 14, 21, and 22; *see also* Exhibit 10 Declaration; First General Issues Supplement at 3–4; and Updated Declarations at Exhibits 10 and 14. For further discussion, *see* Attachment II of the Argentina CVD Initiation Checklist.

[27] *See* Attachment II of the Argentina CVD Initiation Checklist; *see also* section 702(c)(4)(D) of the Act.

[28] *See* Attachment II of the Argentina CVD Initiation Checklist.

expressing support for, or opposition to, the Petition.[29] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[30]

Injury Test

Because Argentina is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Argentina materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[31]

The petitioner contends that the industry's injured condition is illustrated by underselling and price suppression; lost sales and revenues; decline in the U.S. industry's production over the years; inventory carryover into the next crush year; removal of grape vine acreage, which impacts the petitioner's ability to operate at full capacity; and the loss of producers of WGJC and grape growers.[32] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[33]

Initiation of CVD Investigation

Based on our examination of the Petition and supplemental responses, we find the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of WGJC from Argentina benefit from countervailable subsidies conferred by the GOA. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on one of the two alleged programs. For a full discussion of the basis for our decision, *see* the Argentina CVD Initiation Checklist. The CVD Initiation Checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named eight companies in Argentina as producers and/or exporters of WGJC.[34] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event that Commerce determines that the number of companies is large and that it cannot individually examine each company based on Commerce's resources, where appropriate, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of WGJC from Argentina during the POI under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigations,'' in the appendix to this notice.

On April 19, 2022, Commerce released CBP data for U.S. imports of WGJC from Argentina under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.[35] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection. Interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of this notice of initiation of this CVD investigation. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://enforcement.trade.gov/apo.*

Comments on CBP data and respondent selection must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOA via ACCESS. To the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of WGJC from Argentina are materially injuring or threatening material injury to a U.S. industry.[36] A negative ITC determination will result in this investigation being terminated.[37] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Any party, when submitting factual information, must 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

[29] *Id.*

[30] *Id.*

[31] *See* Petition at 21 and Exhibit 6.

[32] *Id.* at 20–34 and Exhibits 2, 5–8, 13, 23–24, and 32–34; *see also* Exhibit 10 Declaration; Updated Declarations at Exhibits 10 and 14; First General Issues Supplement at 1–10 and Answer to Question 17, Supplemental to Exhibits 10 and 33; Updated Exhibit 10; Second General Issues Supplement at 1–6 and Updated Declaration of Jeff Bitter, Supplemental Exhibits 1–3, and Updated Supplement to Exhibit 10; and Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated April 19, 2022.

[33] *See* Argentina CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering White Grape Juice Concentrate from Argentina.

[34] *See* Petition at Exhibit 4.

[35] *See* Memorandum, ''Countervailing Duty Petition on White Grape Juice Concentrate from the Republic of Argentina: Release of U.S. Customs and Border Protection Entry Data,'' dated April 19, 2022.

[36] *See* section 733(a) of the Act.

[37] *Id.*

factual information already on the record, provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[38] Time limits for the submission of factual information are address in 19 CFR 351.301, which provide specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301 or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. 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 a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits prior to submitting extension requests in this investigation.[39]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[40] Parties must use the certification formats provided in 19 CFR 351.303(g).[41] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at *https://enforcement.trade.gov/apo.* Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[42]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: April 20, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers white grape juice concentrate with a Brix level of 65 to 68, whether in frozen or non-frozen forms. White grape juice concentrate is concentrated grape juice produced from grapes of the Vitis vinifera L. species with a white flesh, including fresh market table grapes and raisin grapes (*e.g.,* Thompson Seedless), as well as several varietals of wine grapes (*e.g.,* Chardonnay, Chenin Blanc, Sauvignon Blanc, Colombard, *etc.*). The scope of this investigation covers white grape juice concentrate regardless of whether it has been certified as kosher, organic, or organic kosher. The white grape juice concentrate subject to this investigation consists of 100 percent grape juice with no other types of juice intermixed and no additional sugars or additives included.

The scope does not cover white grape juice concentrate produced from grapes of the Vitis labrusca species (*e.g.,* Niagara).

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2009.69.0040 and 2009.69.0060. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2022–08956 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–DS–P

[38] *See* 19 CFR 351.301(b).

[39] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[40] *See* section 782(b) of the Act.

[41] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[42] *See Temporary Rule.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB977]

Council Coordination Committee Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council (Council) chairs, vice chairs, and executive directors from May 17 to May 19, 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 (MSA).

DATES: Registration for the meeting will begin at 3 p.m. on Monday, May 16, 2022. The substantive meeting topics begin at 1 p.m. on Tuesday, May 17, 2022 and recess at 5:15 p.m. or when business is complete. The meeting will reconvene at 9 a.m. on Wednesday, May 18, 2022 and recess at 5 p.m. or when business is complete. The meeting will reconvene on the final day at 9 a.m. on Thursday, May 19, 2022 and adjourn by 1 p.m. or when business is complete.

ADDRESSES:

Meeting address: The meeting will be held at the Annapolis Waterfront Hotel, 80 Compromise Street, Annapolis, MD 21401; telephone: (410) 268–7555.

The meeting will also be broadcast via webinar. Connection details and public comment instructions will be available at *http://www.fisherycouncils.org/ccc-meetings/may-2022.*

Council address: The Mid-Atlantic Council address is 800 North State Street, Suite 201, Dover, DE 19901–3910.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management 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 their

respective proxies. All sessions are open to the public and time will be set aside for public comments at the end of each day and after specific sessions at the discretion of the meeting Chair. The meeting Chair will announce public comment times and instructions to provide comment at the start of each meeting day. There will be opportunities for public comments to be provided in-person and remotely via phone/webinar. Updates to this meeting, briefing materials, public comment instructions and additional information will be posted when available on *https://www.fisheries.noaa.gov/national/partners/council-coordination-committee* and *http://www.fisherycouncils.org/ccc-meetings/may-2022.*

Proposed Agenda

Tuesday, May 17, 2022, 1 p.m.–5:15 p.m., EDT

1. Welcome and Introduction; Approval of Agenda and Minutes
2. NMFS Update and Upcoming Priorities
3. Funding and Budget Update
4. NMFS Science Update
5. Legislative Outlook
6. Public Comment

Adjourn Day 1

Wednesday, May 18, 2022, 9 a.m.–5 p.m., EDT

7. Climate Change and Fisheries
8. America the Beautiful/Area-Based Management
9. Recreational Fisheries Management
10. Management Strategy Evaluations
11. National Seafood Strategy
12. Public Comment

Adjourn Day 2

Thursday, May 19, 2022, 9 a.m.–1 p.m., EDT

13. Environmental Justice
14. Report on National Fish Habitat Board
15. International Affairs
16. Integration of ESA Section 7 with MSA
17. CCC Committees/Work Group Reports
18. Public Comment
19. Wrap Up and Other Business

Adjourn Day 3

The timing and order in which agenda items are addressed may change as required to effectively address the issues. The CCC will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: April 22, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08998 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB980]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a joint public meeting of its Mackerel, Squid, and Butterfish, and River Herring and Shad Advisory Panels. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Friday, May 13, 2022, from 9 a.m. until 12 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council's Mackerel, Squid, and Butterfish, and River Herring and Shad Advisory Panels will meet via webinar. The purposes of this meeting are for the Advisory Panels to develop recommendations regarding Atlantic Mackerel rebuilding, associated specifications, and recent river herring and shad spatial analyses.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: April 22, 2022.

Tracey L. Thompson,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB948]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Chevron Point Orient Wharf Removal

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewal.

SUMMARY: NMFS has received a request from Chevron Products Company (Chevron) for authorization to take marine mammals incidental to 2 years activity of vibratory pile removal associated with the Point Orient Wharf Removal in San Francisco Bay, California (CA). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive one-year incidental harassment authorizations (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final

decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 27, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.taylor@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualify to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

Summary of Request

On January 11, 2022, NMFS received a request from Chevron for 2 consecutive IHAs to take marine mammals incidental to vibratory pile removal during the Point Orient Wharf Removal in San Francisco Bay, CA over a two-year period. The application was deemed adequate and complete on April 4, 2022. Chevron's request is for take of seven species of marine mammals by Level B harassment only. Neither Chevron nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to Chevron for pile driving and removal work (82 FR 27240, June 14, 2017; 83 FR 27548, June 13, 2018; 84 FR 28474, June 19, 2019; 85 FR 37064, June 19, 2020; 86 FR 28582, May 27, 2021). Chevron complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Description of Marine Mammals in Areas of the Specified Activity section.

Description of Proposed Activity

Overview

Chevron proposes to remove the decommissioned Point Orient Wharf (the Wharf) located in northeastern San Francisco Bay (the Bay), CA. The Point Orient Wharf covers an area of approximately 8,094 m (2 acres) and extends approximately 396 m (1,300 ft) into San Francisco Bay. Over the course of 2 years spanning June 1–November 30, 2022 and June 1–November 30, 2023, Chevron will remove the Wharf in its entirety and restore eelgrass to the surrounding subtidal habitat. Piles will be extracted using a variety of methods, including vibratory pile removal. Vibratory pile removal is a non-impulsive continuous noise source that may result in the incidental take of marine mammals by Level B harassment in the form of behavioral harassment.

Chevron has requested an IHA concurrently for each of the 2 project years. Given the similarities in activities between project years, NMFS is issuing this single **Federal Register** notice to solicit public comments on the issuance of the two similar, but separate, IHAs.

Dates and Duration

Chevron anticipates that removal of the Wharf will occur over 2 years. The in-water work window is anticipated to last from June 1 to November 30 in 2022 (Year 1) and June 1 to November 30 in 2023 (Year 2), although vibratory extraction is expected to occur only in 12 weeks of each annual work period. NMFS expects that a seasonal work window of June through November each year will best protect sensitive life stages of listed fish species in the area. Construction will consist of approximately 100 in-water work days only during daylight hours. Year 1 IHA would be valid from June 1, 2022–May 31, 2023, and Year 2 IHA would span June 1, 2023–May 31, 2024.

Specific Geographic Region

The Point Orient Wharf is located in the central Bay on the western side of Point San Pablo, approximately 2.9 km

(1.8 miles) north of the eastern terminus of the Richmond San-Rafael Bridge (RSRB) in Contra Costa County (Figure 1). The Brothers Islands and Lighthouse are approximately 800 meters (2,600 feet) to the north of the Wharf. The Point Orient Wharf is located near a shipping channel, and regular boat traffic in the vicinity accounts for the majority of ambient underwater noise in the area.

The Point Orient Wharf consists of two portions: a narrower portion of the Wharf that runs perpendicular to the shoreline, known as the Causeway and which will be removed in Year 1, and a wider portion that runs parallel to the shoreline, known as the Main Wharf and which will be removed in Year 2. While the Wharf was in use, a dredged channel and berthing area with a depth of approximately 10 m (33 feet) below mean lower low water (MLLW) was maintained on the western side of the Main Wharf. However, since the Wharf was decommissioned, the channel and berthing area have filled in with sediment. A deep scour pocket of approximately 15.2 m (50 feet) below MLLW is maintained by tidal action west of the Main Wharf and 10 m (33 feet) below MLLW southeast of the Main Wharf. Bathymetry along the Causeway ranges from the upper intertidal at the eastern end of the Causeway to a depth of approximately 4.9 m (16 feet) below MLLW at its western end.

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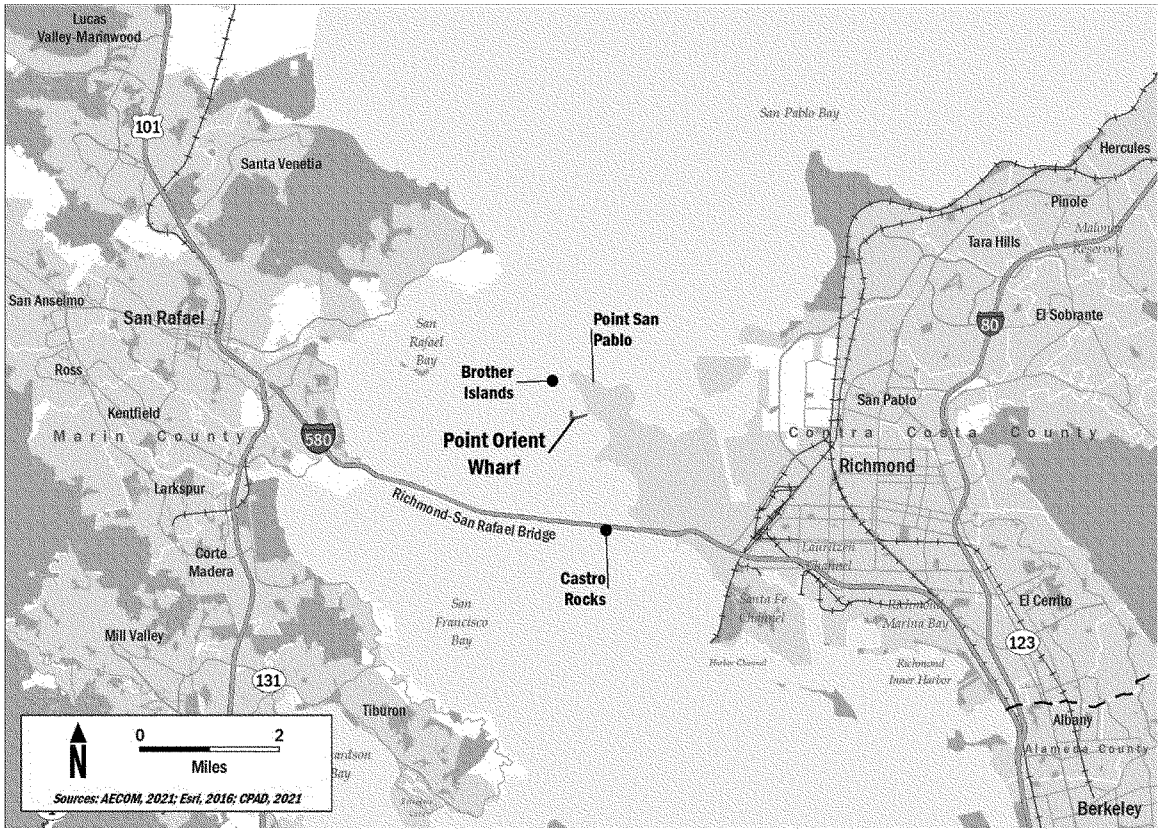

Figure 1. Point Orient Wharf Removal Project Location

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Detailed Description of Specific Activity

Chevron intends to remove the Wharf in its entirety, and restore eelgrass to the subtidal habitat in areas under the Causeway portion of the Wharf that are currently affected by the shading imposed by the structure. This project will utilize direct pull or vibratory removal methods to extract approximately 910 timber piles and 90 steel piles from the Bay. During Year 1, Chevron plans to remove the Causeway portion of the Wharf and repair an area of unstable shoreline embankment just north of the Causeway. The shoreline embankment stabilization, involving only upland work, will not result in the take of marine mammals and will not be considered further. Removal of the Causeway will involve the extraction of 534 12″ treated timber piles (133 of which are concrete encased) through direct pull or vibratory removal methods. Only one pile will be removed at a time. The condition of the piles would dictate the methods that would be implemented. If the piles have sufficient structural integrity, the pile would be wrapped with chain or cable attached to a crane and pulled directly upward, pulling the pile from the sediment. Vibratory extraction would likely be the primary method of removal and involve the use of a vibratory pile driving hammer to loosen the pile with vibration. The vibration causes liquefaction of the surrounding sediment, allowing the pile to be pulled straight up and out. If a pile is unable to be removed entirely or breaks when pulled, the pile may be cut 0.6 m (2 feet) under the mudline using a hydraulic chainsaw or underwater torch cutting system, however, vibratory extraction would be the most impactful removal method. Additional materials removed from the Causeway would include 488 m (1,600 feet) of process piping, steel pipes, wooden decking, pipe supports, light poles, and pile caps. Removal of these additional materials from the above-water portion of the pier would

not result in takes of marine mammals and as such, this will not be considered further. All materials removed would be loaded onto barges for transport to a permitted disposal or recycling facility.

During Year 2, the Main Wharf portion would be removed and eelgrass would be planted after its removal. Removal of the Main Wharf would include the removal of 376 12″ timber piles (156 of which are concrete encased), 34 36″ steel piles, 40 30″ piles, and 16 24″ piles by similar methods as in Year 1. Only one pile would be removed at a time, and only one type of pile would be removed per day. Additional materials removed from the Main Wharf would include steel pipe bridges, steel fendering, and wooden decking. Removing these additional materials would not result in takes of marine mammals and will not be considered further. As in Year 1, all materials removed would be loaded onto barges for transport to a permitted disposal or recycling facility. After the Main Wharf is removed, eelgrass will be planted in suitable areas to restore habitat quality to the Bay. Planting eelgrass will not result in the take of marine mammals and will not be considered further. Table 1 below provides additional detail on duration of construction activities:

TABLE 1—SUMMARY OF PILE REMOVAL ACTIVITIES BY YEAR

Pile type	Diameter (inches)	Number of piles	Approximate duration of vibration per pile (minutes)	Approximate number of piles removed per day	Total number of work days
Year 1 Vibratory Extraction					
Timber	12	401	6	18	*35
Timber concrete encased	18 (12-inch timber core)	133	9	11	
Year 2 Vibratory Extraction					
Timber	12	220	6	18	*27
Timber concrete encased	18 (12-inch timber core)	156	9	11	
Steel	36	34	45	2	18
Steel	30	40	32	3	10
Steel	24	16	26	4	6

* Removal of bare timber pile and concrete encased piles will be co-mingled during these work days.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for both proposed IHAs, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific Marine Mammal SARs (*e.g.,* Carretta *et al.,* 2021). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.,* 2021) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						

TABLE 2—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Gray whale	*Eschrichtius robustus*	Eastern N Pacific	-, -, N	29960 (0.05, 25,849, 2016)	801	131
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose Dolphin	*Tursiops truncatus*	California Coastal	-, -, N	453 (0.06, 346, 2011)	2.7	≥2.0
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	San Francisco-Russian River	-, -, N	7,777 (0.62, 4,811, 2017)	73	≥0.4
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>320
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012)	1,641	43
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013)	5,122	5.3
Northern Fur Seal	*Callorhinus ursinus*	California	-, D, N	14,050 (N/A, 7,524, 2013)	451	1.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI (mortality/serious injury) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all 7 species (with 7 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed survey areas are included in Table 4–1 of the IHA application. While Steller sea lions (*Eumetopias jubatus*) and humpback whales (*Megaptera noveangliae*) have been documented in the area, their occurrence in the Bay is sufficiently rare that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Steller sea lions have been reported at Año Nuevo Island between Santa Cruz and Half Moon Bay as well as at the Farallon Islands about 48 kilometers (30 miles) off the coast of San Francisco (Fuller 2012). However, very few studies have detected Steller sea lions in San Francisco Bay. The San Francisco Bay Subtidal Habitat Goals Report contains one reference to Steller sea lions in the Bay (Cohen 2010), however, this species is considered a rare visitor and not expected to occur in the project area during construction activities.

Humpback whales are also rare visitors to the project area as they are more commonly observed in offshore waters or just inside the Bay entrance. Limited sightings of humpback whales have occurred inside the Bay. In 1985, one humpback whale traveled into the Bay and up the Sacramento River; the same whale re-entered the Bay in the fall of 1990 and stranded (Fimrite 2005). In May 2007, a humpback whale mother and calf spent slightly more than 2 weeks in the Bay and Sacramento River before returning to coastal waters (CBS News 2007). Due to the limited sightings of humpback whales in the Bay, this species is not expected to occur in the project area during construction activities.

Gray Whale

Gray whales are large baleen whales, easily recognized by their mottled gray color and lack of a dorsal fin. They are one of the most frequently seen whales along the California coast. Gray whales feed in the northern waters, primarily off the Bering, Chukchi, and western Beaufort seas during the summer, although a small number of whales, known as the Pacific Coast Feeding Group (PCFG), is known to feed along the Pacific coast between Kodiak Island, AK and northern California (Carretta *et al.,* 2021). Most whales begin their southward migration from the feeding grounds in November and December, traveling south along the eastern Pacific coast to their winter breeding and calving areas in lagoons along the coast of Baja California, Mexico. The southward migration occurs from December through February, peaking in January (NOAA NCCOS 2007). The northward migration to the feeding occurs from February through May, peaking in March (NOAA NCCOS 2007). Gray whales also feed in nearshore waters just outside of San Francisco Bay, and a few individuals will enter San Francisco Bay during the northward migration. Since 2019, it has become more common for gray whales on their northward migration to enter San Francisco Bay during the months of February and March to feed (Bartlett 2022).

Monitors from the RSRB recorded 12 living and 2 dead gray whales in either the Central or North Bay. All but 2 sightings occurred during the months of April and May: One whale was sighted in June and one in October (Winning 2008). In March 2022, a mom and calf were sighted between Alcatraz and Angel Island (Bartlett 2022). During the spring of 2019, 12 dead gray whales washed up on the shoreline of the Bay and on Ocean Beach on the west side of San Francisco. Since 2018, the number of gray whale strandings per year in the Bay area have varied between 5 whales in 2018 and 2020, and 15 whales in 2021 (Bartlett 2022). Ship strikes, malnutrition, and entanglement were the cause of death for strandings (Bartlett 2022; TMMC 2019). The Oceanic Society found that all age classes of gray whales may enter the Bay, either as singles or in groups of up to five individuals (Winning 2008). It is likely that gray whales would typically

enter the Bay from February to May; however, it is also possible that a gray whale may enter the project area during pile extraction.

Eastern North Pacific gray whales experienced an unusual mortality event (UME) beginning in 2019 when large numbers of whales began stranding from Mexico to Alaska. Necropsy results indicated that many whales showed signs of nutritional stress (NOAA 2020). This UME is ongoing and similar to that of 1999 and 2000 when large numbers of gray whales stranded along the eastern Pacific coast (Moore *et al.,* 2001; Gulland *et al.,* 2005). Oceanographic factors limiting food availability for whales was identified as a likely cause of the prior UME and may also be influencing the current UME (LeBouef *et al.,* 2000; Moore *et al.,* 2001; Minobe 2002; Gulland *et al.,* 2005).

Bottlenose Dolphin

The common bottlenose dolphin is found in all oceans across the globe, and is one of the most commonly observed marine mammal species in coastal waters and estuaries. Two genetically distinct stocks occur off the coast of California, the California coastal stock and the California/Oregon/Washington offshore stock. The range of the California coastal stock has expanded northward along the coast since the 1982–1983 El Niño event (Hansen and Defran, 1990; Wells *et al.,* 1990). This stock now occurs as far north as the San Francisco Bay region. Individuals show very little site fidelity to any portion of the California coast (Szczepaniak *et al.,* 2013; Weller *et al.,* 2016), although, as of 2019, the Golden Gate Cetacean Research Dolphin Project had identified 91 individual dolphins in the Bay (APER 2019). Since 2008, coastal bottlenose dolphins have been observed regularly in San Francisco Bay with many observations occurring in the proximity of the Golden Gate near the mouth of the Bay (Bay Nature Institute 2014). A limited number of individuals may approach the project area during in-water construction.

Harbor Porpoise

Harbor porpoises are typically found in cool temperate to sub-polar waters less than 62.6 degrees Fahrenheit (17 degrees Celsius) (Read 1999) where prey aggregations are concentrated (Watts and Gaskin, 1985). In the eastern Pacific, harbor porpoises occur in coastal and inland waters from Point Conception, California to Alaska (Gaskin 1984). Four genetically distinct stocks have been identified along the coast of California (Carretta *et al.,* 2021). The non-migratory San Francisco-Russian River stock ranges from Pescadero to Point Arena, California, utilizes relatively shallow nearshore waters (<100 meters), and feeds on small schooling fishes such as northern anchovy and Pacific herring which enter San Francisco Bay (Caretta *et al.,* 2021; Stern *et al.,* 2017). Harbor porpoises tend to occur in small groups and are considered to be relatively shy animals. Previous estimates for harbor porpoises were based upon aerial surveys conducted between coastal waters and the 50 fm-isobath (Forney 1999), however, surveys have been expanded further offshore and to include shipboard platforms.

Before 2008, harbor porpoises were observed primarily outside of San Francisco Bay although the Bay has historically been considered habitat for harbor porpoises (Broughton 1999). Recently, there have been increasingly common observations of harbor porpoises within the Bay (Duffy 2015; Stern *et al.,* 2017). From 2011–2014, a visual count conducted by the Golden Gate Cetacean Research (GGCR) program identified 2,698 porpoise groups from the Golden Gate Bridge (Stern *et al.,* 2017). Harbor porpoise movements into the Bay are linked to tidal cycle with the greatest numbers of porpoises being sighted during high tide to ebb tide periods. Movements into the Bay are likely influenced by prey availability (Duffy 2015; Stern *et al.,* 2017). Although harbor porpoise sightings are generally concentrated in the vicinity of the Golden Gate Bridge and Angel Island, southwest of the project site (Keener 2011), this species is more frequently venturing into the Bay east of Angel Island and may approach the project area during pile removal activities.

California Sea Lion

California sea lions breed mainly on offshore islands, ranging from Southern California's Channel Islands to Mexico during the spring (Heath and Perrin, 2008), although a few pups have been born on Año Nuevo and the Farallon Islands (TMMC 2020). During the non-breeding season, adult and sub-adult males as well as juveniles migrate northward along the coast, to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Lowry and Forney, 2005; Heath and Perrin, 2008) while females tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008). Based upon statistical analysis of annual pup count, annual survivorship, and human-induced impacts, the California stock appears to have experienced an annual increase from 1975–2014 (Laake *et al.,* 2018).

Although California sea lions forage and conduct many activities within the water, they also use haul outs. In San Francisco Bay, sea lions haul out primarily on floating docks at Pier 39 at the Fisherman's Wharf area of the San Francisco Marina, approximately 12.5 kilometers (7.8 miles) southwest of the project area. In addition to the Pier 39 haul out, California sea lions haul out on buoys, wharfs, and similar structures throughout the Bay. Occurrence of sea lions in typically lowest in June during the breeding season and higher during El Niño seasons. During monitoring for the RSRB project, observers sighted at least 90 sea lions in the northern Bay and at least 57 in the central Bay, although no pupping activity was observed (Caltrans 2012).

California sea lions are mainly seen swimming off the San Francisco and Marin shorelines within the Bay, but may occasionally enter the project area to forage. They feed seasonally on schooling fish and cephalopods, including salmon, herring, sardines, anchovy, mackerel, whiting, rockfish, and squid (Lowry *et al.,* 1990, 1991; Lowry and Carretta, 1999; Weise 2000; Carretta *et al.,* 2021). Seasonal and annual dietary shifts vary with environmental fluctuations that affect prey populations. In central California sea lion populations, short term seasonal variations in diet are related to prey movement and life history patterns while long-term annual changes correlate to large-scale ocean climate shifts and foraging competition with commercial fisheries (Weise and Harvey 2008; McClatchie *et al.,* 2016). Climate change, specifically increasing sea surface temperatures in the California current, negatively impact prey species availability and reduce California sea lion survival rates (DeLong *et al.,* 2017; Laake *et al.,* 2018). Other conservation concerns for California sea lions include vessel strikes, non-commercial fishery human caused mortality, hookworms, and competition for forage with commercial fisheries (Carretta *et al.,* 2018; Carretta *et al.,* 2021).

California sea lions experienced a UME, not correlated to an El Niño event, from 2013–2017 (Carretta *et al.,* 2021). Pup and juvenile age classes experienced high mortality during this time, likely attributed to sea lion prey availability, specifically sardines. California sea lions are also susceptible to the algal neurotoxin, domoic acid (Brodie *et al.,* 2006; Carretta *et al.,* 2021). This neurotoxin is expected to cause future mortalities among California sea lions due to the

prevalence of harmful algal blooms within their habitat.

In San Francisco Bay, California sea lions have been observed foraging near Pier 39, in the shipping channel south of Yerba Buena Island, and along the west side of the Chevron Long Wharf (AECOM 2019). The relatively deep shipping channel west and north of the Point Orient Wharf would also provide foraging area for sea lions. During monitoring at the Chevron Long Wharf Maintenance and Efficiency Project (CLWMEP), Protected Species Observers (PSOs) documented a sea lion foraging on a small shark in 2019 and 8 sea lions in the project area in 2020 (AECOM 2019; 2020). As sea lions may forage widely throughout San Francisco Bay, there is the potential that this species may enter the project area during construction activities.

Harbor Seal

Pacific harbor seals are distributed from Baja California north to the Aleutian Islands of Alaska. Seals primarily haul out on remote mainland and island beaches, reefs, and estuary areas. At haul outs, they will congregate to rest, socialize, breed, and molt. Haul outs are relatively consistent from year to year (Kopec and Harvey, 1995), and females have been documented to return to their own natal haul out when breeding (Green *et al.,* 2006).

The Pacific harbor seal population experienced an increase from 1981–2004, followed by a steady decrease from between 2005–2010. The maximum statewide count showed that the California stock sharply declined in 2009 and 2012 (Duncan 2019). The California Department of Transportation (Caltrans) conducted extensive marine mammal surveys in San Francisco Bay before and during seismic retrofit on the RSRB from 1998–2002. Caltrans determined that a minimum of 500 harbor seals occur within San Francisco Bay (Green *et al.,* 2002), an estimate that agrees with more recent seal counts (Lowry *et al.,* 2008; Codde *et al.,* 2020). The California harbor seal stock may be stabilizing at or near carrying capacity, although conservation concerns such as vessel strikes, disturbance, fishing gear entanglement, and habitat loss are still a concern in the San Francisco Bay area (Duncan 2019). The nearest major haul out site to the project area is Castro Rocks, located approximately 2,600 meters (1.6 miles) south of the southernmost point on the Wharf. Use of Castro Rocks as a haul out site has been increasing over the years (Codde *et al.,* 2020). Smaller numbers of harbor seals have also been reported to haul out on the western Brother Island, approximately 800 meters (2,600 ft) to the north of the Wharf.

The number of harbor seals in San Francisco Bay increases during the winter foraging period as compared to the spring breeding season. In the Bay, harbor seals are known to forage on a variety of fish, crustaceans, and cephalopods in found in shallow intertidal waters. Based upon fecal samples obtained from haul out sites in the Bay, major prey items include the yellowfin goby, northern anchovy, Pacific herring, staghorn sculpin, plainfin midshipman, and white croaker (Harvey and Torok, 1994). Seals haul out on Castro Rocks year-round during medium to low tides, and usage of this haul out site is highest during the summer molting period of June–July. Based upon visual monitoring conducted by PSOs during the CLWMEP in 2019 (AECOM 2020), the number of hauled out seals on Castro Rocks may vary greatly, from 0 to 50 seals, depending upon the tide. Due to the proximity of the Wharf to the Castro Rocks haul out site, it is likely that harbor seals will be in the project area during construction activities.

Northern Elephant Seal

Northern elephant seals commonly pup, breed, rest, and molt on California coastal mainland and island sites. In the vicinity of San Francisco Bay, seals breed, molt, and haul out at Año Nuevo Island, the Farallon Islands, and Point Reyes Seashore (Lowry et *al.,* 2014). The birthing and breeding season occurs from December through March. Pups remain onshore or in adjacent shallow waters through May, when they may make brief stops in San Francisco Bay (Caltrans 2015). Pups of the year may also make brief stops in the Bay when they return in late summer and fall to haul out at rookery sites. Adults typically reside in offshore pelagic waters when not breeding or molting, however, a healthy juvenile male was observed basking at Aquatic Park in San Francisco in the spring of 2019 (Hernández 2020). Caltrans (2015) estimates that approximately 100 juvenile northern elephant seals of the California breeding stock strand in San Francisco Bay each year. Although rare visitors to the Bay, it is possible that a few individuals may be present during construction activities.

Northern Fur Seal

Northern fur seals range from southern California north to the Bering Sea, and west to the Okhotsk Sea and Honshu Island, Japan in the west (Carretta *et al.,* 2021). The majority of the population breeds on the Pribilof Islands in the southern Bering Sea, although a small percentage of the population breed at San Miguel Island and the Farallon Islands off the coast of California. Northern fur seals show high site fidelity to breeding and rookery locations, and may swim long distances for prey. Their diet is composed of small schooling fish such as walleye Pollock, herring, hake, anchovy, and squid. Diet and population trends vary with environmental conditions, such as El Niño (Carretta *et al.,* 2021). The California stock of northern fur seals is known to forage in waters outside of San Francisco Bay. Juvenile northern fur seals occasionally strand in San Francisco Bay, especially during El Niño events (TMMC 2016). The Marine Mammal Center (TMMC) responds to approximately five northern fur seal strandings per year in San Francisco Bay (TMMC 2016). Although rarely observed in San Francisco Bay, it is possible individuals may be present during construction activities.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seven marine mammal species (three cetacean and four pinniped (one otariid and three phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, one is classified as low-frequency cetaceans (*i.e.,* all mysticete species), one is classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the marine environment. In turn, sound propagation is dependent upon the spatially and temporally varying properties of the water column and sea floor. As a result of the dependence upon a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB per day (Richardson *et al.,* 1995). The result is that, depending upon the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that could affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, a type of non-impulsive sound. Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving/removal, and active sonar systems) can be broadband, narrowband, or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). The distinction between impulsive and non-impulsive sounds is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install or remove piles by vibrating them, allowing the weight of the hammer to push the pile into the sediment during installation. The vibrations produced also cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground more easily. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during pile driving of the same size pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005). The likely or possible impacts of Chevron's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be acoustic in nature. Acoustic stressors involve effects of vibratory pile removal.

Acoustic Impacts

In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Exposure to pile removal noise has the potential to result in auditory threshold shift and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile removal noise on marine mammals are dependent upon several factors, including but not limited to the species, age, and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss the physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in decibels (dB). A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of a TS, time to recover (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kalstein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Extracting piles for this project requires vibratory pile removal, yet removal of only one pile type would occur at a time. There would also be pauses in pile removal activities; given these pauses and that any marine mammals in the ensonified area would likely move through the area and not remain for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Forney *et al.,* 2017; Lusseau and Bejder 2007; Weilgart 2007).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities;

changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002a) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002b). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Habituation—Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC 2003; Wartzok *et al.,* 2003). Controlled experiments with captive

marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud-impulsive sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans.

Airborne Acoustic Effects from the Proposed Activities—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile removal that have the potential to cause behavioral harassment, depending on their distance from construction activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. However, these animals would previously have been ''taken'' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Multiple instances of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. As the behavioral harassment of these animals is already accounted for in these estimates of potential take, effects of airborne noise will not be considered further.

Marine Mammal Habitat Effects

Chevron's construction activities could have localized temporary impacts on marine mammal prey and foraging habitat by increasing in-water sound pressure levels and slightly decreasing water quality. However, construction activities are of relatively short duration and the removal of the creosote treated piles of the Wharf will have a long-term beneficial effect on marine mammal habitat.

Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile removal activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile removal stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In addition, the affected area represents an extremely small portion of the total foraging area available to marine mammals within San Francisco Bay.

Effects on Potential Foraging Habitat—A temporary, small-scale loss of foraging habitat may occur for marine mammals if marine mammals avoid the area during Wharf demolition. Pile removal may temporarily impact foraging habitat by increasing turbidity resulting from suspended sediments. Impacts to benthic invertebrate species would be primarily associated with disturbance of sediments that may cover or displace some invertebrates. The impacts will be highly localized, and no habitat will be permanently displaced by construction activities. As previously noted, the affected area represents a small portion of the total area within foraging range of marine mammals that may be present. Therefore, it is expected that impacts on foraging opportunities for marine mammals due to the removal of the Point Orient Wharf would be minimal.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through these IHAs, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise generated from in-water pile removal (vibratory) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury

(Level A harassment) to result, primarily for high- and low-frequency species and phocids because predicted auditory injury zones are larger than for mid-frequency species. However, auditory injury is unlikely to occur due to the proposed shutdown zones (see Proposed Mitigation section). Additionally, the proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 micropascal (μPa) root mean square (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Chevron's Point Orient Wharf Removal includes the use of continuous non-impulsive (vibratory pile removal) sources, and therefore the 120 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Chevron's Point Orient Wharf Removal includes the use of non-impulsive vibratory pile removal.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 1183 dB	*Cell 2:* $L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 1185 dB	*Cell 4:* $L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-}pk.flat}$: 218 dB; $L_{E,p,PW,24h}$: 1185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-}pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^2s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Pile extraction using a vibratory hammer will generate underwater noise that potentially could result in disturbance to marine mammals near the project area. A review of underwater sound measurements for similar projects was conducted to estimate the near-source sound levels for vibratory pile extraction for each pile type. Vibratory pile extraction (and if not available,

vibratory driving) sound from similar type and sized piles have been measured from other projects and can be used to estimate the noise levels that this project would generate. This analysis uses the practical spreading loss model, a standard assumption regarding sound propagation for similar environments, to estimate transmission of sound through water. For this analysis, the transmission loss factor of 15 (4.5 dB per doubling of distance) is used. A weighting adjustment factor of 2.5, a standard default value for vibratory pile driving and removal, was used to calculate Level A harassment areas.

Pile extraction will include the removal of existing 12-inch timber piles during Year 1 and Year 2, and the removal of various sizes of steel piles during Year 2. Approximately 543 timber piles would be removed in Year 1 and 376 timber piles in Year 2. Of the timber piles in Year 1, 133 piles are encased in concrete, however, since the concrete wrapping is only present on the upper portion of the pile, these piles are expected to behave as the unwrapped timber piles in regards to generation of underwater noise. Although some piles may be extracted with direct pulling, this analysis assumes that a vibratory pile driver will be used to remove all piles. Up to 18 of the unwrapped piles or 11 of the wrapped piles could be extracted in one work day, but on most days a co-mingling of the two types would likely be removed. Vibratory extraction time needed for each pile could require approximately 6 minutes for each of the unwrapped piles and 9 minutes for each of the concrete wrapped piles (Table 1). An estimated 35 work days will be spent in Year 1 removing timber piles and approximately 27 work days will be spent removing timber piles in Year 2 (Table 1). The most applicable noise values for timber pile removal from which to base estimates for the proposed project are the values used for the Pier 62/63 pile removal in Seattle, Washington (City of Seattle 2017). During vibratory pile extraction associated with this project, the RMS was estimated to be approximately 152 dB at a distance of 10 meters (City of Seattle, 2017) (Table 5).

In Year 2, 34 36-inch steel piles will be extracted. Each 36-inch steel pipe pile may require approximately 45 minutes of vibratory extraction for removal. Up to two of these piles could be removed in a single work day (Table 1). Chevron is planning a total of 18 work days to remove the 36-inch steel piles (Table 1). Installation of this pile type was hydro-acoustically monitored during the CLWMEP in 2019 (AECOM 2020). As pile installation typically produces more sound than vibratory removal, the sound levels during vibratory extraction in this project are expected to be equal to or less than the maximum sound levels recorded during that installation. The maximum measured peak sound value was 196 dB measured at 10 meters, and the highest median RMS value recorded was 167 dB measured at 15 meters (AECOM 2020) (Table 5).

Approximately 40 30-inch steel piles would also be removed in Year 2. Each 30-inch steel pipe pile may require approximately 32 minutes of vibratory extraction for removal. Up to three of these piles could be removed in a single work day (Table 1). Chevron has planned approximately 10 work days to remove the 30-inch steel piles (Table 1). Installation of this pile type was hydro-acoustically monitored at the WETA Downtown Ferry Terminal in San Francisco, CA (Caltrans 2020). The sound levels during vibratory extraction are expected to be equal to or less than the maximum sound levels recorded during that installation. The maximum measured peak sound value was 183 dB measured at 7 meters, and the highest median rms value recorded was 156 dB measured at 7 meters (Caltrans 2020) (Table 5).

In Year 2, approximately 16 24-inch steel piles would be removed. Each 24-inch steel pile may require up to 26 minutes of vibration to remove (Table 1). Chevron has planned approximately 6 work days to remove the 24-inch steel piles (Table 1). Installation of this pile type was hydro-acoustically monitored at the WETA Downtown Ferry Terminal in San Francisco, CA (Caltrans 2020). The sound levels during vibratory extraction are expected to be equal to or less than the maximum sound levels recorded during that installation. For the 24-inch piles, the maximum measured peak sound value was 178 dB measured at 15 meters, and the highest median RMS value recorded was 157 dB measured at 15 meters (Caltrans 2020) (Table 5).

TABLE 5—SOURCE LEVELS FOR VIBRATORY REMOVAL OF PILES FOR YEAR 1 AND YEAR 2

Pile type	Diameter (in)	Source levels/source distance (m)	
		Peak	RMS
Year 1			
Timber	12	NA	152/10
Year 2			
Timber	12	NA	152/10
Steel	36	196/10	167/15
Steel	30	183/7	156/7
Steel	24	178/15	157/15

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources (such as vibratory pile removal),

the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the User Spreadsheet are reported in Table 1 and source levels used in the spreadsheet are reported in Table 5. The resulting Level A and Level B harassment isopleths as well as area encompassed by the Level B harassment isopleths are reported below in Table 6.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS BY PILE TYPE

Pile type	Hearing group					Level B isopleths (m)	Level B isopleth area (km^2)
	Level A isopleths (m)						
	LF cetaceans	MF cetaceans	HF cetaceans	Phocid pinnipeds	Otariid pinnipeds		
Timber	3	1	4	2	1	1,359	3.81
36″ steel	34	3	50	21	2	20,390	26.93
30″ steel	3	1	5	2	1	1,758	0.93
24″ steel	8	1	12	5	1	4,393	5.14

The maximum distance to the Level A harassment threshold during construction would be during the vibratory removal of the 36 inch steel piles during Year 2 (34 m for gray whales, 3 m for bottlenose dolphins, 50 m for harbor porpoises, 21 m for harbor seals, and 2 m for sea lions). The largest Level B harassment zone extends out to 20,390 m for extraction of the 36 inch steel piles. Area was calculated for each Level B harassment isopleth through a GIS exercise and incorporated into take calculations for California sea lions and harbor porpoises (see below).

Marine Mammal Occurrence and Take Estimation and Calculation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We will also describe how this information is brought together to produce a quantitative take estimate for each species.

Harbor Seals

Limited at-sea densities are available for Pacific harbor seals in San Francisco Bay. To estimate the number of harbor seals potentially exposed to Level B harassment, take estimates were developed based upon annual surveys of haul outs in San Francisco Bay conducted by the National Park Service (NPS) (Codde and Allen 2013, 2015, 2017, 2020; Codde 2020). Harbor seals spend more time hauled out and enter the water later in the evening during molting season (NPS 2014). The molting season occurs from June–July and overlaps with the construction period of June–November, therefore, haul out counts may provide accurate estimates of harbor seals in the area during that time. Due to the close proximity of Castro Rocks to the project area, haul out occupancy of Castro Rocks was selected to determine take estimates. Calculations of take estimates were based upon the highest mean value of harbor seals observed at Castro Rocks during the molting season in any recent NPS annual survey. The highest mean number of harbor seals was recorded in 2019 as 237 seals (Table 7).

Based upon radio and telemetry data in San Francisco Bay, it is expected that harbor seals concentrate within 10 m of Castro Rocks in all directions while foraging (Grigg *et al.,* 2012). Due to the close proximity of the project area to Castro Rocks, it is expected that all seals assumed to be present (237) on a given day would enter the Level B harassment zone during steel pile extraction and half of the seals (119) would enter the Level B harassment zone during timber pile extraction. Chevron is requesting authorization of a total of 4,165 takes of harbor seals by Level B harassment across the 35 planned work days in Year 1 (Table 8). In Year 2, Chevron is requesting authorization of a total of 11,271 takes of harbor seals by Level B harassment across the 61 planned work days (Table 9).

Chevron plans to implement shutdown zones based upon the distances to the Level A threshold for each hearing group (Table 6). Therefore, takes of harbor seals by Level A harassment were not requested, nor are takes by Level A harassment proposed for authorization by NMFS.

California Sea Lions

Although there are no haul out sites for California sea lions in close proximity to the Wharf, sea lions have consistently been sighted in San Francisco Bay while monitoring during past construction projects (AECOM 2019, 2020; Caltrans 2017). During a long-term monitoring effort for the demolition and reuse of the original east span of the San Francisco-Oakland Bay Bridge in the central Bay, 83 California sea lions were observed in the vicinity of the bridge over a 17-year period (2000 to 2017) (Caltrans 2017). In order to calculate the estimated at-sea density of sea lions, the number of sea lions observed over the 17 year period (83 animals) was divided by the number of monitoring days (257 days) to find the number of sea lions observed per day. The total number of sea lions observed per day was then divided by the area of the monitoring zone (2 km^2) to derive an estimated at-sea density of 0.16 animals per square kilometer (Caltrans 2017) (Table 7). In order to calculate a daily take estimate for the current Wharf removal project, sea lion density was multiplied by the area of the Level B harassment zone for each pile type (Tables 6). The daily take estimate was then multiplied by the number of work days for that pile type to receive a total take estimate per year (Tables 1, 8, 9). Chevron is requesting authorization of a total of 22 takes of California sea lions by Level B harassment in Year 1, and a total of 542 takes of California sea lions by Level B harassment in Year 2 (Tables 8, 9).

Level A harassment takes of California sea lions were not requested by Chevron, nor with they be authorized by NMFS. As Chevron plans to implement a shutdown zone for all Level A harassment isopleths for each hearing group, Level A harassment takes are not expected.

Harbor Porpoise

The harbor porpoise population has been growing over time in San Francisco Bay (Stern *et al.,* 2017). Although commonly sighted in the vicinity of Angel Island and the Golden Gate, approximately 6 and 12 kilometers (3.7 and 7.5 miles, respectively) southwest of the Wharf, individuals may use other areas of central San

Francisco Bay (Keener 2011), as well as the project area.

As in the case of California sea lions, density estimates temporally and spatially aligned with the project work period were available for harbor porpoises based upon long term monitoring for the demolition and reuse of the original east span of the San Francisco-Oakland Bay Bridge in the central Bay (Caltrans 2017). During the 257 days of monitoring from 2000–2017, approximately 24 harbor porpoises were observed in the bridge vicinity. The total number of harbor porpoises observed per day was calculated by dividing the total number of harbor porpoises observed by the number of monitoring days. This estimate per day was then divided by the area of the monitoring zone for harbor porpoises (15 km^2) to calculate an at-sea density of harbor porpoises (0.17 harbor porpoises/square kilometer). In order to calculate a daily take estimate for the current Wharf removal project, the density of harbor porpoises (0.17) was multiplied by the area of the Level B harassment zone for each pile type (Table 6). To calculate a total take estimate of harbor porpoises per year, the daily estimate was multiplied by the number of anticipated work days for each pile type (Tables 1, 8, 9). Chevron is requesting authorization of a total of 23 takes of harbor porpoises by Level B harassment in Year 1 (Table 8), and a total of 576 takes of harbor porpoises by Level B harassment in Year 2 (Table 9).

Takes of harbor porpoises by Level A harassment are not expected as Chevron plans to shut down construction activities within the Level A harassment zones for all pile types and hearing groups. NMFS does not propose to authorize Level A harassment takes of harbor porpoises, nor have Level A harassment takes been requested.

Bottlenose Dolphin

Bottlenose dolphins in San Francisco Bay are typically observed west of Treasure Island, near the Golden Gate at the mouth of the Bay, and along the nearshore areas of San Francisco south to Redwood City (Bay Nature Institute 2014; NMFS 2017). The numbers of dolphins in San Francisco Bay have been increasing over the years (Perlman 2017; Szczepaniak *et al.,* 2013). Although dolphins may occur in the Bay year-round, density estimates are limited. Beginning in 2015, two individuals have been observed frequently in the vicinity of Alameda (APER 2019; Perlman 2017). The average reported group size for bottlenose dolphins in this area is five. Assuming a group of five dolphins comes into San Francisco Bay on two week intervals and vibratory pile extraction occurs over 6 two-week periods, 30 bottlenose dolphin takes would be expected if the group enters the area over which the Level B harassment thresholds may be exceeded (Tables 8, 9). Chevron is requesting authorization of 30 takes of bottlenose dolphins by Level B harassment per year (Tables 8, 9).

Takes of bottlenose dolphins by Level A harassment are not anticipated as Chevron plans to implement a shutdown zone for all Level A harassment isopleths. Takes of bottlenose dolphins by Level A harassment were not requested by Chevron nor will they be authorized by NMFS.

Gray Whale

Gray whales are most often sighted in San Francisco Bay during February and March, however, Wharf removal is not planned to occur during this time. Prior monitoring reports for similar projects occurring during the same work windows did not document gray whales in the area (AECOM 2019, 2020). Limited sightings of gray whales in the Bay include strandings, (Bartlett 2022; TMMC 2019), monitoring during work on the RSRB (Winning 2008), and whale watch reports (Bartlett 2022). At-sea densities and regular observational data for gray whales in San Francisco Bay during the planned project time are not available. Therefore, take estimates are based upon the potential for one pair of gray whales to be present in the project area each year. In the event that gray whales are in the project area during the time of construction activities, Chevron is requesting authorization for two gray whale takes by Level B harassment per year (Tables 8, 9).

Takes of gray whales by Level A harassment are not anticipated as Chevron plans to shut down construction activities within the Level A harassment zones for all pile types and hearing groups. NMFS does not plan to authorize any takes by Level A harassment of gray whales, nor have any takes by Level A harassment been requested.

Northern Elephant Seal

Small numbers of elephant seals may haul out or strand within central San Francisco Bay (Caltrans 2015; Hernández 2020). Previous monitoring, however, has shown northern elephant seal densities to be very low in the area and out of season for the proposed Wharf removal project. Additionally, northern elephant seals were not observed during pile driving monitoring for the CLWMEP from 2018–2020, which was located just south of the proposed project area. However, as northern elephant seals have been sighted in the Bay, and on assumption that an elephant seal enters the Level B harassment zone once every three days during pile extraction, Chevron is requesting authorization of a total of 12 takes of elephant seals by Level B harassment during Year 1 and 21 takes of elephant seals by Level B harassment during Year 2 (Tables 8, 9).

Takes of elephant seals by Level A harassment are not anticipated as Chevron plans to implement a shutdown zone for all Level A harassment isopleths. Takes of elephant seals by Level A harassment were not requested by Chevron nor will they be authorized by NMFS.

Northern Fur Seal

The presence of northern fur seals in San Francisco Bay depends upon oceanic conditions, as more fur seals are likely to strand during El Niño events (TMMC 2016). Equatorial sea surface temperatures of the Pacific Ocean have been below average across most of the Pacific, and La Niña conditions are likely to remain for most of spring 2022. During summer 2022, La Niña conditions are expected to remain or transition into neutral El Niño conditions (NOAA 2022). Since there are no estimated at-sea densities for this species in San Francisco Bay, Chevron conservatively requested authorization for, and NMFS proposes to authorize, 10 takes of fur seals per year by Level B harassment (Tables 8, 9).

Takes of northern fur seals by Level A harassment are not anticipated as Chevron plans to shut down construction activities within the Level A harassment zones for all pile types and hearing groups. NMFS does not plan to authorize takes of northern fur seals by Level A harassment, nor have takes by Level A harassment been requested.

TABLE 7—ESTIMATED MARINE MAMMAL DENSITIES AND OCCURRENCES

Species	Stock	Estimated density/occurrence	References
Harbor Seals	California	237 per day in June–July (molt season)	(Codde and Allen 2013, 2015, 2017, 2020; Codde 2020).
California Sea Lions	U.S.	0.16 animals/km^2	(Caltrans 2017).
Harbor Porpoise	SF-Russian River	0.17 animals/km^2	(Caltrans 2017).
Bottlenose Dolphin	CA Coastal	Average group size of 5 present in the Bay in two week intervals.	(APER 2019; Perlman 2017).
Gray Whale	Eastern N Pacific	Rare; 2 whales per year	(TMMC 2019; Winning 2008).
Northern Elephant Seal	CA Breeding	Rare; once every 3 days	(Caltrans 2015; Hernández 2020).
Northern Fur Seal	California	Rare; 10 seals per year	(TMMC 2016).

TABLE 8—PROPOSED AUTHORIZED AMOUNT OF MARINE MAMMAL LEVEL B TAKES BY SPECIES AND STOCK, AND PERCENT OF TAKES BY STOCK YEAR 1

Species	Stock	Pile type/size	Requested total take	Percent of stock
Harbor Seals	California *	timber 12″	*4,165	*13.4
California Sea Lions	U.S	timber 12″	22	<0.01
Harbor Porpoise	San Francisco-Russian River	timber 12″	23	0.3
Bottlenose Dolphin	CA Coastal	timber 12″	30	6.6
Gray Whale	Eastern North Pacific	timber 12″	2	<0.01
Northern Elephant Seal	California Breeding	timber 12″	12	<0.01
Northern Fur Seal	California	timber 12″	10	0.07

* Assumes multiple repeated takes of the same individuals from a small portion of the stock. Please see the small numbers section for additional information.

Abundance estimates are taken from the 2020 U.S. Pacific Marine Mammal Stock Assessments (Carretta et al., 2021).

TABLE 9—PROPOSED AUTHORIZED AMOUNT OF MARINE MAMMAL LEVEL B TAKES BY SPECIES AND STOCK, AND PERCENT OF TAKES BY STOCK YEAR 2

Species	Stock	Pile type/size	Requested total take	Percent of stock
Harbor Seals	California *	timber 12″	3,213	
		steel 36″	4,266	
		steel 30″	2,370	
		steel 24″	1,422	
Total			*11,271	*36.4
California Sea Lions	U.S	timber 12″	17	
		steel 36″	485	
		steel 30″	9	
		steel 24″	31	
Total			542	1.3
Harbor Porpoise	San Francisco-Russian River	timber 12″	18	
		steel 36″	515	
		steel 30″	10	
		steel 24″	33	
Total			576	7.4
Bottlenose Dolphin	California Coastal		30	6.6
Gray Whale	Eastern North Pacific		2	<0.01
Northern Elephant Seal	California Breeding		21	0.01
Northern Fur Seal	California		10	0.07

* Assumes multiple repeated takes of the same individuals from a small portion of the stock. Please see the small numbers section for additional information.

Abundance estimates are taken from the 2020 U.S. Pacific Marine Mammal Stock Assessments (Carretta et al., 2021).

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

The following mitigation measures are proposed for Chevron's removal of the Point Orient Wharf:

- *Time restriction:* For all in-water pile removal activities, Chevron shall operate only when the shutdown zone is visible and visual monitoring of marine mammals can be conducted;
- *Establishment of shutdown zones:* As proposed by Chevron, shutdown zones will be established for each pile type to include the Level A harassment zone for each hearing group. The Level A harassment zone encompasses all of the area where underwater sound pressure levels are expected to reach or exceed the cumulative SEL thresholds for Level A harassment (Table 6), and will be no less than 10 m. The radii of the shutdown zones are rounded to the next largest 5 m interval if the value is greater than 10 m; and
- *PSOs:* Trained PSOs will conduct visual monitoring from clear, elevated vantage points, along the shoreline or construction barges, where the entirety of the shutdown zones can be observed. PSOs will monitor the shutdown zones for 30 minutes prior to any pile extraction activity to be sure marine mammals are not in the zones. Pile extraction will not commence until marine mammals have not been sighted within the shutdown zone for 30 minutes. If a marine mammal is observed entering a shutdown zone during pile extraction, construction activities will stop until the marine mammal leaves the zone, and will not resume until no marine mammals are observed in the shutdown zone for 30 minutes. If a marine mammal is seen above water and dives below, a 15 minute wait period will begin. If the marine mammal is not redetected in that time, it will be assumed that the marine mammal has moved beyond the shutdown zone, and construction activities will continue.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Chevron will monitor to collect sighting data and record behavioral responses to construction activities for all marine mammal species observed in the project location during the period of activity. The monitoring zone will include all shutdown zones and areas where underwater sound pressure levels are expected to reach or exceed the thresholds for Level B harassment. Monitoring will be conducted by qualified protected species observers (PSOs), trained biologists familiar with marine mammal species and their behavior.

Chevron will monitor the shutdown zones and monitoring zones before, during, and after pile removal activities with at least two PSOs located at the best practicable vantage points. Based upon our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile removal:

- PSOs must be independent observers (*i.e.,* not construction personnel). All PSOs must have the ability to conduct field observations and collect data according to assigned protocols, be experienced in field identification of marine mammals and their behaviors, and submit their resumes to NMFS for approval;
- Biological monitoring will occur within one week of the project's start date to establish baseline observation;
- Observation periods will encompass different tide levels at different hours of the day;
- Monitoring will occur from elevated locations along the shoreline or on barges where the entire shutdown zones and monitoring zones are visible. If visibility decreases, such as due to fog or weather, vibratory pile extraction would be stopped until PSOs are able to view the entire shutdown zone;
- PSOs will be equipped with high quality binoculars for monitoring and radios or cells phones for maintaining contact with work crews;

• PSOs will implement clearing of the shutdown and monitoring zones as well as shutdown procedures; and
• At the end of the pile removal day, post-construction monitoring will be conducted for 30 minutes beyond the cessation of pile removal.

Data Collection

Chevron will record detailed information about implementation of shutdowns, counts and behaviors (if possible) of all marine mammal species observed, times of observations, construction activities that occurred, any acoustic and visual disturbances, and weather conditions. PSOs will use approved data forms to record the following information:
• Date and time that permitted construction activity begins and ends;
• Type of pile removal activities that take place;
• Weather parameters (*e.g.,* percent cloud cover, percent glare, visibility, air temperature, tide level, Beaufort sea state);
• Species counts, and, if possible, sex and age classes of any observed marine mammal species;
• Marine mammal behavior patterns, including bearing and direction of travel;
• Any observed behavioral reactions just prior to, during, or after construction activities;
• Location of marine mammal, distance from observer to the marine mammal, and distance from pile removal activities to marine mammals;
• Record of whether an observation required the implementation of mitigation measures, including shutdown procedures and the duration of each shutdown; and
• Any acoustic or visual disturbances that take place.

Reporting Measures

Chevron shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are received, a final report must be submitted up to 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reports shall contain the following information:
• Dates and times (begin and end) of all marine mammal monitoring.
• Construction activities occurring during each daily observation period including: (a) How many and what type of piles were removed; and (b) the total duration of time for removal of each pile;
• PSO locations during monitoring; and
• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:
• Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
• Time of sighting;
• Identification of the animal (s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
• Distance and location of each observed marine mammal relative to pile removal for each sighting;
• Estimated number of animals by species (min/max/best estimate);
• Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
• Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching); and
• Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensured, and resulting changes in behavior of the animal(s), if any.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Chevron would immediately cease the specified activities and immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and the West Coast Regional Stranding Coordinator. The report would include the following information:
• Time, date, and location (latitude/longitude) of the incident;
• Name and type of vessel involved (if applicable);
• Vessel's speed during and leading up to the incident (if applicable);
• Description of the incident;
• Status of all sound source used in the 24 hours preceding the incident;
• Water depth;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Chevron to determine necessary actions to minimize the likelihood of further prohibited take and ensure MMPA compliance. Chevron would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Chevron would immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in the section above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Chevron to determine whether modifications in the activities are appropriate.

In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Chevron would report the incident to Office of Protected Resources, NMFS, and West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Chevron would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Pile removal activities would be permitted to continue.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile removal activities have the potential to disturb or displace marine mammals. The proposed project activities may result in take in the form of Level B harassment from underwater sounds generated by vibratory pile removal. Potential takes could occur if individuals move into in the ensonified area when construction activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance. No serious injury or mortality is anticipated for any stocks presented in this analysis given the nature of the activity and mitigation measures designed to minimize the possibility of injury. The potential for harassment is minimized through construction method and the implementation of planned mitigation strategies (see Proposed Mitigation section).

No marine mammal stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal density, small shutdown zones, and proposed monitoring also make injury takes of marine mammals unlikely. The shutdown zones would be thoroughly monitored before the proposed vibratory pile removal begins and construction activities would be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals would be detected by trained observers under environmental conditions described for the proposed project. Limiting construction activities to daylight hours will also increase detectability of marine mammal in the area. Therefore, the proposed mitigation and monitoring measures are expected to eliminate the potential for injury and Level A harassment as well as reduce the amount and intensity for Level B behavioral harassment. Furthermore, the pile removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities will occur over the course of 12 weeks and removal of each pile lasts only approximately 6–45 minutes. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.,* Thorson and Reyff 2006). Individual animals, even if taken multiple times, will likely move away from the sound source and be temporarily displaced from the area due to elevated noise level during pile removal. Marine mammals could also experience TTS if they move into the Level B monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Thus, it is not considered an injury. While TTS could occur, it is not considered a likely outcome of this activity. Repeated exposures of individuals to levels of sounds that could cause Level B harassment are unlikely to considerably significantly disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stock as a whole.

As previously described, a UME has been declared for Eastern Pacific gray whales. However, we do not expected proposed takes for authorization in this action to exacerbate the ongoing UME. As mentioned previously, no injury or mortality is proposed for authorization, and Level B harassment takes of gray whales will be reduced to the level of least practicable adverse impact through incorporation of the proposed mitigation measures. Given that only 2 takes by Level B harassment are proposed for this stock annually, we do not expect the proposed take authorization to compound the ongoing UME.

The proposed project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated habitat within the project area. While EFH for several fish species does exist in the proposed project area, the proposed activities would not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range, however, due to the short duration of activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No Level A harassment, including injury or serious injury, is anticipated or authorized;

- Anticipated impacts of Level B harassment include temporary behavior modifications;
- Short duration and intermittent nature of in-water construction activities;
- The specified activity and associated ensonified areas are very small relative to the overall habitat ranges of all species and do not include habitat areas of special significance (Biologically Important Areas or ESA-designated critical habitat);
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity;
- Monitoring reports from similar work in San Francisco Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

These factors, in addition to the available body of evidence from prior similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival, and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds, specific to both the Year 1 and Year 2 proposed IHAs, that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize in Year 1 is below one-third of the estimated stock abundance for all impacted stocks (Table 8). The number of animals authorized to be taken during Year 1 would be considered small relative to the relevant stocks or populations, even if each estimated take occurred to a new individual. Furthermore, these takes are likely to only occur within a small portion of the overall regional stock and the likelihood that each take would occur to a new individual is low.

The amount of take NMFS proposes to authorize in Year 2 is below one-third of the estimated stock abundance for California sea lions, harbor porpoises, bottlenose dolphins, gray whales, northern elephant seals, and northern fur seals (Table 9). The take percentage of the estimated stock of harbor seals is approximately 36.4 percent, however, take estimates are likely conservative as they assume all takes are of different individuals which is likely not the case. Some individuals may return to the area multiple times a week, but PSOs would count them as separate takes if they are not individually identified. Therefore, since take estimates likely include repeated takes of the same individuals over time, take estimates are expected to represent a smaller percentage of the total stock. Furthermore, the project area represents a small portion of the overall range of harbor seals and activities are will most likely to impact only a small portion of the stock.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds, specific to both the Year 1 and Year 2 proposed IHAs that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two consecutive IHAs to Chevron for conducting the Point Orient Wharf Removal in San Francisco Bay, CA from June 1–November 30, 2022 and June 1–November 30, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorizations, and any other aspect of this notice of proposed IHAs for the proposed Point Orient Wharf Removal. We also request at this time comment on the potential renewal of this proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or subsequent Renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing

that the Renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

• The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 21, 2022.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–08888 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB979]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice; issuance of revised letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that NMFS has issued a revised Letter of Authorization (LOA) to Equinor Gulf of Mexico LLC (Equinor), in place of TotalEnergies E&P USA, Inc. (TotalEnergies), for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from April 20, 2022, through April 19, 2023.

ADDRESSES: The LOA, original LOA request, request for transferal, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request

On January 26, 2022, NMFS issued an LOA to TotalEnergies (87 FR 4866; January 31, 2022) to take marine mammals incidental to a 3D ocean bottom node (OBN) survey within the North Platte field. The survey area is located in Garden Banks, Green Canyon, Keathley Canyon, and Walker Ridge lease areas with approximate water depths ranging from 725 to 2,180 meters (m). See Figure 1 of TotalEnergies' LOA application for a map of the area. Additional description of the planned survey, as well as analysis related to the issuance of that LOA, is available in TotalEnergies' LOA application and the aforementioned **Federal Register** notice of issuance.

On April 12, 2022, TotalEnergies notified NMFS that it had relinquished operatorship of the offshore asset, with which the subject geophysical survey

was associated, to its joint interest owner (Equinor). Accordingly, TotalEnergies requested the transfer of the LOA to Equinor. Equinor confirmed to NMFS that it similarly requested transfer of the LOA. With the transfer of the LOA, Equinor agrees to comply with the associated terms, conditions, stipulations, and restrictions of the original LOA. No other changes were requested. The revised LOA remains effective through April 19, 2023.

The revised LOA sets forth only a change in the LOA holder's name. There are no other changes to the LOA as described in the January 31, 2022, **Federal Register** notice of issuance (87 FR 4866): The specified activity; estimated take by incidental harassment; and small numbers analysis and determination; and the period of effectiveness remain unchanged and are herein incorporated by reference.

Authorization

NMFS is changing the name of the holder of the LOA from ''TotalEnergies E&P USA, Inc.'' to ''Equinor Gulf of Mexico LLC.''

Dated: April 21, 2022.

Catherine G. Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–09008 Filed 4–26–22; 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; Groundfish Tagging Program

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 20, 2022, 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: Alaska Groundfish Tagging Program.

OMB Control Number: 0648–0276.

Form Number(s): None.

Type of Request: Regular submission. Extension of a currently approved collection.

Number of Respondents: 440.

Average Hours per Response: 5 minutes for returning a regular tag (groundfish or sablefish simple tag), and 20 minutes for returning an internal archival tag electronically.

Burden Hours: 89.

Needs and Uses: NOAA Fisheries is mandated to assess the health of the populations of commercially important species with the best information possible. Groundfish tagging programs in the northeastern Pacific Ocean and Alaska waters provide essential research data on groundfish life histories and migration patterns that are necessary for successful management. Collecting tag recovery data from the public is essential for the success of this program. Each year, thousands of fish are caught during NOAA Fisheries stock assessment surveys. These fish are weighed and measured, and their sex is determined. Fish that appear healthy and uninjured are tagged before being released back into the wild. Fishermen and seafood processors subsequently find the tagged fish. By returning the tag to NOAA Fisheries, along with information on when and where the fish was caught and the size and weight of the fish, these fishermen and processors provide extremely valuable information to fishery scientists and managers. Tagging groundfish for subsequent tracking and recovery is an important tool for managing fishery resources and the information gathered has resulted in numerous scientific and management publications by NOAA Fisheries personnel.

Affected Public: Not-for-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Frequency: As needed.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0276.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08920 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities, Submission for Office of Management and Budget (OMB) Review and Emergency Approval; Comment Request; Infrastructure Investment and Jobs Act—Application for Broadband Grant Programs

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for emergency review and approval in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden.

Agency: National Telecommunications and Information Administration (NTIA), Commerce.

Title: Infrastructure Investment and Jobs Act—Application for Broadband Grant Programs.

OMB Control Number: 0660–XXXX.

Form Number(s): N/A.

Type of Request: Emergency submission, New Information Collection Request.

Number of Respondents: 950 respondents.

Average Hours per Response: 14 hours for Middle Mile grant application and 4 hours for the State Equity Planning program application.

Burden Hours: 10,300 hours.

Needs and Uses: NTIA requests emergency review and approval of the emergency collection to ensure that the agency can meet the statutory deadlines Congress set forth for the Infrastructure Act Broadband Grant Programs. Given

the challenges that the grant application process can pose for disadvantaged communities, NTIA seeks to make this process more equitable for all of its potential applicants for the broadband grant programs enacted in the Infrastructure Act, including those with limited resources and/or technical expertise. In order to do so, NTIA created new forms for use in the application process which will provide structured questions and guidance concerning the kind of discrete and structured data required for successful applications. The new forms will create greater efficiencies in the NTIA grant program, which will likely result in enhanced timing and information accuracy beneficial to program applicants. NTIA believes that a significant number of these prospective applicants will be Tribal governments or other entities associated with disadvantaged communities. NTIA further believes that the above-discussed new forms will offer these applicants greater opportunities for meaningful participation in the Broadband programs than they would otherwise enjoy while lessening overall application review burdens.

Affected Public: Entities applying for Infrastructure Act Broadband Grant Program funding.

Frequency: Once per application.

Respondent's Obligation: Mandatory for entities applying for Infrastructure Act Broadband Grant Program funding.

Legal Authority: Infrastructure Investment and Jobs Act (Infrastructure Act), 2021, Public Law 117–58, 135 Stat. 429.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08919 Filed 4–26–22; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the information collection request abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The information collection request describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://www.reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for these collections, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5496; email: *jchachkin@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants (OMB Control Nos. 3038–0068, 3038–0083, 3038–0088). This is a request for an extension of currently approved information collections.[2]

Abstract: On September 11, 2012 the Commission adopted Commission Regulations 23.500–23.505 (Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants)[3] under sections 4s(f), (g) and (i)[4] of the Commodity Exchange Act (''CEA''). Commission regulations 23.500–23.505 require, among other things, that swap dealers (''SDs'')[5] and major swap participants (''MSPs'')[6] develop and

[1] 17 CFR 145.9.

[2] 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 conrol number. See 46 FR 63035 (Dec. 30, 1981).

[3] 17 CFR 23.500–23.505.

[4] 7 U.S.C. 6s(f), (g) & (i).

[5] For the definition of SD, *see* Section 1a(49) of the CEA and Commission regulation 1.3; 7 U.S.C. 1a(49) and 17 CFR 1.3.

[6] For the definitions of MSP, *see* Section 1a(33) of the CEA and Commission regulation 1.3; 7 U.S.C. 1a(33) and 17 CFR 1.3.

retain written swap trading relationship documentation. The regulations also establish requirements for SDs and MSPs regarding swap confirmation, portfolio reconciliation, and portfolio compression. Under the regulations, SDs and MSPs are obligated to maintain records of the policies and procedures required by the rules.[7]

Confirmation, portfolio reconciliation, and portfolio compression are important post-trade processing mechanisms for reducing risk and improving operational efficiency. The information collection obligations imposed by the regulations are necessary to ensure that each SD and MSP maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction. The information collections contained in the regulations are also essential to ensuring that SDs and MSPs document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises. The collections of information are mandatory.

On February 23, 2022, the Commission published in the **Federal Register** notice of the proposed extension of these information collections and provided 60 days for public comment on the proposed extension, 87 FR 10175 (''60-Day Notice'') The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burdens for the collections to reflect the current number of respondents and estimated burden hours. The respondent burdens for the collections are estimated to be as follows:

- OMB Control No. 3038–0068 (Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants)

Number of Registrants: 107.

Estimated Average Burden Hours per Registrant: 1,274.5.

Estimated Aggregate Burden Hours: 136,371.5.

Frequency of Recordkeeping: As applicable.

- OMB Control No. 3038–0083 (Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants)

Number of Registrants: 107.

Estimated Average Burden Hours per Registrant: 270.

Estimated Aggregate Burden Hours: 28,890.

Frequency of Recordkeeping: As applicable.

- OMB Control No. 3038–0088 (Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants)

Number of Registrants: 107.

Estimated Average Burden Hours per Registrant: 6,284.

Estimated Aggregate Burden Hours: 672,388.

Frequency of Recordkeeping: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 22, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–09020 Filed 4–26–22; 8:45 am]

BILLING CODE 6351–01–P

[7] SDs and MSPs are required to maintain all records of policies and procedures in accordance with Commission regulations 23.203 and, by extension, 1.31, including policies, procedures, and models used for eligible master netting agreements and custody agreements that prohibit custodian of margin from re-hypothecating, repledging, reusing, or otherwise transferring the funds held by the custodian. *See* 17 CFR 1.31 and 23.203.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0075, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Christopher Cummings, Special Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC

[1] 17 CFR 145.9.

20581; (202) 418–5445; email: *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy (OMB Control No. 3038–0075). This is a request for an extension of a currently approved information collection.

Abstract: Section 4s(l) of the Commodity Exchange Act requires swap dealers (''SDs'') and major swap participants (''MSPs'') to notify uncleared swap counterparties that they have the right to request that property provided as margin be segregated, and to report quarterly to counterparties who have not requested segregated accounts that the back office procedures of the swap dealer or major swap participant with respect to margin and collateral comply with the parties' agreement. Regulations 23.701 and 23.704 establish reporting requirements that are mandated by Section 4s(l) and, thus, are necessary to implement the objectives of Section 4s(l). Regulation 23.701 requires that the SD or MSP notify the counterparty at the beginning of the swap trading relationship of the counterparty's right to require segregation of initial margin, and to permit the counterparty to change that election by written notice to the SD or MSP. Regulation 23.704 requires that, in certain circumstances, an SD or MSP must report to the counterparty, on a quarterly basis, that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties. The data required to be compiled and maintained pursuant to Regulations 23.701 and 23.704 would be used by uncleared swap counterparties (and, in some instances, the CFTC and self-regulatory organizations).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On February 22, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 9583 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

- *Regulation 23.701:*

Estimated Number of Respondents: 108.

Estimated Average Burden Hours per Respondent: 600 hours.

Estimated Total Annual Burden Hours: 64,800 hours.

Frequency of Collection: Beginning of the swap trading relationship with a counterparty.

- *Regulation 23.704:*

Estimated Number of Respondents: 108.

Estimated Average Burden Hours per Respondent: 806 hours.

Estimated Total Annual Burden Hours: 87,048 hours.

Frequency of Collection: Quarterly (4 times per year).

- *Total Annual Burden for the Collection:* 151,848 hours.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 22, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–09021 Filed 4–26–22; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 27, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0094, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Melissa A. D'Arcy, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC

[1] 17 CFR 145.9.

20581; (202) 418–5086; email: *mdarcy@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Clearing Member Risk Management (OMB Control No. 3038–0094). This is a request for an extension of a currently approved information collection.

Abstract: Section 3(b) of the Commodity Exchange Act (''Act'' or ''CEA'') provides that one of the purposes of the Act is to ensure the financial integrity of all transactions subject to the Act and to avoid systemic risk. Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations that it believes are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. Risk management systems are critical to the avoidance of systemic risk.

Section 4s(j)(2) of the CEA requires each Swap Dealer (''SD'') and Major Swap Participant (''MSP'') to have risk management systems adequate for managing its business. Section 4s(j)(4) of the CEA requires each SD and MSP to have internal systems and procedures to perform any of the functions set forth in Section 4s.

Section 4d of the CEA requires Futures Commission Merchants (''FCMs'') to register with the Commission. It further requires FCMs to segregate customer funds. Section 4f of the CEA requires FCMs to maintain certain levels of capital and Section 4g of the CEA establishes reporting and recordkeeping requirements for FCMs.

Pursuant to these provisions, the Commission adopted Commission regulation 1.73 which applies to clearing members that are FCMs and Commission regulation 23.609 which applies to clearing members that are SDs or MSPs. These provisions require these clearing members to have procedures to limit the financial risks they incur as a result of clearing trades and liquid resources to meet the obligations that arise. The regulations require each clearing member to: (1) Establish credit and market risk-based limits based on position size, order size, margin requirements, or similar factors; (2) use automated means to screen orders for compliance with the risk-based limits; (3) monitor for adherence to the risk-based limits intra-day and overnight; (4) conduct stress tests of all positions in the proprietary account and all positions in any customer account that could pose material risk to the futures commission merchant at least once per week; (5) evaluate its ability to meet initial margin requirements at least once per week; (6) evaluate its ability to meet variation margin requirements in cash at least once per week; (7) evaluate its ability to liquidate the positions it clears in an orderly manner, and estimate the cost of the liquidation at least once per month; and (8) test all lines of credit at least once per quarter.

Each of these items has been observed by Commission staff as an element of an existing sound risk management program at an SD, MSP, or FCM. The Commission regulations require each clearing member to establish written procedures to comply with this regulation and to keep records documenting its compliance. The information collection obligations imposed by the regulations are necessary to implement certain provisions of the CEA, including ensuring that registrants exercise effective risk management and for the efficient operation of trading venues among SDs, MSPs, and FCMs.

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. On February 22, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 9582 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 167 (108 Clearing Member Swap Dealers and 59 Clearing Member Futures Commission Merchants).

Estimated Average Burden Hours per Respondent: 504 hours.

Estimated Total Annual Burden Hours: 84,168 hours.

Frequency of Collection: As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 22, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–09019 Filed 4–26–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the National Assessment Governing Board (hereafter referred to as Governing Board) meeting scheduled for May 12–13, 2022. This notice provides information about the meeting to members of the public who may be interested in attending and/or providing written comments related to the work of the Governing Board. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

ADDRESSES: Westin Crystal City, 1800 Richmond Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6906, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include: (1) Selecting subject areas to be assessed; (2) developing assessment frameworks and specifications; (3) developing appropriate student achievement levels for each grade and subject tested; (4) developing standards and procedures for interstate and national comparisons; (5) improving the form and use of NAEP; (6) developing guidelines for reporting and disseminating results; and (7) releasing initial NAEP results to the public.

Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work planned for this Quarterly Board Meeting and any items undertaken by committees for

consideration by the full Governing Board. (Please see committee meeting minutes for previous meetings, available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html).* Committee meeting agendas will be posted on the Governing Board's website *www.nagb.gov* five business days prior to the meetings.

Committee Meetings

Monday, May 9, 2022

Nominations Committee (Closed Session)
5:30 p.m.–7:00 p.m.

Thursday, May 12, 2022

Executive Committee Meeting
8:30 a.m.–9:00 a.m. (Open Session)

Friday, May 13, 2022

Reporting and Dissemination Committee (R&D)
8:30 a.m.–11:00 a.m. (Open Session)

Friday, May 13, 2022

Assessment Development Committee (ADC)
8:30 a.m.–10:45 a.m. (Open Session)
10:45 a.m.–11:00 a.m. (Closed Session)

Friday, May 13, 2022

Committee on Standards, Design and Methodology
8:30 a.m.–9:30 a.m. (Open Session)
9:30 a.m.–11:00 a.m. (Closed Session)

Quarterly Governing Board Meeting

The plenary sessions of the May 12–13, 2022 quarterly meeting of the Governing Board will be held on the following dates and times:

Thursday, May 12, 2022: Open Meeting: 9:15 a.m.–5:30 p.m.

Friday, May 13, 2022: Open Meeting: 11:15 a.m.–11:30 a.m.; Closed Meeting: 11:30 a.m.–3:30 p.m.

May 12, 2022 Meeting

On Thursday, May 12, 2022, the plenary session of the Governing Board meeting will meet in open session from 9:15 a.m. to 11:15 a.m. From 9:15 a.m. to 9:30 a.m. Chair Beverly Perdue will welcome members, review, and approve the May 12–13, 2022 quarterly Governing Board meeting agenda and minutes from the March 3–4, 2022 quarterly Governing Board meeting.

Thereafter, from 9:30 a.m. to 9:45 a.m. Lesley Muldoon, Executive Director of the Governing Board, will update members on ongoing work. From 9:45 a.m. to 10:00 a.m., Peggy Carr, Commissioner, National Center for Education Statistics (NCES), will provide an update on National Assessment of Educational Progress (NAEP) activities. Peggy Carr and Lesley Muldoon will then discuss proposed approaches to NAEP innovation from 10:00 a.m. to 11:15 a.m. followed by a 15-minute break.

The Governing Board will hear a panel presentation from 11:30 a.m. to 1:30 p.m. on State Perspectives on Opportunities for NAEP to Innovate. This session will be followed by a 15-minute break. The Governing Board will reconvene from 1:45 p.m. to 3:15 p.m. to receive a briefing from Daniel McGrath, Acting Associate Commissioner, NCES, on plans for analyzing and reporting NAEP 2022. Following a 15-minute break, the Vice Chair of the Assessment Development Committee will lead a discussion on the Board charge to the NAEP Science Assessment Framework Panels. The Director of the Institute of Education Sciences, Mark Schneider, then will provide an update from 4:30 p.m. to 5:00 p.m. After which, members will engage in open discussion from 5:00 p.m. to 5:30 p.m. before the meeting is adjourned on May 12, 2022.

Friday, May 13, 2022

The May 13, 2022 session will begin with standing committee meetings from 8:30 a.m. to 11:00 a.m., followed by a 15-minute break. From 11:15 a.m. to 11:30 a.m., the Governing Board will take action on the Charge to the NAEP Science Framework Panels.

The Governing Board will meet in closed session from 11:30 a.m. to 2:00 p.m. to participate in the NAEP Budget Workshop. This session must be closed to the public because the budget discussions pertain to current and future NAEP contracts and must be kept confidential to maintain the integrity of the federal acquisition process. Public disclosure of this confidential information would impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

Following a short break, the Governing Board will reconvene in the second closed session from 2:15 p.m. to 3:30 p.m. to receive and discuss results from the NAEP Achievement Level Descriptor Study in Mathematics and Reading. This briefing must be held in closed session because study results are not yet public. Public disclosure of secure results would impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The May 13, 2022 session of the Governing Board meeting will adjourn at 3:30 p.m.

The Quarterly Board meeting and committee meeting agendas, together with meeting materials, will be posted on the Governing Board's website at *www.nagb.gov* no later than five working days prior to each meeting.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* five business days prior to each meeting. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following each meeting.

Reasonable Accommodations: The meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than ten working days prior to each meeting.

Written Comment: Written comments related to the work of the Governing Board may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above).

Public Participation: Members of the public may attend all open sessions of the standing committees and open plenary sessions of the Governing Board meeting.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Public Law 107–279, Title III—National Assessment of Educational Progress § 301.

Munira Mwalimu,

Executive Officer, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2022–09001 Filed 4–26–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research (EIR) Program—Early-Phase Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2022 for the EIR program—Early-phase Grants, Assistance Listing Number 84.411C (Early-phase Grants). This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: April 29, 2022.

Deadline for Notice of Intent to Apply: May 27, 2022.

Deadline for Transmittal of Applications: July 21, 2022.

Deadline for Intergovernmental Review: September 21, 2022.

Pre-Application Information: The Department will post additional competition information for prospective applicants on the EIR program website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/fy-2022-competition/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264), and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phaseout of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Yvonne Crockett, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E344, Washington, DC 20202–5900. Telephone: (202) 453–7122. Email: *eir@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based (as defined in this notice), field-initiated innovations to improve student achievement and attainment for high-need students and to rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially higher numbers of students.

The central design element of the EIR program is its multitier structure that links the amount of funding an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers: ''Early-phase,'' ''Mid-phase,'' and ''Expansion.''

''Early-phase,'' ''Mid-phase,'' and ''Expansion'' grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

Early-phase grants must demonstrate a rationale (as defined in this notice). Early-phase grants provide funding for the development, implementation, and feasibility testing of a program, which prior research suggests has promise, for the purpose of determining whether the program can successfully improve student achievement and attainment for high-need students. Early-phase grants are not intended simply to implement established practices in additional locations or address needs that are unique to one particular context. The goal is to determine whether and in what ways relatively new practices can improve student achievement and attainment for high-need students.

This notice invites applications for Early-phase grants only. The notices inviting applications for Mid-phase and Expansion grants are published elsewhere in this issue of the **Federal Register**.

Background

While this notice is for the Early-phase tier only, the premise of the EIR program is that new and innovative educational programs and practices can help to overcome the persistent and significant challenges to student success, particularly for underserved and high-need students.

Note: The EIR program statute refers to ''high-need students'' but allows applicants to define the term as it relates to the proposed project, population, and setting. In addressing the needs of underserved students, the statutory requirement for serving ''high-need students'' can also be addressed.

These innovations need to be evaluated, and, if sufficient evidence of effectiveness can be demonstrated, the intent is for these innovations to be replicated and tested in new populations and settings. EIR is not intended to provide support for practices that are already commonly implemented by educators, unless significant adaptations of such practices warrant testing to determine if they can accelerate achievement or increase the likelihood that the practices can be widely, efficiently, and effectively implemented in new populations and settings.

As an EIR project is implemented, grantees are encouraged to learn more about how the practices improve student achievement and attainment and to develop increasingly rigorous evidence of effectiveness and new strategies to efficiently and cost-effectively scale to new school districts, regions, and States. To meet the required evidence level, applicants must develop a logic model (as defined in this notice), theory of action, or another conceptual framework that includes the goals, objectives, outcomes, and key project components (as defined in this notice) of the project.

All EIR applicants and grantees should also consider how they need to develop their organizational capacity, project financing, or business plans to sustain their projects and continue implementation and adaptation after Federal funding ends. The Department intends to provide grantees with

technical assistance in their dissemination, scaling, and sustainability efforts.

Early-phase grantees are encouraged to make continuous and iterative improvements in project design and implementation before conducting a full-scale evaluation of effectiveness. Grantees should consider how easily others could implement the proposed practice, and how its implementation could potentially be improved. Additionally, grantees should consider using data from early indicators to gauge initial impact and to consider possible changes in implementation that could increase student achievement and attainment.

Early-phase applicants should develop, implement, and test the feasibility of their projects. The evaluation of an Early-phase project should be an experimental or quasi-experimental design study (as defined in this notice) that can determine whether the program can successfully improve student achievement and attainment for high-need students. Early-phase grantees' evaluation designs should have the potential to demonstrate a statistically significant effect on improving student outcomes or other relevant outcomes (as defined in this notice) based on moderate evidence (as defined in this notice) from at least one well-designed and well-implemented experimental or quasi-experimental design study. The Department intends to provide grantees and their independent evaluators with evaluation technical assistance. This evaluation technical assistance could include grantees and their independent evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation, with updates consistent with the scope and objectives of the approved application.

The FY 2022 Early-phase competition includes four absolute priorities and two competitive preference priorities. All Early-phase applicants must address Absolute Priority 1. Early-phase applicants are also required to address one of the other three absolute priorities. Applicants have the option of addressing one or both competitive preference priorities and may opt to do so regardless of the absolute priority they select.

Absolute Priority 1—Demonstrates a Rationale establishes the evidence requirement for this tier of grants. All Early-phase applicants must submit prior evidence of effectiveness that demonstrates a rationale (as defined in this notice).

Absolute Priority 2—Field-Initiated Innovations—General allows applicants to propose projects that align with the purpose of the EIR program: To create and take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment.

Absolute Priority 3—Field-Initiated Innovations—Promoting Equity in Student Access to Educational Resources and Opportunities is intended to support innovations to improve student achievement and attainment in the science, technology, engineering, or mathematics (STEM) education field, consistent with efforts to ensure our Nation's economic competitiveness by improving and expanding STEM learning and engagement.

In Absolute Priority 3, the Department recognizes the importance of funding prekindergarten (Pre-K) through grade 12 STEM education and anticipates that projects would expand opportunities for high-need students. Within this absolute priority, applicants may focus on expanding opportunities in computer science for underrepresented students, such as students of color, girls, English learners, students with disabilities, youth from rural communities, and youth from families living at or below the poverty line, to help reduce the enrollment and achievement gaps in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws.

Absolute Priority 4—Field-Initiated Innovations—Meeting Student Social, Emotional, and Academic Needs is intended to promote high-quality social and emotional learning projects. Countless students have been exposed to trauma and disruptions in learning and have experienced disengagement from school and peers, negatively impacting their mental health and wellbeing. It is critical to provide support for students' social and emotional needs, not only to benefit student wellbeing, but also to support their academic success as student social, emotional, and academic development are interconnected.

Competitive Preference Priority 1 is intended to encourage applicants to propose projects that promote equity and adequacy in educational opportunity and outcomes.

Competitive Preference Priority 2 reflects the Administration's ongoing commitment to addressing the impact of the novel coronavirus 2019 (COVID–19) on Pre-K- grade 12 education. COVID–19 has caused unprecedented disruption in schools across the country and drawn renewed attention to the ongoing challenges for underserved students. In response to the pandemic, educators have mobilized and continue to work hard to address the needs of all students. Researchers, educators, parents, and policymakers are working to understand and address the impact of inconsistent access to instruction, enrichment, peers, and services and supports, and the impact of other related challenges.

We also know that for students in underserved communities, inequities in educational opportunity and outcomes existed prior to COVID–19. Those inequities have only been exacerbated by COVID–19. The impact of the COVID–19 pandemic changed the education landscape for the foreseeable future, especially as students continue to make up for lost classroom instruction. However, it also provides an opportunity to redesign how schools approach teaching and learning in ways that both address long-standing gaps in educational opportunity and better prepare students for college and careers.

The Department seeks projects that develop and evaluate evidence-based, field-initiated innovations to remedy the inequities in our country's education system. The proposed innovations should be designed to better enable students to access the educational opportunities they need to succeed in school and reach their full potential.

Through these priorities, the Department intends to advance innovation, build evidence, and address the learning and achievement of underserved and high-need students in Pre-K through grade 12.

Priorities: This notice includes four absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Absolute Priority 1 is from the notice of final priorities published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from section 4611(a)(1)(A) of the ESEA. In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priorities 3 and 4 are from section 4611(a)(1)(A) of the ESEA and the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities). The competitive preference priorities are from the Supplemental Priorities.

In the Early-phase grant competition, Absolute Priorities 2, 3, and 4 constitute their own funding categories. The Secretary intends to award grants under each of these absolute priorities provided that applications of sufficient quality are submitted. To ensure that applicants are considered for the correct type of grant, applicants must clearly identify the specific absolute priority that the proposed project addresses. If an entity is interested in proposing separate projects (*e.g.,* one that addresses Absolute Priority 2 and another that addresses Absolute Priority 3), it must submit separate applications.

Absolute Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1 and one additional absolute priority (Absolute Priority 2, Absolute Priority 3, or Absolute Priority 4).

These priorities are:

Absolute Priority 1—Applications that Demonstrate a Rationale.

Under this priority, an applicant proposes a project that demonstrates a rationale.

Absolute Priority 2—Field-Initiated Innovations—General.

Projects that are designed to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students.

Absolute Priority 3—Field-Initiated Innovations—Promoting Equity in Student Access to Educational Resources and Opportunities: STEM.

Projects that are designed to—

(a) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and

(b) Promote educational equity and adequacy in resources and opportunity for underserved students—

(1) In one or more of the following educational settings:

(i) Early learning programs.

(ii) Elementary school.

(iii) Middle school.

(iv) High school.

(v) Career and technical education programs.

(vi) Out-of-school-time settings.

(vii) Alternative schools and programs.

(viii) Juvenile justice system or correctional facilities; (2) That examine the sources of inequity and inadequacy and implement responses, including rigorous, engaging, and well-rounded (*e.g.,* that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including science, technology, engineering, and mathematics (STEM), including computer science coursework.

Absolute Priority 4—Field-Initiated Innovations— Meeting Student Social, Emotional, and Academic Needs.

Projects that are designed to—

(a) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and

(b) Improve students' social, emotional, academic, and career development, with a focus on underserved students, through one or more of the following priority areas:

(1) Developing and supporting educator and school capacity to support social and emotional learning and development that—

(i) Fosters skills and behaviors that enable academic progress;

(ii) Identifies and addresses conditions in the learning environment, that may negatively impact social and emotional well-being for underserved students, including conditions that affect physical safety; and

(iii) Is trauma-informed, such as addressing exposure to community-based violence and trauma specific to military- or veteran-connected students (as defined in this notice).

(2) Creating education or work-based settings that are supportive, positive, identity-safe and inclusive with regard to race, ethnicity, culture, language, and disability status, through one or more of the following activities:

(i) Developing trusting relationships between students (including underserved students), educators, families, and community partners.

(ii) Providing high-quality professional development opportunities designed to increase engagement and belonging and build asset-based mindsets for educators working in and throughout schools.

(iii) Engaging students (including underserved students), educators, families, and community partners from diverse backgrounds and representative of the community as partners in school climate review and improvement efforts.

(iv) Developing and implementing inclusive and culturally informed discipline policies and addressing disparities in school discipline policy by identifying and addressing the root causes of those disparities, including by involving educators, students, and families in decision-making about discipline procedures and providing training and resources to educators.

(v) Supporting students to engage in real-world, hands-on learning that is aligned with classroom instruction and takes place in community-based settings, such as apprenticeships, pre-apprenticeships, work-based learning, and service learning, and in civic activities, that allow students to apply their knowledge and skills, strengthen their employability skills, and access career exploration opportunities.

(3) Providing multi-tiered systems of supports that address learning barriers both in and out of the classroom, that enable healthy development and respond to students' needs and which may include evidence-based trauma-informed practices and professional development for educators on avoiding deficit-based approaches.

(4) Developing or implementing policies and practices, consistent with applicable Federal law, that prevent or reduce significant disproportionality on the basis of race or ethnicity with respect to the identification, placement, and disciplining of children or students with disabilities (as defined in this notice).

(5) Providing students equitable access that is inclusive, with regard to race, LGBTQI+, ethnicity, culture, language, and disability status, to social workers, psychologists, counselors, nurses, or mental health professionals and other integrated services and supports, which may include in early learning environments.

(6) Preparing educators to implement project-based or experiential learning opportunities for students to strengthen their metacognitive skills, self-direction, self-efficacy, competency, or motivation, including through instruction that: Connects to students' prior knowledge and experience; provides rich, engaging, complex, and motivating tasks; and offers opportunities for collaborative learning.

(7) Creating and implementing comprehensive schoolwide frameworks (such as small schools or learning communities, advisory systems, or looping educators) that support strong and consistent student and educator relationships.

(8) Fostering partnerships, including across government agencies (*e.g.,* housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education intuitions, to provide comprehensive services to students and families that support students' social,

emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 6 points to an application, depending on how well the application addresses the competitive preference priorities.

If an applicant chooses to address one or both competitive preference priorities, the applicant must identify in the project narrative section of its application its response to the competitive preference priorities it chooses to address.

These priorities are:

Competitive Preference Priority 1—Promoting Equity in Student Access to Educational Resources and Opportunities (up to 3 points).

Projects designed to promote educational equity and adequacy in resources and opportunity for underserved students in middle school or high school that examine the sources of inequity and inadequacy and implement responses, including rigorous, engaging, and well-rounded (*e.g.,* that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including one or more of the following:

(a) Student-centered learning models that may leverage technology to address learner variability (*e.g.,* universal design for learning (as defined in this notice), K–12 competency-based education (as defined in this notice), project-based learning, or hybrid/blended learning) and provide high-quality learning content, applications, or tools.

(b) Middle school courses or projects that prepare students to participate in advanced coursework in high school.

(c) Advanced courses and programs, including dual enrollment and early college programs.

(d) Project-based and experiential learning, including service and work-based learning.

(e) High-quality career and technical education courses, pathways, and industry-recognized credentials that are integrated into the curriculum.

Competitive Preference Priority 2—Addressing the Impact of COVID–19 on Students, Educators, and Faculty (up to 3 points).

Projects that are designed to address the impacts of the COVID–19 pandemic, including impacts that extend beyond the duration of the pandemic itself, on the students most impacted by the pandemic, with a focus on underserved students and the educators who serve them through—

(a) Conducting community asset-mapping and needs assessments that may include an assessment of the extent to which students, including subgroups of students, have become disengaged from learning, including students not participating in in-person or remote instruction, and specific strategies for reengaging and supporting students and their families; and

(b) Using evidence-based instructional approaches and supports, such as professional development, coaching, ongoing support for educators, high quality tutoring, expanded access to rigorous coursework and content across K–12, and expanded learning time to accelerate learning for students in ways that ensure all students have the opportunity to successfully meet challenging academic content standards without contributing to tracking or remedial courses.

Definitions: The definitions of ''baseline,'' ''demonstrates a rationale,'' ''evidence-based,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''nonprofit,'' ''performance measure,'' ''performance target,'' ''project component,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbooks (WWC Handbooks)'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''competency-based education,'' ''disconnected youth,'' ''early learning,'' ''educator,'' ''English learner,'' ''military- or veteran-connected student,'' ''underserved students,'' and ''universal design for learning'' are from the Supplemental Priorities. The definitions of ''local educational agency'' and ''State educational agency'' are from section 8101 of the ESEA.

Baseline means the starting point from which performance is measured and targets are set.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Competency-based education (also called proficiency-based or mastery-based learning) means learning based on knowledge and skills that are transparent and measurable. Progression is based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; (d) nonrelative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

Educator means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

English learner means an individual who is an English learner as defined in section 8101(20) of the ESEA, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group

that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks (as defined in this notice):

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (SEA) (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study (as defined in this notice) or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an

experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, and students in postsecondary education or career and technical education, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(p) A student performing significantly below grade level.

(q) A military- or veteran-connected student.

Universal design for learning has the meaning ascribed it in section 103(24) of the Higher Education Act of 1965, as amended.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbooks are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 7261.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Administrative Priorities. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $159,400,000.

These estimated available funds are the total available for new awards for all three types of grants under the EIR program (Early-phase, Mid-phase, and Expansion grants).

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards: Up to $4,000,000.

Maximum Award: We will not make an award exceeding $4,000,000 for a project period of 60 months. The Department intends to fund one or more projects under each of the EIR competitions, including Expansion (84.411A), Mid-phase (84.411B), and Early-phase (84.411C). Entities may submit applications for different projects for more than one competition (Early-phase, Mid-phase, and Expansion). The maximum new award amount a grantee may receive under these three competitions, taken together, is $15,000,000. If an entity is within funding range for multiple applications, the Department will award the highest scoring applications up to $15,000,000.

Estimated Number of Awards: 11–20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Note: Under section 4611(c) of the ESEA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the *Eligible Applicants* section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision and program requirement, the Department may fund high-quality applications from rural applicants out of rank order in the Early-phase competition.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) An SEA;

(c) The Bureau of Indian Education (BIE);

(d) A consortium of SEAs or LEAs;

(e) A nonprofit (as defined in this notice) organization; and

(f) An LEA, an SEA, the BIE, or a consortium described in clause (d), in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An IHE.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with an SEA; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (*https://nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes, and the Public School search tool (*https://nces.ed.gov/ccd/schoolsearch/*), where individual schools can be looked up to retrieve locale codes. More information on rural applicant eligibility is in the application package.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

In addition, any IHE is eligible to be a partner in an application submitted by an LEA, SEA, BIE, consortium of SEAs or LEAs, or a nonprofit organization. A private IHE that is a nonprofit organization may apply for an EIR grant. A nonprofit organization, such as a development foundation, that is affiliated with a public IHE may apply for a grant. A public IHE that has 501(c)(3) status would also qualify as a nonprofit organization and may apply for an EIR grant. A public IHE without 501(c)(3) status (even if that entity is tax exempt under Section 115 of the Internal Revenue Code or any other State or Federal provision), or that could not provide any other documentation of nonprofit status described in 34 CFR 75.51(b), however, would not qualify as a nonprofit organization, and therefore would not be eligible to apply for and receive an EIR grant.

2. a. *Cost Sharing or Matching:* Under section 4611(d) of the ESEA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions to the budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications.

Section 4611(d) of the ESEA authorizes the Secretary to waive the matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(i) The difficulty of raising matching funds for a program to serve a rural area;

(ii) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(A) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(B) Who are eligible for a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(C) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(D) Who are eligible to receive medical assistance under the Medicaid program; and

(iii) The difficulty of raising funds on Tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* a. *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant for which it applies (*i.e.,* Early-phase: Absolute Priority 2, Early-phase: Absolute Priority 3, or Early-phase: Absolute Priority 4). An applicant may not submit an application for the same proposed project under more than one type of grant (*e.g.,* both an Early-phase grant and Mid-phase grant).

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

b. *Evaluation:* The grantee must conduct an independent evaluation of the effectiveness of its project.

c. *High-need students:* The grantee must serve high-need students.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in SAM.gov a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for Early-phase grants, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your

application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative for an Early-phase grant to no more than 25 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. Applicants may access this form using the link available on the Notice of Intent to Apply section of the competition website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/fy-2022-competition/.* Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Early-phase competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 20 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (20 points)

B. *Quality of the Project Design (up to 30 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (10 points)

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(3) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (15 points)

C. *Quality of Project Personnel (up to 10 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel. (10 points)

D. *Quality of the Management Plan (up to 10 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

E. *Quality of the Project Evaluation (up to 30 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards with or without reservations as described in the What Works Clearinghouse Handbook (as defined in this notice). (20 points)

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

(3) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation. (5 points)

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view an optional webinar recording that was hosted by the Institute of Education Sciences. The webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC evidence standards without reservations. This webinar is available at: *https://ies.ed.gov/ncee/wwc/Multimedia/18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also

consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded Early-phase grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

Note: The evaluation report is a specific deliverable under an Early-phase grant that grantees must make available to the public. Additionally, EIR grantees are encouraged to submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (*http://eric.ed.gov*).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures (as defined in this notice) for the Early-phase grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations designed to provide performance feedback to inform project design; (4) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes; (5) the percentage of grantees that implement an evaluation that provides information about the key elements and the approach of the project so as to facilitate testing, development, or replication in other settings; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reach the targeted number of high-need students specified in the application; (3) the percentage of grantees that use evaluation data to make changes to their practice(s); (4) the percentage of grantees that implement a completed well-designed, well-implemented, and independent evaluation that provides evidence of their effectiveness at improving student outcomes; (5) the percentage of grantees with a completed evaluation that provides information about the key elements and the approach of the project so as to facilitate testing, development, or replication in other settings; and (6) the cost per student served by the grant.

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (as defined in this notice) consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

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

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

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

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BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research (EIR) Program—Expansion Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2022 for the EIR program—Expansion Grants, Assistance Listing Number 84.411A (Expansion Grants). This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: April 29, 2022.

Deadline for Notice of Intent to Apply: May 27, 2022.

Deadline for Transmittal of Applications: June 21, 2022.

Deadline for Intergovernmental Review: August 22, 2022.

Pre-Application Information: The Department will post additional competition information for prospective applicants on the EIR program website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/fy-2022-competition/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the

Federal Register on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phaseout of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Yvonne Crockett, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E344, Washington, DC 20202–5900. Telephone: (202) 401–8105. Email: *eir@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students and to rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially higher numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers: ''Early-phase,'' ''Mid-phase,'' and ''Expansion.''

''Early-phase,'' ''Mid-phase,'' and ''Expansion'' grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

Expansion grants are supported by strong evidence (as defined in this notice) for at least one population and setting, and grantees are encouraged to implement at the national level (as defined in this notice). Expansion grants provide funding for the implementation and rigorous evaluation of a program that has been found to produce sizable, significant impacts under a Mid-phase grant or other effort meeting similar criteria, for the purposes of (a) determining whether such impacts can be successfully reproduced and sustained over time; and (b) identifying the conditions in which the program is most effective.

This notice invites applications for Expansion grants only. The notices inviting applications for Early-phase and Mid-phase grants are published elsewhere in this issue of the **Federal Register**.

Background

While this notice is for the Expansion tier only, the premise of the EIR program is that new and innovative educational programs and practices can help to overcome the persistent and significant challenges to student success, particularly for underserved and high-need students.

Note: The EIR program statute refers to ''high-need students'' but allows applicants to define the term as it relates to the proposed project, population, and setting. In addressing the needs of underserved students, the statutory requirement for serving ''high-need students'' can also be addressed.

These innovations need to be evaluated, and, if sufficient evidence of effectiveness can be demonstrated, the intent is for these innovations to be replicated and tested in new populations and settings. EIR is not intended to provide support for practices that are already commonly implemented by educators, unless significant adaptations of such practices warrant testing to determine if they can accelerate achievement, or increase the likelihood that the practices can be widely, efficiently, and effectively implemented in new populations and settings.

As an EIR project is implemented, grantees are encouraged to learn more about how the practices improve student achievement and attainment and to develop increasingly rigorous evidence of effectiveness and new strategies to efficiently and cost-effectively scale to new school districts, regions, and States. We encourage applicants to develop a logic model, theory of action, or another conceptual framework that includes the goals, objectives, outcomes, and key project components (as defined in this notice) of the project that can support systems of continuous improvement.

Note: Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

All EIR applicants and grantees should also consider how they need to develop their organizational capacity, project financing, or business plans to sustain their projects and continue implementation and adaptation after Federal funding ends. The Department intends to provide grantees with technical assistance in their dissemination, scaling, and sustainability efforts.

Expansion projects are expected to scale practices that have prior evidence of effectiveness, in order to improve outcomes for high-need and underserved students. They are also expected to generate important information about an intervention's effectiveness, such as for whom and in which contexts a practice is most effective, including cost-effectiveness. Expansion projects are uniquely positioned to help answer critical questions about the process of scaling a practice to the national level (as defined in this notice) across geographies. Expansion grantees are encouraged to consider how the cost structure of a practice can change as the intervention scales. Additionally, grantees may want to consider multiple ways to facilitate implementation fidelity without making scaling too onerous.

Expansion applicants are encouraged to design an evaluation that has the potential to meet the strong evidence (as defined in this notice) threshold. Expansion grantees should measure the cost-effectiveness of their practices using administrative or other readily available data. These types of efforts are critical to sustaining and scaling EIR-funded effective practices after the EIR grant period ends, assuming that the practice has positive effects on important student outcomes. In order to support adoption or replication by other entities, the evaluation of an Expansion project should identify and codify the core elements of the EIR-supported practice that the project implements and examine the effectiveness of the project for any new populations or settings that are included in the project. The Department intends to provide grantees and their independent evaluators with

evaluation technical assistance. This evaluation technical assistance could include grantees and their independent evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation, with updates consistent with the scope and objectives of the approved application.

The FY 2022 Expansion grant competition includes two absolute priorities and two competitive preference priorities. Applicants have the option of addressing one or both competitive preference priorities.

Absolute Priority 1—Strong Evidence establishes the evidence requirement for this tier of grants. All Expansion applicants must submit prior evidence of effectiveness that meets the strong evidence standard.

Absolute Priority 2—Field-Initiated Innovations—General allows applicants to propose projects that align with the purpose of the EIR program: To create and take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment.

Through Competitive Preference Priority 1, the Department encourages applicants to propose projects that promote equity in educational opportunities and outcomes. Improving educational equity and adequacy is a priority for the Nation's education system, with particular emphasis on supporting underserved students.

Competitive Preference Priority 2 reflects the Administration's ongoing commitment to addressing the impact of the novel coronavirus 2019 (COVID–19) on prekindergarten (Pre-K)–grade 12 education. COVID–19 has caused unprecedented disruption in schools across the country and drawn renewed attention to the ongoing challenges for underserved students. In response to the pandemic, educators have mobilized and continue to address the needs of all students. Researchers and educators are now working to understand and address the impact of inconsistent access to instruction, services, and supports, and other challenges.

We also know that for students in underserved communities, inequities in educational opportunity and outcomes existed prior to COVID–19. Those inequities have only been exacerbated by COVID–19. The impact of the COVID–19 pandemic changed the education landscape for the foreseeable future, especially as students continue to make up for lost classroom instruction. However, it also provides an opportunity to redesign how schools approach teaching and learning in ways that both address long-standing gaps in educational opportunity and better prepare students for college and careers.

The Department seeks projects that develop and evaluate evidence-based, field-initiated innovations to remedy the inequities in our country's education system. The proposed innovations should be designed to better enable students to access the educational opportunities they need to succeed in school and reach their future goals.

Through these priorities, the Department intends to advance innovation, build evidence, and address the learning and achievement of underserved and high-need students in Pre-K through grade 12.

Priorities: This notice includes two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Absolute Priority 1 is from 34 CFR 75.226(d)(2). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from section 4611(a)(1)(A) of the ESEA. The competitive preference priorities are from the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both Absolute Priority 1 and Absolute Priority 2.

These priorities are:

Absolute Priority 1—Strong Evidence.

Projects supported by evidence that meets the conditions in the definition of ''strong evidence.''

Note: An applicant must identify up to four studies to be reviewed against the What Works Clearinghouse (WWC) Handbooks (as defined in this notice) for the purposes of meeting the definition of ''strong evidence.'' The studies may have been conducted by the applicant or by a third party. An applicant must clearly identify the citation for each study in the Evidence form. An applicant must ensure that all cited studies are available to the Department from publicly available sources and provide links or other guidance indicating where each is available. The Department may not review a study that an applicant fails to clearly identify for review.

In addition to including up to four study citations, an applicant must provide in the Evidence form the following information: (1) The positive student outcomes the applicant intends to replicate under its Expansion grant and how these outcomes correspond to the positive student outcomes in the cited studies; (2) the characteristics of the population to be served under its Expansion grant and how these characteristics correspond to the characteristics of the students in the cited studies; (3) the characteristics of the setting to be served under its Expansion grant and how these characteristics correspond to the settings in the cited studies; and (4) the practice(s) the applicant plans to implement under its Expansion grant and how the practice(s) correspond with the practice(s) in the cited studies.

If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC may submit a query to the study author(s) to gather information for use in determining a study rating. Authors would be asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study may be deemed ineligible under the grant competition. After the grant competition closes, the WWC will, for purposes of its own curation of studies, continue to include responses to author queries and make updates to study reviews as necessary. However, no additional information will be considered after the competition closes and the initial timeline established for response to an author query passes.

Absolute Priority 2—Field-Initiated Innovations—General.

Projects designed to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 6 points to an application, depending on how well the application addresses the competitive preference priorities.

If an applicant chooses to address one or both of the competitive preference

priorities, the applicant must identify in the project narrative section of its application the competitive preference priorities it chooses to address.

These priorities are:

Competitive Preference Priority 1—Promoting Equity in Student Access to Educational Resources and Opportunities (up to 3 points).

Projects designed to promote educational equity and adequacy in resources and opportunity for underserved students in middle school or high school that examine the sources of inequity and inadequacy and implement responses, including rigorous, engaging, and well-rounded (*e.g.,* that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including one or more of the following:

(a) Student-centered learning models that may leverage technology to address learner variability (*e.g.,* universal design for learning (as defined in this notice), K–12 competency-based education (as defined in this notice), project-based learning, or hybrid/blended learning) and provide high-quality learning content, applications, or tools.

(b) Middle school courses or projects that prepare students to participate in advanced coursework in high school.

(c) Advanced courses and programs, including dual enrollment and early college programs.

(d) Project-based and experiential learning, including service and work-based learning.

(e) High-quality career and technical education courses, pathways, and industry-recognized credentials that are integrated into the curriculum.

Competitive Preference Priority 2—Addressing the Impact of COVID–19 on Students, Educators, and Faculty (up to 3 points).

Projects that are designed to address the impacts of the COVID–19 pandemic, including impacts that extend beyond the duration of the pandemic itself, on the students most impacted by the pandemic, with a focus on underserved students and the educators who serve them through—

(a) Conducting community asset-mapping and needs assessments that may include an assessment of the extent to which students, including subgroups of students, have become disengaged from learning, including students not participating in in-person or remote instruction, and specific strategies for reengaging and supporting students and their families; and

(b) Using evidence-based instructional approaches and supports, such as professional development, coaching, ongoing support for educators, high quality tutoring, expanded access to rigorous coursework and content across K–12, and expanded learning time to accelerate learning for students in ways that ensure all students have the opportunity to successfully meet challenging academic content standards without contributing to tracking or remedial courses.

Definitions: The definitions of ''baseline,'' ''evidence-based,'' ''experimental study,'' ''strong evidence,'' ''national level,'' ''nonprofit,'' ''performance measure,'' ''performance target,'' ''project component,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbooks (WWC Handbooks)'' are from 34 CFR 77.1. The definitions of ''local educational agency'' and ''State educational agency'' are from section 8101 of the ESEA. The definitions of ''children or students with disabilities,'' ''competency-based education,'' ''disconnected youth,'' ''early learning,'' ''educator,'' ''English learner,'' ''military- or veteran-connected student,'' ''underserved students,'' and ''universal design for learning'' are from the Supplemental Priorities.

Baseline means the starting point from which performance is measured and targets are set.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Competency-based education (also called proficiency-based or mastery-based learning) means learning based on knowledge and skills that are transparent and measurable. Progression is based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; (d) non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

Educator means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

English learner means an individual who is an English learner as defined in section 8101(20) of the ESEA, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based means the proposed project component is supported by strong evidence.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks (as defined in this notice):

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any SEA (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement in this paragraph (iii)(D).

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, and students in postsecondary education or career and technical education, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(p) A student performing significantly below grade level.

(q) A military- or veteran-connected student.

Universal design for learning has the meaning ascribed it in section 103(24) of the Higher Education Act of 1965, as amended.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbooks are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: Section 4611 of the ESEA, 20 U.S.C. 7261.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $159,400,000.

These estimated available funds are the total available for new awards for all three types of grants under the EIR program (Early-phase, Mid-phase, and Expansion grants).

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards: Up to $15,000,000.

Maximum Award: We will not make an award exceeding $15,000,000 for a project period of 60 months. The Department intends to fund one or more projects under each of the EIR competitions, including Expansion (84.411A), Mid-phase (84.411B), and Early-phase (84.411C). Entities may submit applications for different projects for more than one competition (Early-phase, Mid-phase, and Expansion). The maximum new award amount a grantee may receive under these three competitions, taken together, is $15,000,000. If an entity is within funding range for multiple applications, the Department will award the highest scoring applications up to $15,000,000.

Estimated Number of Awards: 1–5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Note: Under section 4611(c) of the ESEA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the *Eligible Applicants* section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision and program requirement, the Department may fund high-quality applications from rural applicants out of rank order in the Expansion competition.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) An SEA;

(c) The Bureau of Indian Education (BIE);

(d) A consortium of SEAs or LEAs;

(e) A nonprofit (as defined in this notice) organization; and

(f) An LEA, an SEA, the BIE, or a consortium described in clause (d), in partnership with—

(1) A nonprofit organization;

(2) A business;

(3) An educational service agency; or

(4) An IHE.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with an SEA; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (*https://nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes, and the Public School search tool (*https://nces.ed.gov/ccd/schoolsearch/*), where individual schools can be looked up to retrieve locale codes. More information on rural applicant eligibility is in the application package.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

In addition, any IHE is eligible to be a partner in an application submitted by an LEA, SEA, BIE, consortium of SEAs or LEAs, or a nonprofit organization. A private IHE that is a nonprofit organization may apply for an EIR grant. A nonprofit organization, such as a

development foundation, that is affiliated with a public IHE may apply for a grant. A public IHE that has 501(c)(3) status would also qualify as a nonprofit organization and may apply for an EIR grant. A public IHE without 501(c)(3) status (even if that entity is tax exempt under Section 115 of the Internal Revenue Code or any other State or Federal provision), or that could not provide any other documentation of nonprofit status described in 34 CFR 75.51(b), however, would not qualify as a nonprofit organization, and therefore would not be eligible to apply for and receive an EIR grant.

2. a. *Cost Sharing or Matching:* Under section 4611(d) of the ESEA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions to the budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications.

Section 4611(d) of the ESEA authorizes the Secretary to waive the matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(i) The difficulty of raising matching funds for a program to serve a rural area;

(ii) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(A) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(B) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(C) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(D) Who are eligible to receive medical assistance under the Medicaid program; and

(iii) The difficulty of raising funds on Tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* a. *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant (*e.g.,* both an Expansion grant and Mid-phase grant).

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

b. *Evaluation:* The grantee must conduct an independent evaluation of the effectiveness of its project.

c. *High-need students:* The grantee must serve high-need students.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for Expansion grants, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative for an Expansion grant to no more than 35 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the

letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. Applicants may access this form using the link available on the Notice of Intent to Apply section of the competition website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/fy-2022-competition/.* Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Expansion competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 15 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The national significance of the proposed project. (5 points)

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(3) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies. (5 points)

B. *Strategy to Scale (up to 35 points).*

The Secretary considers the applicant's strategy to scale the proposed project. In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application. (10 points)

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(3) The applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in 34 CFR 77.1(c)) working directly, or through partners, during the grant period. (10 points)

(4) The mechanisms the applicant will use to broadly disseminate information on its project so as to support further development or replication. (10 points)

C. *Quality of the Project Design (up to 15 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (5 points)

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(3) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

D. *Quality of the Project Evaluation (up to 35 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards without reservations as described in the What Works Clearinghouse Handbook (as defined in 34 CFR 77.1(c)). (20 points)

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (5 points)

(3) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation. (5 points)

(4) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view an optional webinar recording that was hosted by the Institute of Education Sciences. The webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC evidence standards without reservations. This webinar is available at: *https://ies.ed.gov/ncee/wwc/Multimedia/18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management

system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

Note: The evaluation report is a specific deliverable under an Expansion grant that grantees must make available to the public. Additionally, EIR grantees are encouraged to submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (*http://eric.ed.gov*).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures (as defined in this notice) for the Expansion grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees that implement an evaluation that provides information about the key practices and the approach of the project so as to facilitate replication; (5) the percentage of grantees that implement an evaluation that provides information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reach the targeted number of high-need students specified in the application; (3) the percentage of grantees that implement a completed well-designed, well-implemented, and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (4) the percentage of grantees with a completed well-designed, well-implemented, and independent evaluation that provides information about the key elements and the approach of the project so as to

facilitate replication or testing in other settings; (5) the percentage of grantees with a completed evaluation that provided information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (as defined in this notice) consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

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

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

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

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BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Innovation and Research (EIR) Program—Mid-Phase Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2022 for the EIR program—Mid-phase Grants, Assistance Listing Number 84.411B (Mid-phase Grants). This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: April 29, 2022.

Deadline for Notice of Intent to Apply: May 27, 2022.

Deadline for Transmittal of Applications: June 21, 2022.

Deadline for Intergovernmental Review: August 22, 2022.

Pre-Application Information: The Department will post additional competition information for prospective applicants on the EIR program website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/fy-2022-competition/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phaseout of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Yvonne Crockett, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E344, Washington, DC 20202–5900. Telephone: (202) 453–7122. Email: *eir@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The EIR program, established under section 4611 of the Elementary and Secondary Education Act, as amended (ESEA), provides

funding to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and to rigorously evaluate such innovations. The EIR program is designed to generate and validate solutions to persistent education challenges and to support the expansion of those solutions to serve substantially higher numbers of students.

The central design element of the EIR program is its multi-tier structure that links the amount of funding an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project, with the expectation that projects that build this evidence will advance through EIR's grant tiers: ''Early-phase,'' ''Mid-phase,'' and ''Expansion.''

''Early-phase,'' ''Mid-phase,'' and ''Expansion'' grants differ in terms of the level of prior evidence of effectiveness required for consideration for funding, the expectations regarding the kind of evidence and information funded projects should produce, the level of scale funded projects should reach, and, consequently, the amount of funding available to support each type of project.

Mid-phase grants are supported by moderate evidence (as defined in this notice). Mid-phase grants provide funding for the implementation and rigorous evaluation of a program that has been successfully implemented under an Early-phase grant or other effort meeting similar criteria, for the purpose of measuring the program's impact and cost-effectiveness, if possible using existing administrative data.

This notice invites applications for Mid-phase grants only. The notices inviting applications for Early-phase and Expansion grants are published elsewhere in this issue of the **Federal Register**.

Background

While this notice is for the Mid-phase tier only, the premise of the EIR program is that new and innovative educational programs and practices can help to overcome the persistent and significant challenges to student success, particularly for underserved and high-need students.

Note: The EIR program statute refers to ''high-need students'' but allows applicants to define the term as it relates to the proposed project, population, and setting. In addressing the needs of underserved students, the statutory requirement for serving ''high-need students'' can also be addressed.

These innovations need to be evaluated, and, if sufficient evidence of effectiveness can be demonstrated, the intent is for these innovations to be replicated and tested in new populations and settings. EIR is not intended to provide support for practices that are already commonly implemented by educators, unless significant adaptations of such practices warrant testing to determine if they can accelerate achievement or increase the likelihood that the practices can be widely, efficiently, and effectively implemented in new populations and settings.

As an EIR project is implemented, grantees are encouraged to learn more about how the practices improve student achievement and attainment and to develop increasingly rigorous evidence of effectiveness and new strategies to efficiently and cost-effectively scale to new school districts, regions, and States. We encourage applicants to develop a logic model, theory of action, or another conceptual framework that includes the goals, objectives, outcomes, and key project components (as defined in this notice) of the project that can support systems of continuous improvement.

Note: Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships.

All EIR applicants and grantees should also consider how they need to develop their organizational capacity, project financing, or business plans to sustain their projects and continue implementation and adaptation after Federal funding ends. The Department intends to provide grantees with technical assistance in their dissemination, scaling, and sustainability efforts.

Mid-phase projects are expected to refine and expand the use of practices with prior evidence of effectiveness in order to improve outcomes for high-need and underserved students. They are also expected to generate important information about an intervention's effectiveness, such as for whom and in which contexts a practice is most effective, including cost-effectiveness. Mid-phase projects are uniquely positioned to help answer critical questions about the process of scaling a practice to the regional or national levels (as defined in this notice) across geographies. Mid-phase grantees are encouraged to consider how the cost structure of a practice can change as the intervention scales. Additionally, grantees may want to consider multiple ways to facilitate implementation fidelity without making scaling too onerous.

Mid-phase applicants are encouraged to design an evaluation that has the potential to meet the strong evidence (as defined in this notice) threshold. Mid-phase grantees should measure the cost-effectiveness of their practices using administrative or other readily available data. These types of efforts are critical to sustaining and scaling EIR-funded effective practices after the EIR grant period ends, assuming that the practice has positive effects on important student outcomes. In order to support adoption or replication by other entities, the evaluation of a Mid-phase project should identify and codify the core elements of the EIR-supported practice that the project implements and examine the effectiveness of the project for any new populations or settings that are included in the project. The Department intends to provide grantees and their independent evaluators with evaluation technical assistance. This evaluation technical assistance could include grantees and their independent evaluators providing to the Department or its contractor updated comprehensive evaluation plans in a format as requested by the technical assistance provider and using such tools as the Department may request. Grantees will be encouraged to update this evaluation plan at least annually to reflect any changes to the evaluation, with updates consistent with the scope and objectives of the approved application.

The FY 2022 Mid-phase competition includes four absolute priorities and two competitive preference priorities. All Mid-phase applicants must address Absolute Priority 1. Mid-phase applicants are also required to address one of the other three absolute priorities. Applicants have the option of addressing one or both competitive preference priorities and may opt to do so regardless of the absolute priority they select.

Absolute Priority 1—Moderate Evidence establishes the evidence requirement for this tier of grants. All Mid-phase applicants must submit prior evidence of effectiveness that meets the moderate evidence standard.

Absolute Priority 2—Field-Initiated Innovations—General allows applicants to propose projects that align with the purpose of the EIR program: To create and take to scale entrepreneurial, evidence-based, field-initiated

innovations to improve student achievement and attainment.

Absolute Priority 3—Field-Initiated Innovations—Promoting Equity in Student Access to Educational Resources and Opportunities is intended to support innovations to improve student achievement and attainment in the science, technology, engineering, or mathematics (STEM) education field, consistent with efforts to ensure our Nation's economic competitiveness by improving and expanding STEM learning and engagement.

In Absolute Priority 3, the Department recognizes the importance of funding prekindergarten (Pre-K) through grade 12 STEM education and anticipates that projects would expand opportunities for high-need students. Within this absolute priority, applicants may focus on expanding opportunities in computer science for underrepresented students such as students of color, girls, English Learners, students with disabilities, youth from rural communities, and youth from families living at or below the poverty line, to help reduce the enrollment and achievement gaps in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws.

Absolute Priority 4—Field-Initiated Innovations—Meeting Student Social, Emotional, and Academic Needs is intended to promote high-quality social and emotional learning projects. Countless students have been exposed to trauma and disruptions in learning and have experienced disengagement from school and peers, negatively impacting their mental health and wellbeing. It is critical to provide support for students' social and emotional needs, not only to benefit students wellbeing, but also to support their academic success as student social, emotional, and academic development are interconnected.

Competitive Preference Priority 1 is intended to encourage applicants to propose projects that promote equity and adequacy in educational opportunity and outcomes.

Competitive Preference Priority 2 reflects the Administration's ongoing commitment to addressing the impact of the novel coronavirus 2019 (COVID–19) on Pre-K–grade 12 education. COVID–19 has caused unprecedented disruption in schools across the country and drawn renewed attention to the ongoing challenges for underserved students. In response to the pandemic, educators have mobilized and continue to work hard to address the needs of all students. Researchers, educators, parents, and policymakers are working to understand and address the impact of inconsistent access to instruction, enrichment, peers, and services and supports, and the impact of other related challenges.

We also know that for students in underserved communities, inequities in educational opportunity and outcomes existed prior to COVID–19. Those inequities have only been exacerbated by COVID–19. The impact of the COVID–19 pandemic changed the education landscape for the foreseeable future, especially as students continue to make up for lost classroom instruction. However, it also provides an opportunity to redesign how schools approach teaching and learning in ways that both address long-standing gaps in educational opportunity and better prepare students for college and careers.

The Department seeks projects that develop and evaluate evidence-based, field-initiated innovations to remedy the inequities in our country's education system. The proposed innovations should be designed to better enable students to access the educational opportunities they need to succeed in school and reach their future full potential.

Through these priorities, the Department intends to advance innovation, build evidence, and address the learning and achievement of underserved and high-need students in Pre-K through grade 12.

Priorities: This notice includes four absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Absolute Priority 1 is from 34 CFR 75.226(d)(2). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from section 4611(a)(1)(A) of the ESEA. In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priorities 3 and 4 are from section 4611(a)(1)(A) of the ESEA and the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities). The competitive preference priorities are from the Supplemental Priorities.

In the Mid-phase grant competition, Absolute Priorities 2, 3, and 4 constitute their own funding categories. The Secretary intends to award grants under each of these absolute priorities provided that applications of sufficient quality are submitted. To ensure that applicants are considered for the correct type of grant, applicants must clearly identify the specific absolute priority that the proposed project addresses. If an entity is interested in proposing separate projects (*e.g.,* one that addresses Absolute Priority 2 and another that addresses Absolute Priority 3), it must submit separate applications.

Absolute Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priority 1—Moderate Evidence, and one additional absolute priority (Absolute Priority 2, Absolute Priority 3, or Absolute Priority 4).

These priorities are:

Absolute Priority 1—Moderate Evidence.

Projects supported by evidence that meets the conditions in the definition of ''moderate evidence.''

Note: An applicant must identify up to two studies to be reviewed against the What Works Clearinghouse (WWC) Handbooks (as defined in this notice) for the purposes of meeting the definition of ''moderate evidence.'' The studies may have been conducted by the applicant or by a third party. An applicant must clearly identify the citations for each study in the Evidence form. An applicant must ensure that all cited studies are available to the Department from publicly available sources and provide links or other guidance indicating where each is available. The Department may not review a study that an applicant fails to clearly identify for review.

In addition to including up to two study citations, an applicant must provide in the Evidence form the following information: (1) The positive student outcomes the applicant intends to replicate under its Mid-phase grant and how these outcomes correspond to the positive student outcomes in the cited studies; (2) the characteristics of the population or setting to be served under its Mid-phase grant and how these characteristics correspond to the characteristics of the population or setting in the cited studies; and (3) the practice(s) the applicant plans to implement under its Mid-phase grant and how the practice(s) correspond with the practice(s) in the cited studies.

If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC may submit a query to the study author(s) to gather information for use in determining a study rating.

Authors would be asked to respond to queries within 10 business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study may be deemed ineligible under the grant competition. After the grant competition closes, the WWC will, for purposes of its own curation of studies, continue to include responses to author queries and make updates to study reviews as necessary. However, no additional information will be considered after the competition closes and the initial timeline established for response to an author query passes.

Absolute Priority 2—Field-Initiated Innovations—General.

Projects that are designed to create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students.

Absolute Priority 3—Field-Initiated Innovations—Promoting Equity in Student Access to Educational Resources and Opportunities: STEM.

Projects that are designed to—

(a) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and

(b) Promote educational equity and adequacy in resources and opportunity for underserved students—

(1) In one or more of the following educational settings:

(i) Early learning programs.

(ii) Elementary school.

(iii) Middle school.

(iv) High school.

(v) Career and technical education programs.

(vi) Out-of-school-time settings.

(vii) Alternative schools and programs.

(viii) Juvenile justice system or correctional facilities;

(2) That examine the sources of inequity and inadequacy and implement responses, including rigorous, engaging, and well-rounded (*e.g.,* that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including science, technology, engineering, and mathematics (STEM), including computer science coursework.

Absolute Priority 4—Field-Initiated Innovations—Meeting Student Social, Emotional, and Academic Needs.

Projects that are designed to—

(a) Create, develop, implement, replicate, or take to scale entrepreneurial, evidence-based, field-initiated innovations to improve student achievement and attainment for high-need students; and

(b) Improve students' social, emotional, academic, and career development, with a focus on underserved students, through one or more of the following priority areas:

(1) Developing and supporting educator and school capacity to support social and emotional learning and development that—

(i) Fosters skills and behaviors that enable academic progress;

(ii) Identifies and addresses conditions in the learning environment, that may negatively impact social and emotional well-being for underserved students, including conditions that affect physical safety; and

(iii) Is trauma-informed, such as addressing exposure to community-based violence and trauma specific to military- or veteran-connected students (as defined in this notice).

(2) Creating education or work-based settings that are supportive, positive, identity-safe and inclusive with regard to race, ethnicity, culture, language, and disability status, through one or more of the following activities:

(i) Developing trusting relationships between students (including underserved students), educators, families, and community partners.

(ii) Providing high-quality professional development opportunities designed to increase engagement and belonging and build asset-based mindsets for educators working in and throughout schools.

(iii) Engaging students (including underserved students), educators, families, and community partners from diverse backgrounds and representative of the community as partners in school climate review and improvement efforts.

(iv) Developing and implementing inclusive and culturally informed discipline policies and addressing disparities in school discipline policy by identifying and addressing the root causes of those disparities, including by involving educators, students, and families in decision-making about discipline procedures and providing training and resources to educators.

(v) Supporting students to engage in real-world, hands-on learning that is aligned with classroom instruction and takes place in community-based settings, such as apprenticeships, pre-apprenticeships, work-based learning, and service learning, and in civic activities, that allow students to apply their knowledge and skills, strengthen their employability skills, and access career exploration opportunities.

(3) Providing multi-tiered systems of supports that address learning barriers both in and out of the classroom, that enable healthy development and respond to students' needs and which may include evidence-based trauma-informed practices and professional development for educators on avoiding deficit-based approaches.

(4) Developing or implementing policies and practices, consistent with applicable Federal law, that prevent or reduce significant disproportionality on the basis of race or ethnicity with respect to the identification, placement, and disciplining of children or students with disabilities (as defined in this notice).

(5) Providing students equitable access that is inclusive, with regard to race, LGBTQI+, ethnicity, culture, language, and disability status, to social workers, psychologists, counselors, nurses, or mental health professionals and other integrated services and supports, which may include in early learning environments.

(6) Preparing educators to implement project-based or experiential learning opportunities for students to strengthen their metacognitive skills, self-direction, self-efficacy, competency, or motivation, including through instruction that: Connects to students' prior knowledge and experience; provides rich, engaging, complex, and motivating tasks; and offers opportunities for collaborative learning.

(7) Creating and implementing comprehensive schoolwide frameworks (such as small schools or learning communities, advisory systems, or looping educators) that support strong and consistent student and educator relationships.

(8) Fostering partnerships, including across government agencies (*e.g.,* housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education intuitions, to provide comprehensive services to students and families that support students' social, emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 6 points to an application, depending on how well the application addresses the competitive preference priorities.

If an applicant chooses to address one or both competitive preference priorities, the applicant must identify in the project narrative section of its application its response to the competitive preference priorities it chooses to address.

These priorities are:

Competitive Preference Priority 1—Promoting Equity in Student Access to Educational Resources and Opportunities (up to 3 points).

Projects designed to promote education equity and adequacy in resources and opportunity for underserved students in middle school or high school that examine the sources of inequity and inadequacy and implement responses, including rigorous, engaging, and well-rounded (*e.g.,* that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including one or more of the following:

(a) Student-centered learning models that may leverage technology to address learner variability (*e.g.,* universal design for learning (as defined in this notice), K–12 competency-based education (as defined in this notice), project-based learning, or hybrid/blended learning) and provide high-quality learning content, applications, or tools.

(b) Middle school courses or projects that prepare students to participate in advanced coursework in high school.

(c) Advanced courses and programs, including dual enrollment and early college programs.

(d) Project-based and experiential learning, including service and work-based learning.

(e) High-quality career and technical education courses, pathways, and industry-recognized credentials that are integrated into the curriculum.

Competitive Preference Priority 2—Addressing the Impact of COVID–19 on Students, Educators, and Faculty (up to 3 points).

Projects that are designed to address the impacts of the COVID–19 pandemic, including impacts that extend beyond the duration of the pandemic itself, on the students most impacted by the pandemic, with a focus on underserved students and the educators who serve them through—

(a) Conducting community asset-mapping and needs assessments that may include an assessment of the extent to which students, including subgroups of students, have become disengaged from learning, including students not participating in in-person or remote instruction, and specific strategies for reengaging and supporting students and their families; and

(b) Using evidence-based instructional approaches and supports, such as professional development, coaching, ongoing support for educators, high quality tutoring, expanded access to rigorous coursework and content across K–12, and expanded learning time to accelerate learning for students in ways that ensure all students have the opportunity to successfully meet challenging academic content standards without contributing to tracking or remedial courses.

Definitions: The definitions of ''baseline,'' ''evidence-based,'' ''experimental study,'' ''moderate evidence,'' ''national level,'' ''nonprofit,'' ''performance measure,'' ''performance target,'' ''project component,'' ''quasi-experimental design study,'' ''regional level,'' ''relevant outcome,'' ''strong evidence,'' and ''What Works Clearinghouse Handbooks (WWC Handbooks)'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''competency-based education,'' ''disconnected youth,'' ''early learning,'' ''educator,'' ''English learner,'' ''military- or veteran-connected student,'' ''underserved students,'' and ''universal design for learning'' are from the Supplemental Priorities. The definitions of ''local educational agency'' and ''State educational agency'' are from section 8101 of the ESEA.

Baseline means the starting point from which performance is measured and targets are set.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Competency-based education (also called proficiency-based or mastery-based learning) means learning based on knowledge and skills that are transparent and measurable. Progression is based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; (d) nonrelative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

Educator means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

English learner means an individual who is an English learner as defined in section 8101(20) of the ESEA, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based means the proposed project component is supported by one or more of strong evidence or moderate evidence.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks (as defined in this notice):

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured

variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any SEA (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study (as defined in this notice) or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Regional level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process,

product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the SEA is the sole educational agency for all schools.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, and students in postsecondary education or career and technical education, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(p) A student performing significantly below grade level.

(q) A military- or veteran-connected student.

Universal design for learning has the meaning ascribed it in section 103(24) of the Higher Education Act of 1965, as amended.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbooks are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 7261.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $159,400,000.

These estimated available funds are the total available for new awards for all three types of grants under the EIR program (Early-phase, Mid-phase, and Expansion grants).

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Average Size of Awards: Up to $8,000,000.

Maximum Award: We will not make an award exceeding $8,000,000 for a project period of 60 months. The Department intends to fund one or more projects under each of the EIR competitions, including Expansion (84.411A), Mid-phase (84.411B), and Early-phase (84.411C). Entities may submit applications for different projects for more than one competition (Early-phase, Mid-phase, and Expansion). The maximum new award amount a grantee may receive under these three competitions, taken together, is $15,000,000. If an entity is within funding range for multiple applications, the Department will award the highest scoring applications up to $15,000,000.

Estimated Number of Awards: 5–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Note: Under section 4611(c) of the ESEA, the Department must use at least 25 percent of EIR funds for a fiscal year to make awards to applicants serving

rural areas, contingent on receipt of a sufficient number of applications of sufficient quality. For purposes of this competition, we will consider an applicant as rural if the applicant meets the qualifications for rural applicants as described in the *Eligible Applicants* section and the applicant certifies that it meets those qualifications through the application.

In implementing this statutory provision and program requirement, the Department may fund high-quality applications from rural applicants out of rank order in the Mid-phase competition.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA;

(b) An SEA;

(c) The Bureau of Indian Education (BIE);

(d) A consortium of SEAs or LEAs;

(e) A nonprofit organization; and

(f) An LEA, an SEA, the BIE, or a consortium described in clause (d), in partnership with—

(1) A nonprofit (as defined in this notice) organization;

(2) A business;

(3) An educational service agency; or

(4) An IHE.

To qualify as a rural applicant under the EIR program, an applicant must meet both of the following requirements:

(a) The applicant is—

(1) An LEA with an urban-centric district locale code of 32, 33, 41, 42, or 43, as determined by the Secretary;

(2) A consortium of such LEAs;

(3) An educational service agency or a nonprofit organization in partnership with such an LEA; or

(4) A grantee described in clause (1) or (2) in partnership with an SEA; and

(b) A majority of the schools to be served by the program are designated with a locale code of 32, 33, 41, 42, or 43, or a combination of such codes, as determined by the Secretary.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (*https://nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes, and the Public School search tool (*https://nces.ed.gov/ccd/schoolsearch/*), where individual schools can be looked up to retrieve locale codes. More information on rural applicant eligibility is in the application package.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

In addition, any IHE is eligible to be a partner in an application submitted by LEA, SEA, BIE, consortium of SEAs or LEAs, or a nonprofit organization. A private IHE that is a nonprofit organization may apply for an EIR grant. A nonprofit organization, such as a development foundation, that is affiliated with a public IHE may apply for a grant. A public IHE that has 501(c)(3) status would also qualify as a nonprofit organization and may apply for an EIR grant. A public IHE without 501(c)(3) status (even if that entity is tax exempt under Section 115 of the Internal Revenue Code or any other State or Federal provision), or that could not provide any other documentation of nonprofit status described in 34 CFR 75.51(b), however, would not qualify as a nonprofit organization, and therefore would not be eligible to apply for and receive an EIR grant.

2.a. *Cost Sharing or Matching:* Under section 4611(d) of the ESEA, each grant recipient must provide, from Federal, State, local, or private sources, an amount equal to 10 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. Grantees must include a budget showing their matching contributions to the budget amount of EIR grant funds and must provide evidence of their matching contributions for the first year of the grant in their grant applications.

Section 4611(d) of the ESEA authorizes the Secretary to waive the matching requirement on a case-by-case basis, upon a showing of exceptional circumstances, such as:

(i) The difficulty of raising matching funds for a program to serve a rural area;

(ii) The difficulty of raising matching funds in areas with a concentration of LEAs or schools with a high percentage of students aged 5 through 17—

(A) Who are in poverty, as counted in the most recent census data approved by the Secretary;

(B) Who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(C) Whose families receive assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); or

(D) Who are eligible to receive medical assistance under the Medicaid program; and

(iii) The difficulty of raising funds on Tribal land.

Applicants that wish to apply for a waiver must include a request in their application that describes why the matching requirement would cause serious hardship or an inability to carry out project activities. Further information about applying for waivers can be found in the application package.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* a. *Funding Categories:* An applicant will be considered for an award only for the type of EIR grant for which it applies (*i.e.,* Mid-phase: Absolute Priority 2, Mid-phase: Absolute Priority 3, or Mid-phase: Absolute Priority 4). An applicant may not submit an application for the same proposed project under more than one type of grant (*e.g.,* both an Early-phase grant and Mid-phase grant).

Note: Each application will be reviewed under the competition it was submitted under in the *Grants.gov* system, and only applications that are successfully submitted by the established deadline will be peer reviewed. Applicants should be careful that they download the intended EIR application package and that they submit their applications under the intended EIR competition.

b. *Evaluation:* The grantee must conduct an independent evaluation of the effectiveness of its project.

c. *High-need students:* The grantee must serve high-need students.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for Mid-phase grants, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative for a Mid-phase grant to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. Applicants may access this form using the link available on the Notice of Intent to Apply section of the competition website: *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/innovation-early-learning/education-innovation-and-research-eir/fy-2022-competition/.* Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Mid-phase competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 15 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The national significance of the proposed project. (5 points)

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(3) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies. (5 points)

B. *Strategy to Scale (up to 35 points).*

The Secretary considers the applicant's strategy to scale the proposed project. In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application. (10 points)

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(3) The applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in 34 CFR 77.1(c)) working directly, or through partners, during the grant period. (10 points)

(4) The mechanisms the applicant will use to broadly disseminate information on its project so as to support further development or replication. (10 points)

C. *Quality of the Project Design (up to 15 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (5 points)

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(3) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs

of the target population or other identified needs. (5 points)

D. *Quality of the Project Evaluation (up to 35 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards without reservations as described in the What Works Clearinghouse Handbook (as defined in 34 CFR 77.1(c)). (20 points)

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (5 points)

(3) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation. (5 points)

(4) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbooks: *https://ies.ed.gov/ncee/wwc/Handbooks;* (2) ''Technical Assistance Materials for Conducting Rigorous Impact Evaluations'': *http://ies.ed.gov/ncee/projects/evaluationTA.asp;* and (3) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view an optional webinar recording that was hosted by the Institute of Education Sciences. The webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing experimental studies that meet WWC evidence standards without reservations. This webinar is available at: *https://ies.ed.gov/ncee/wwc/Multimedia/18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department

grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

Note: The evaluation report is a specific deliverable under a Mid-phase grant that grantees must make available to the public. Additionally, EIR grantees are encouraged to submit final studies resulting from research supported in whole or in part by EIR to the Educational Resources Information Center (*http://eric.ed.gov*).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures (as defined in this notice) for the Mid-phase grants.

Annual performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of grantees that reach their annual target number of high-need students as specified in the application; (3) the percentage of grantees with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes in multiple contexts; (4) the percentage of grantees that implement an evaluation that provides information about the key practices and the approach of the project so as to facilitate replication; (5) the percentage of grantees that implement an evaluation that provides information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Cumulative performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of grantees that reach the targeted number of high-need students specified in the application; (3) the percentage of grantees that implement a completed, well-designed, well-implemented, and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (4) the percentage of grantees with a completed well-designed, well-implemented, and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; (5) the percentage of grantees with a completed evaluation that provided information on the cost-effectiveness of the key practices to identify potential obstacles and success factors to scaling; and (6) the cost per student served by the grant.

Project-Specific Performance Measures: Applicants must propose project-specific performance measures and performance targets (as defined in this notice) consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline (as defined in this notice) data. (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) Data collection and reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official

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

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

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2022–09085 Filed 4–26–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability and Solicitation of Public Comment on the Draft Implementation Guidance Pertaining to the Extended Product System Rebate Program and Energy Efficient Transformer Rebate Program

AGENCY: Manufacturing and Supply Chains Office, Department of Energy.

ACTION: Notice of availability of draft guidance and solicitation of public comment.

SUMMARY: The U.S. Department of Energy (DOE) announces the notice of availability (NOA) and invites public comment on two draft guidance documents implementing the extended product system rebate program, and the energy efficient transformer rebate program of the Energy Act of 2020, as authorized by the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL).

DATES: Comments on this draft guidance must be received by May 27, 2022.

ADDRESSES: Comments on this draft guidance must be provided in writing. Interested parties are to submit their written comments electronically to *EPS_EET_rebates@ee.doe.gov* and include either ''Extended Product System Rebate Program'' or ''Energy Efficient Transformer Rebate Program'' in the subject line of the email. Email attachments can be provided as a Microsoft Word (.docx) file or an Adobe PDF (.pdf) file, prepared in accordance with the detailed instructions in the NOA. Documents submitted electronically should clearly indicate which topic areas and specific questions are being addressed and should be limited to no more than 25 MB in size. The complete NOA and Draft Implementation Guidance document is located at *https://www.energy.gov/eere/buildings/draft-implementation-guidance-pertaining-extended-product-system-rebate-program-and.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, (202) 287–1779, *Ashley.Armstrong@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The draft guidance documents address sections 1005 and 1006 of the Energy Act of 2020, which direct DOE to establish rebate programs for extended product systems and energy efficient transformers. The draft guidance documents provide information as to how DOE is considering implementing the rebate programs, including definitions, eligibility criteria, eligibility window, rebate payment calculations, and application content requirements and process, and solicit feedback on key items.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority: This document of the Department of Energy was signed on April 20, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 22, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–08930 Filed 4–26–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–40–000]

Public Service Company of New Mexico; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 21, 2022, the Commission issued an order in Docket No. EL22–40–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Public Service Company of New Mexico's formula rate protocols are unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. *Public Service Company of New Mexico,* 179 FERC ¶ 61,056 (2022).

The refund effective date in Docket No. EL22–40–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–40–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08965 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–37–000]

Idaho Power Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 21, 2022, the Commission issued an order in Docket No. EL22–37–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Idaho Power Company's formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Idaho Power Company,* 179 FERC ¶ 61,054 (2022).

The refund effective date in Docket No. EL22–37–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–37–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08961 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–41–000]

Puget Sound Energy, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 21, 2022, the Commission issued an order in Docket No. EL22–41–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Puget Sound Energy, Inc.'s formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Puget Sound Energy, Inc.,* 179 FERC ¶ 61,055 (2022).

The refund effective date in Docket No. EL22–41–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–41–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *https://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08942 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 309–072]

Brookfield Renewable Power Piney & Deep Creek, LLC Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment Application Requesting to close Piney Park during construction activities.

b. *Project No:* 309–072.

c. *Date Filed:* April 7, 2022.

d. *Applicant:* Brookfield Renewable Power Piney & Deep Creek, LLC.

e. *Name of Project:* Piney Hydroelectric Project.

f. *Location:* The project is located on the Clarion River in Clarion County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Adam C. Slowik, Compliance Specialist, Brookfield Renewable, 482 Old Holtwood Road, Holtwood, PA 17532, (717) 284–6218, *adam.slowik@brookfieldrenewable.com.*

i. *FERC Contact:* Mary Karwoski, (678) 245–3027, *mary.karwoski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 23, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–309–072. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a variance from Article 405 which requires, in part, the licensee to operate and maintain the Piney Park recreation site. The licensee is planning to temporarily close Pine Park from May 2022 through November 2023 to facilitate the construction of gate and hoist modifications on the project dam. The licensee intends to use the lower parking area as a staging and for construction access. The temporary closure of Piney Park is required due to the single entrance/exit to the area and for public safety. The licensee will post signage, as well as notify the local Chamber of Commerce, directing the public to nearby Clarion County Park.

l. *Locations of the Application:* This filing 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08970 Filed 4–26–22; 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: RP22–833–000.

Applicants: Southwest Gas Transmission Company, A Limited Partnership.

Description: Compliance filing: Pre-File Settlement in Lieu of Rate Filing to be effective April 1, 2022 to be effective N/A.

Filed Date: 4/20/22.

Accession Number: 20220420–5172.

Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–834–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate and Non-Conforming Agreement Clean Up to be effective 5/21/2022.

Filed Date: 4/21/22.

Accession Number: 20220421–5086.

Comment Date: 5 p.m. ET 5/3/22.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08962 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–8–000]

Transmission Planning and Cost Management; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference regarding transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes in the above-captioned proceeding on October 6, 2022, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time.

The technical conference will explore measures to ensure sufficient transparency into and cost effectiveness of local and regional transmission planning decisions, including: (1) The role of cost management measures in ensuring the cost effective identification of local transmission needs (*e.g.,* planning criteria) and solutions to address identified local transmission and regional reliability-related transmission needs; and (2) cost considerations and the processes through which transmission developers recover their costs to ensure just and reasonable transmission rates. The technical conference will also consider potential approaches to providing enhanced cost management measures and greater transparency and oversight if needed to ensure just and reasonable transmission rates, such as a role for an independent transmission monitor to the extent it is consistent with the Commission's authority.

Specific topics for discussion at the technical conference may include: (1) How transmission owners establish local transmission planning criteria and use their local transmission planning criteria to identify local transmission needs, and the effectiveness of cost management, transparency, and oversight measures in those processes; (2) how public utility transmission providers identify transmission projects in local and regional reliability transmission planning processes; and (3) whether enhanced cost management, transparency, and oversight measures over: (a) Local and regional transmission planning processes, (b) the costs transmission owners expend on transmission facilities, (c) and the recovery of those costs through rates could help to ensure just and reasonable transmission rates.

Individuals interested in participating as panelists should submit a self-nomination email by 5:00 p.m. Eastern Time on June 16, 2022, to *john.riehl@ferc.gov.* Each nomination should state the proposed panelist's name, contact information, organizational affiliation, and what topics the proposed panelist would speak on.

The technical conference will be open to the public and there is no fee for attendance. An additional supplemental notice will be issued with further details regarding the technical conference agenda and logistics, as well as any changes in timing. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The workshop will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the workshop via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact John Riehl at *john.riehl@ferc.gov* or (202) 502–6026. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov or* (202) 502–8368.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08964 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–39–000]

Public Service Company of Colorado; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 21, 2022, the Commission issued an order in Docket No. EL22–39–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Public Service Company of Colorado's formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Public Service Company of Colorado,* 179 FERC ¶ 61,057 (2022).

The refund effective date in Docket No. EL22–39–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–39–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room

1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08974 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–38–000]

PacifiCorp; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 21, 2022, the Commission issued an order in Docket No. EL22–38–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether PacifiCorp's formula rate protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *PacifiCorp,* 179 FERC ¶ 61,053 (2022).

The refund effective date in Docket No. EL22–38–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–38–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08960 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–51–004.

Applicants: T. ROWE PRICE GROUP, INC.

Description: Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act of T. Rowe Price Group, Inc., et al.

Filed Date: 4/21/22.

Accession Number: 20220421–5205.

Comment Date: 5 p.m. ET 5/12/22.

Docket Numbers: EC22–53–000.

Applicants: GC PGR Holdco, LLC, Beulah Solar, LLC, Centerfield Cooper Solar, LLC, Highest Power Solar, LLC, Lick Creek Solar, LLC, Peony Solar, LLC, PGR 2020 Lessee 8, LLC, PGR 2021 Lessee 1, LLC, PGR 2021 Lessee 2, LLC, PGR 2021 Lessee 5, LLC, PGR 2021 Lessee 7, LLC, PGR Lessee L, LLC, PGR Lessee O, LLC, Stanly Solar, LLC, Sugar Solar, LLC, Trent River Solar, LLC, Trent River Solar Mile Lessee, LLC, TWE Bowman Solar Project, LLC.

Description: Amendment to April 15, 2022 Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Consideration of GC PGR Holdco, LLC.

Filed Date: 4/18/22.

Accession Number: 20220418–5533.

Comment Date: 5 p.m. ET 5/9/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–105–000.

Applicants: Walleye Wind, LLC.

Description: Walleye Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/20/22.

Accession Number: 20220420–5290.

Comment Date: 5 p.m. ET 5/11/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–686–008.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Correction to Amended Compliance Filing in OATT Settlement to be effective 3/26/2020.

Filed Date: 4/21/22.

Accession Number: 20220421–5171.

Comment Date: 5 p.m. ET 5/12/22.

Docket Numbers: ER22–1464–000.

Applicants: EnerSmart Murray BESS LLC.

Description: Report Filing: Supplement to Market-Based Rate Application to be effective N/A.

Filed Date: 4/19/22.

Accession Number: 20220419–5195.

Comment Date: 5 p.m. ET 5/10/22.

Docket Numbers: ER22–1666–000.

Applicants: Parkway Generation Essex, LLC, Parkway Generation Operating LLC.

Description: Petition for Limited Waiver of Parkway Generation Essex, LLC, et al.

Filed Date: 4/20/22.

Accession Number: 20220420–5326.

Comment Date: 5 p.m. ET 5/11/22.

Docket Numbers: ER22–1667–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2022–04–21 PSC–TSGT–COM-Reunion Sub-586–0.0.0-Concurrence to be effective 4/18/2022.

Filed Date: 4/21/22.

Accession Number: 20220421–5112.

Comment Date: 5 p.m. ET 5/12/22.

Docket Numbers: ER22–1668–000.

Applicants: Northern Indiana Public Service Company LLC.

Description: § 205(d) Rate Filing: Amendment to NIPSCO–AEP Indiana Dark Fiber Lease to be effective 3/21/2022.

Filed Date: 4/21/22.

Accession Number: 20220421–5222.

Comment Date: 5 p.m. ET 5/12/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08963 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–298]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

Pacific Gas and Electric Company's (PG&E) 9.959-megawatt Potter Valley Project No. 77 is located on the Eel and East Fork Russian Rivers in Lake and Mendocino Counties, California. The license for the Potter Valley Project was issued to PG&E for a period ending April 14, 2022.

Section 15(a)(1) of the Federal Power Act (FPA), 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for the Potter Valley Project is issued to PG&E for a period effective April 15, 2022, through April 14, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 14, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PG&E is authorized to continue operation of the Potter Valley Project, until such time as the Commission orders disposition of the project.

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08941 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10821–005]

Pacific Gas and Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license for the Camp Far West Transmission Line Project, and has prepared an Environmental Assessment (EA) for the project. As proposed, the project would be located in Placer and Yuba Counties, California and would occupy 2.3 acres of tribal land managed by the U.S. Department of the Interior, Bureau of Indian Affairs (Auburn Off-Reservation Land Trust) and 10.9 acres managed by the U.S. Department of Defense (Beale Air Force Base).

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA 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 (*e.g.,* P–10821). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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–10821–005.

For further information, contact Quinn Emmering at (202) 502–6382 or by email at *quinn.emmering@ferc.gov.*

Dated: April 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08971 Filed 4–26–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0223; FRL–9694–01–OCSPP]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of the products listed in Table 1 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a February 24, 2022, **Federal Register** Notice of Receipt of Requests from the registrant listed in Table 2 of Unit II to voluntarily cancel these product registrations. In the February 24, 2022, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrant withdrew their request. The Agency received three incomplete anonymous public comments on the notice, but none merited its further review of the requests. Further, the registrant did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective April 27, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0223, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1744.

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.*

II. What action is the Agency taking?

This notice announces the cancellation, as requested by the registrant, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
7969–430	7969	Tirexor Herbicide Technical	Trifludimoxazin.
7969–432	7969	Tirexor Herbicide	Trifludimoxazin.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
7969	BASF Corporation, Division Name: Agricultural Products, 26 Davis Drive, Research Triangle Park, NC 27709–3528.

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received three anonymous public comments on the notice; however, the comments were incomplete. For these reasons, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are the subject of this notice is April 27, 2022.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of February 24, 2022 (87 FR 10360) (FRL–9600–01–OCSPP). The comment period closed on March 28, 2022.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. For this voluntary cancellation request, the registrant indicates that the products listed in Table 1 of Unit II are not in the channels of trade because they were never commercialized in the United States. Therefore, no existing stocks provision is needed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 18, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2022–08939 Filed 4–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0316; FRL–9809–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Agricultural Worker Protection Standard Training, Notification and Recordkeeping (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Agricultural Worker Protection Standard Training, Notification and Recordkeeping (EPA ICR Number 2491.06, OMB Control Number 2070–0190) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2022. Public comments were previously requested via the **Federal Register** on August 3, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 27, 2022.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OPP–2021–0316, online using *www.regulations.gov* (our preferred method), by email to *siu.carolyn@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Mission Support Division, Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency (Mailcode: 7101M), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1205; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This Information Collection Request (ICR) estimates the recordkeeping and third-party response burden of paperwork activities that covers the information collection requirements contained in the Worker Protection Standard (WPS) regulations at 40 CFR part 170. Agricultural employers and commercial pesticide handling establishments (CPHEs) are responsible for providing required training, notifications and information to their employees to ensure worker and handler safety. The WPS regulation includes training for workers and handlers, posting of pesticide-treated areas, providing additional information for workers before they enter a pesticide-treated area while a restricted entry interval (REI) is in effect, access to more general and application-specific information about pesticides used on the establishment, and recordkeeping of training.

Form Numbers: None.

Respondents/affected entities: Employers of agricultural establishments, including employers in farms, nursery, forestry, and greenhouse establishments.

Respondent's obligation to respond: Mandatory under 40 CFR 170.

Estimated number of respondents: 865,555 (total).

Frequency of response: Annually or on occasion, depending on the activity.

Total estimated burden: 10,188,669 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $480,131,806 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is a decrease of 259,491 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decline in the number of respondents (farms and employees) since the last Census of Agriculture. This change is an adjustment.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–09006 Filed 4–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0111; FRL–9810–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (EPA ICR Number 2028.11, OMB Control Number 2060–0551), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested via the **Federal Register** on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 27, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0111, online using *https://www.regulations.gov/* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the 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 EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is: 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD) apply to existing and new industrial, commercial, and institutional boilers and process heaters located at major sources of HAP. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: 5900–559.

Respondents/affected entities: Existing and new industrial, commercial, and institutional boilers and process heaters located at major sources of HAP.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart DDDDD).

Estimated number of respondents: 2,302 (total).

Frequency of response: Initially, semiannually, annually.

Total estimated burden: 410,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $118,000,000 (per year), which includes $69,900,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to several considerations. There is growth in portions of this industry (biomass-fired and gas-fired boilers), but decreases in other portions of the industry (coal-fired and liquid-fired boilers) due to shutdowns. The number of existing large solid-fired (coal and biomass) boilers, existing large liquid-fired boilers, existing large Gas 2 boilers, and new large biomass boilers were updated using CEDRI December 2020 data and the data collected during the proposed rule. These changes have resulted in an overall increase in the number of respondents. These changes have also resulted in decreases in the overall capital/startup or operation and maintenance (O&M) costs, as the majority of new sources (gas-fired boilers) have no capital/startup costs. Also, the regulations have not changed over the past three years. An amendment to these regulations was proposed in 2020, but has not been finalized. Changes in burden due to that amendment have not been included in this ICR. One minor error in the calculations for the previously-approved ICR (2028.09) has been corrected. The number of existing and small limited use solid fuel units conducting a biennial tune-up has been adjusted to account for the correct number of average annual respondents expected.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–09007 Filed 4–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9798–01–R1]

2022 Spring Joint Meeting of the Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the joint 2022 Spring Meeting of the Ozone Transport Commission (OTC) and the Mid-Atlantic Northeast Visibility Union (MANE–VU). The meeting agenda will include topics regarding reducing ground-level ozone precursors and matters relevant to regional haze and

visibility improvement in Federal Class I areas in a multi-pollutant context.

DATES: The meeting will be held on June 2, 2022 starting at 9:30 a.m. and ending at 12:00 p.m.

ADDRESSES: Crowne Plaza Princeton Conference Center, 900 Scudders Mill Road, Plainsboro, NJ 08536, (609) 936–4200.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 89 South Street, Suite 602, Boston, MA 02111, (617) 259–2005; email: *ozone@otcair.org;* website: *https://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR), which is currently comprised of the States of Connecticut, Delaware, parts of Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia, and the District of Columbia. The purpose of the OTC is to address ground-level ozone formation, transport, and control within the OTR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed at in 2001 in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, and the St. Regis Mohawk Tribe, along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (617) 259–2005; by email: *ozone@otcair.org* or via the OTC website at *https://www.otcair.org.*

Dated: April 21, 2022.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–08980 Filed 4–26–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 83571]

Sunshine Act Meetings: Deletion of Items From April 21, 2022 Open Meeting

April 20, 2022.

The following items were released by the Commission on April 19, 2022 and deleted from the list of items scheduled for consideration at the Thursday, April 21, 2022, Open Meeting. These items were previously listed in the Commission's Sunshine Notice on Thursday, April 14, 2022.

3	MEDIA	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.
4	MEDIA	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Marlene Dortch,

Secretary.

[FR Doc. 2022–09059 Filed 4–25–22; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0001; –0178]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0001 and –0178).

DATES: Comments must be submitted on or before June 27, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collection of information:*

1. *Title:* Interagency Charter and Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Form Number: 6200–05.

Affected Public: Banks or Savings Associations wishing to become FDIC insured depository institutions.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0001]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Interagency Charter and Federal Deposit Insurance Application.	Reporting (Mandatory) ...	On Occasion	20	1	125	2,500

Source: FDIC.

General Description of Collection: The Federal Deposit Insurance Act requires financial institutions to apply to the FDIC to obtain deposit insurance. This collection provides FDIC with the information needed to evaluate the applications.

There is no change in the method or substance of the collection. The decrease in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

2. *Title:* Market Risk Capital Requirements.

OMB Number: 3064–0178.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

Information collection description	Type of burden	Frequency of response	Estimated number of respondents	Estimated number of responses per respondent	Estimated time per response (hours)	Estimated annual burden (hours)
Identification of Trading Positions (IC–1)	Recordkeeping	Annual	1	1	40	40
Trading and Hedging Strategies (IC–2)	Recordkeeping	Annual	1	1	16	16
Active Management of Covered Positions (IC–3)	Recordkeeping	Annual	1	1	16	16
Prior Written Approval to Use Internal Models (IC–4)	Reporting	Annual	1	1	8	8
Documentation of Internal Models and Other Activities (IC–5).	Recordkeeping	Annual	1	1	24	24
Prior Approval for Certain Capital Standards (IC–6)	Reporting	Annual	1	1	8	8
Demonstrate Appropriateness of Proxies (IC–7)	Recordkeeping	Annual	1	1	8	8
Retention of Subportfolio Information (IC–8)	Recordkeeping	Annual	1	1	24	24
Stressed VaR-based Measure Quantitative Requirements (IC–9).	Recordkeeping & Reporting.	Semiannual	1	4	40	160
Incremental Risk Modeling Prior Approval (IC–10)	Reporting	Quarterly	1	4	480	1,920
Comprehensive Risk Measurement Prior Approval (IC–11).	Reporting	Quarterly	1	4	480	1,920
Recordkeeping for Stress Tests (IC–12)	Recordkeeping	Quarterly	1	4	8	32
Demonstrate Understanding of Securitization Positions and Performance (IC–13).	Recordkeeping	Periodically	1	100	2	200
Disclosure Policy (IC–14)	Recordkeeping	Annual	1	1	40	40
Quantitative Market Risk Disclosures (IC–15)	Third-Party Disclosure	Quarterly	1	4	8	32
Qualitative Market Risk Disclosures (IC–16)	Third-Party Disclosure	Annual	1	1	12	12
Total Annual Burden Hours						4,460

General Description of Collection: The FDIC's market risk capital rules (12 CFR part 324, subpart F) enhance risk sensitivity, increase transparency through enhanced disclosures and include requirements for the public disclosure of certain qualitative and quantitative information about the market risk of state nonmember banks and state savings associations (covered FDIC-supervised institutions). The market risk rule applies only if a bank holding company or bank has aggregated trading assets and trading liabilities equal to 10 percent or more of quarter-end total assets or $1 billion or more (covered FDIC-supervised institutions). Currently, only one FDIC regulated entity meets the criteria of the information collection requirements that are located at 12 CFR 324.203 through 324.212. The collection of information is necessary to ensure capital adequacy appropriate for the level of market risk. Section 324.203(a)(1) requires covered FDIC-supervised institutions to have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and specifies the factors a covered FDIC-supervised institution must take into account in drafting those policies and procedures. Section 324.203(a)(2) requires covered FDIC supervised institutions to have clearly defined trading and hedging strategies for trading positions that are approved by senior management and specifies what the strategies must articulate. Section 324.203(b)(1) requires covered FDIC-supervised institutions to have clearly defined policies and procedures for actively managing all covered positions and specifies the minimum requirements for those policies and procedures. Sections 324.203(c)(4) through 324.203(c)(10) require the annual review of internal models and specify certain requirements for those models. Section 324.203(d) requires the internal audit group of a covered FDIC supervised institution to prepare an annual report to the board of directors on the effectiveness of controls supporting the market risk measurement systems. Section 324.204(b) requires covered FDIC-supervised institutions to conduct quarterly back testing. Section 324.205(a)(5) requires institutions to demonstrate to the FDIC the appropriateness of proxies used to capture risks within value-at-risk models. Section 324.205(c) requires institutions to develop, retain, and make available to the FDIC value-at-risk and profit and loss information on sub portfolios for two years. Section 324.206(b)(3) requires covered FDIC supervised institutions to have policies and procedures that describe how they determine the period of significant financial stress used to calculate the institution's stressed value-at-risk models and to obtain prior FDIC approval for any material changes to

these policies and procedures. Section 324.207(b)(1) details requirements applicable to a covered FDIC-supervised institution when the covered FDIC-supervised institution uses internal models to measure the specific risk of certain covered positions. Section 324.208 requires covered FDIC-supervised institutions to obtain prior written FDIC approval for including equity positions in its incremental risk modeling. Section 324.209(a) requires prior FDIC approval for the use of a comprehensive risk measure. Section 324.209(c)(2) requires covered FDIC-supervised institutions to retain and report the results of supervisory stress testing. Section 324.210(f)(2)(i) requires covered FDIC supervised institutions to document an internal analysis of the risk characteristics of each securitization position in order to demonstrate an understanding of the position. Section 324.212 applies to certain covered FDIC supervised institutions that are not subsidiaries of bank holding companies, and requires quarterly quantitative disclosures, annual qualitative disclosures, and a formal disclosure policy approved by the board of directors that addresses the approach for determining the market risk disclosures it makes.

Relative to the 2019 information collection request (ICR), the set of information collections (ICs) included in the above burden estimates has been revised. A detailed review of the 18 ICs included in the 2019 ICR showed that seven of the ICs appear inconsistent with the requirements in subpart F or potentially repeat other identified PRA requirements in subpart F. Those seven ICs have been deleted from the set of ICs retained in this renewal.[1] Additionally, a detailed review of subpart F found five provisions that require covered institutions to conduct third-party disclosure, recordkeeping, or reporting and were not included in the 2019 ICR. The PRA requirements of these five provisions have been introduced as ICs in the burden estimate above.[2] Lastly, a review of the 2019 Supporting Statement for the Federal Reserve's approved information collection (OMB No. 7100–0314) for its Market Risk Capital Requirements regulations (12 CFR 217 subpart F) shows that the OMB No. 7100–0314 list of ICs corresponds with the modified set of ICs in this renewal, and would therefore promote consistency among how the banking agencies estimate the PRA burden for the market risk capital rule.[3]

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 21, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–08916 Filed 4–26–22; 8:45 am]

BILLING CODE 6714–01–P

[1] The ICs deleted from the 2019 ICR are: IC 4—Review of internal models; IC 5—Internal audit report; IC 6—Backtesting adjustments to risk-based capital ratio calculations; IC 10—Modeled specific risk; IC 13—Requirements of stress testing; IC 14—Securitization position; IC 17—Quantitative disclosures for each portfolio of covered positions (IC numbers refer to those in the 2019 ICR memo).

[2] The newly-introduced ICs are: IC 4—Prior approval to use internal models (324.203(c)(1)); IC 5—Documentation of internal models and other activities (324.203(f)); IC 6—Prior approval for certain capital standards (324.204(a)(2)(vi)(B)); IC 12—Recordkeeping for stress tests (324.209(c)(2)); and IC 13—Demonstrate understanding of securitization positions (324.210(f)(1)).

[3] *See https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=7100-0314.*

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201382.

Agreement Name: Volkswagen Konzernlogistik GmbH & Co. OHG/EPS Chartering (UK) Limited Space Charter Agreement.

Parties: Volkswagen Konzernlogistik GmbH & Co. OHG and EPS Chartering (UK) Limited.

Filing Party: Ashley Craig; Venable LLP.

Synopsis: The Agreement authorizes the parties to charter space to each other in the trades between the U.S. East and Gulf Coasts, on one hand, and ports in Mexico, Canada, and Germany, on the other hand.

Proposed Effective Date: 4/14/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/61515.

Agreement No.: 201383.

Agreement Name: Hyundai Glovis/Liberty Space Charter Agreement.

Parties: Hyundai Glovis Co., Ltd. and Liberty Global Logistics LLC.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to charter space to each other in all U.S. trades.

Proposed Effective Date: 6/2/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/61518.

Agreement No.: 201384.

Agreement Name: Hyundai Glovis/Liberty Korea Space Charter Agreement.

Parties: Hyundai Glovis Co., Ltd. and Liberty Global Logistics LLC.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to charter space to/from one another in the trade between Korea and the Pacific Coast of the United States.

Proposed Effective Date: 4/19/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/61516.

Dated: April 21, 2022.

William Cody,

Secretary.

[FR Doc. 2022–08917 Filed 4–26–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL TRADE COMMISSION

[File No. 211 0131]

American Securities Partners/Ferro; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 27, 2022.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''American Securities Partners/Ferro; File No. 211 0131'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Wilensky (202–326–2650), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 23, 2022. Write ''American Securities Partners/Ferro; File No. 211 0131'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''American Securities Partners/Ferro; File No. 211 0131'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before May 27, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from American Securities Partners VII, L.P. (''American Securities''), Prince International Corporation (''Prince''), and Ferro Corporation (''Ferro'') that is designed to remedy the anticompetitive effects resulting from Prince's acquisition of Ferro. Pursuant to an agreement dated May 11, 2021, American Securities proposes to acquire Ferro in a transaction valued at approximately $2.1 billion (the ''Proposed Acquisition''). The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the following the markets: (1) Porcelain enamel frit; (2) glass enamel; and (3) forehearth colorants. The Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be eliminated by the Proposed Acquisition.

Under the terms of the proposed Decision and Order (''Order''), Respondents are required to divest all of Prince's rights and assets related to the following three plants: (1) The porcelain enamel and forehearth colorants plant located in Leesburg, Alabama; (2) the porcelain enamel and forehearth colorants plant located in Bruges, Belgium; and (3) the glass enamel plant located in Cambiago, Italy. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture plant in the normal course of business until the

products are ultimately divested. The Commission also issued the Order to Maintain Assets.

The Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the Consent Agreement, along with the comments received, to make a final decision as to whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

II. The Respondents

Respondent American Securities Partners VII, L.P. (''American Securities'') is a private equity firm headquartered in New York, New York. Respondent Prince International Corporation (''Prince'') is a wholly owned subsidiary of American Securities. Prince manufactures a variety of chemicals, minerals, and industrial additives, including porcelain enamel frit, glass enamel, and forehearth colorant. Prince is headquartered in Houston, Texas. Respondent Ferro Corporation (''Ferro'') manufactures a variety of functional coatings and color solutions, including porcelain enamel frit, glass enamel, and forehearth colorant. Ferro is headquartered in Mayfield, Ohio.

III. The Products and Structure of the Markets

Porcelain enamel frit is a glass-based product used to create heat resistant, scratch and corrosion resistant coatings (porcelain enamel) for appliances, water heaters, cookware, and other applications. Porcelain enamel frit is necessary to make porcelain enamel coating. There are no good substitutes for porcelain enamel coating in the various applications in which it is used. Prince supplies its U.S. customers from a plant in Leesburg, Alabama while Ferro suppliers its U.S. customers from a plant in Villagran, Mexico. North America is the relevant geographic area in which to assess the competitive effects of the Proposed Acquisition in porcelain enamel frit. The North American market for porcelain enamel frit is highly concentrated. Respondents have a dominant combined share of sales of the overall North American market for porcelain enamel frit and an even higher share of the sales of the non-captive, merchant North American market for porcelain enamel frit. Almost all the porcelain enamel frit production capacity in North America outside of that owned by Respondents is possessed by competitors who use it internally and consequently little if any is sold to merchant customers.

Glass enamel is a liquid paste or powder that is added to glass surfaces, such as appliance doors, architectural panels, and glass bottles, for aesthetic purposes, such as adding color or decoration; and to automotive windshields, for functional purposes, such as blocking UV light. There are no good substitutes for glass enamel in the various applications in which it is used. Prince supplies its U.S. customers from a plant in Cambiago, Italy while Ferro suppliers its U.S. customers from a plant in Villagran, Mexico. The world is the relevant geographic area in which to assess the competitive effects of the Proposed Acquisition in glass enamel. The world market for glass enamel is highly concentrated, with the two leading producers, Ferro and Fenzi Holdings SPV S.p.A (''Fenzi''), having a dominant combined market share. Prince is the third largest competitor.

Forehearth colorants are glass-based powders added to the forehearths of glass furnaces during the manufacture of glass bottles to impart a specific color to bottles. There is no good substitute for forehearth colorants. Prince supplies its U.S. forehearth colorants customers from a plant in Bruges, Belgium and further processes the product at Leesburg, Alabama, while Ferro supplies its U.S. customers from a plant in Villagran, Mexico and further processes the product at Orrville, Ohio. The world is the relevant geographic area in which to assess the competitive effects of the Proposed Acquisition in forehearth colorants. The world market for forehearth colorants is highly concentrated. Ferro and Prince are the two largest producers of forehearth colorants in the world, with a dominant combined market share.

IV. Entry

Entry into the three markets at issue would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. Constructing a new plant and acquiring approvals at customer accounts is costly and lengthy.

V. Competitive Effects

The Proposed Acquisition will eliminate competition between Prince and Ferro and likely allow the merged firm to unilaterally increase the price in the North American market for porcelain enamel frit and in the world market for forehearth colorants. The Proposed Acquisition will eliminate Prince as an independent competitor in the world market for glass enamel. By removing Prince, the third large competitor in the world and the firm most likely to expand market share in the United States, the Proposed Acquisition decreases the likelihood of future price competition and increases the likelihood of coordination between the merged firm and its largest competitor, Fenzi.

VI. The Proposed Order and the Order To Maintain Assets

The proposed Order and the Order to Maintain Assets effectively remedy the competitive concerns raised by the Proposed Acquisition for the three relevant products at issue. Pursuant to the proposed Order, the parties are required to divest Prince's rights and assets related to the three relevant products to KPS Capital Partners, L.P. (''KPS''). The parties must accomplish these divestitures no later than 10 days after Prince consummates the Proposed Acquisition. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. KPS is a capable purchaser with management and employees who have experience acquiring and improving industrial assets resulting from corporate carve-outs, including those resulting from U.S. Department of Justice and Federal Trade Commission consent decrees. It will be able to replicate the competition otherwise lost from the Proposed Acquisition.

The proposed Order contains several provisions to help ensure that the divestitures are successful. The proposed Order requires Prince to provide transitional services to KPS to assist it in establishing its back-office capabilities.

Under the proposed Order, the Commission also will appoint a Monitor to ensure that Prince complies with its obligations under the proposed Order and Order to Maintain Assets. The Commission has appointed Smith & Williamson as the Monitor. Smith & Williamson is a leading UK accountancy firm with over 1,800 UK employees and has 17 years of experience acting as a monitor trustee. Smith & Williamson has prior monitoring experience in divestitures ordered by both the Commission and the European Commission (''EC''). The EC also has approved Smith & Williamson as the Monitor in this matter.

In addition to requiring plant divestitures, the proposed Order requires Respondent American Securities to obtain prior approval from the Commission before acquiring assets for the manufacture and sale of products in any of the three relevant markets for ten years. The prior approval provision is necessary because an acquisition of assets for the manufacture and sale of products in any of the three relevant markets likely would raise the same competitive concerns as the Acquisition. The proposed Order further requires KPS to obtain prior approval from the Commission for a period of three years before transferring any of the divested assets to any buyer, and for a period of seven additional years to any buyer with an interest in assets for the manufacture and sale of products in any of the three relevant markets.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–09003 Filed 4–26–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Challenge Competition: Announcement of AHRQ Challenge on Innovative Solutions to Update or Re-Create TeamSTEPPS Videos

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking to announce a challenge competition to modernize TeamSTEPPS® video content; the videos are an integral part of AHRQ's TeamSTEPPS training program. TeamSTEPPS is an evidence-based set of tools aimed at improving patient outcomes by improving communication and teamwork among the members of healthcare teams. This challenge competition will be completed in two phases, with cash prizes awarded at the end of Phase 2.

DATES: *Phase 1 Submission Deadline* on June 20, 2022 and *Phase 2 Submission Deadline* on October 31, 2022.

ADDRESSES: Submit your responses electronically via: *https://www.ahrq.gov/challenges/teamstepps-video/index.html.*

FOR FURTHER INFORMATION CONTACT: Monika Haugstetter, Health Scientist Administrator, Email: *TeamSTEPPSChallenge@ahrq.hhs.gov,* Telephone: 301–427–1515.

SUPPLEMENTARY INFORMATION:

Problem Statement

The Agency for Healthcare Research and Quality (AHRQ), U.S. Department of Health and Human Services (HHS), is announcing a challenge competition to modernize TeamSTEPPS® video content; the videos are an integral part of AHRQ's TeamSTEPPS training program. The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010. TeamSTEPPS is an evidence-based set of tools aimed at improving patient outcomes by improving communication and teamwork among the members of healthcare teams.

Communication gaps among healthcare professionals are linked to poor patient safety outcomes. Conversely, effective teamwork, collaboration, and active communication are considered essential to safer healthcare. Strengthening teamwork and communication among healthcare personnel is a key initiative within the patient safety domain and can transform the culture of safety within healthcare. The TeamSTEPPS training program offers a plethora of methods to build team skills and improve teamwork in healthcare. The training videos are an important tool to demonstrate those methods and how they can be used to achieve the best possible outcomes.

For more than 15 years, the TeamSTEPPS curriculum has been widely used by the healthcare industry in various settings (including hospitals, outpatient clinics, nursing homes, and surgery centers). Medical and nursing schools routinely teach the TeamSTEPPS curricula as part of their core courses, and a variety of healthcare institutions and organizations promote TeamSTEPPS principles and techniques in their efforts to create skilled and cohesive teams. Several years have passed since many of the TeamSTEPPS videos were developed or last revised. In a fast-paced environment such as healthcare, this is a substantial amount of time. With advancements in health information technology, changes in how care is delivered, and an increased emphasis on engaging patients and families as members of the healthcare team, many of the current TeamSTEPPS videos need to be updated to align more closely with current clinical practice, standards of care, and improved methods of adult training and education.

Challenge Goal

Healthcare has evolved and advanced since the original TeamSTEPPS videos were created, and many of the current TeamSTEPPS videos no longer meet current healthcare setting needs. AHRQ plans to replace their content to capture the innovations and practices observed in the healthcare landscape today.

This AHRQ Challenge seeks innovators to update the current TeamSTEPPS videos to provide improved TeamSTEPPS tools for communication and collaboration among healthcare team members.

All existing TeamSTEPPS videos currently on the AHRQ website may be considered for updating.

This Challenge consists of two phases:

Phase 1: Elicit written proposals on innovatively modernizing current TeamSTEPPS videos in an equitable, culturally sensitive, and health literate manner (*e.g.,* including diverse patients and providers, choice of clinical topics that affect diverse populations, modeling plain language). Each proposal is to be written in the form of a narrative story or a plan that briefly provides details about how to update an applicable TeamSTEPPS video topic, including video style, type of graphics, use of live or animated actors and/or narrator, and music, and plans for audience testing.

An organization may choose to update between 1 and 3 TeamSTEPPS video topics, submitting a separate proposal for each one. Each proposal will be considered and evaluated on its own merit. Organizations may wish to consider the following while deciding on which video(s) to select for refreshing: 1. The organization deems a video or videos to be of most urgency to update and 2. the organization has experience in that particular area. A total of 10 proposals will be selected as winners for Phase 1.

Phase 2: Organizations selected as winners in Phase 1 will be invited to produce a replacement for the existing TeamSTEPPS video identified in their proposal. Examples of products to consider that may replace a TeamSTEPPS video include animation videos, motion graphics videos, whiteboard videos, live action videos,

live action screencast, or video showcases. This is not an exhaustive list; innovative ideas of how to apply TeamSTEPPS training strategies appropriate for a healthcare environment are encouraged. Each video shall be up to 5 minutes in length. Each video shall be accompanied by a short debrief guide—a series of prompts to the learners who watch the video—in written format to support learners in adopting new practices. The debrief guide may include, for example, questions about how the learner would have handled the situation, how the learner would use the TeamSTEPPS tool featured in the video, and similar probing questions.

Timeline and Prize Amounts

AHRQ is hosting this challenge as a two-phase competition. All costs associated with both submitting proposals and creating the videos will be the responsibility of the Challenge participant. Cash prizes will be awarded only after the videos are evaluated and determined acceptable at the end of Phase 2.

Timeline

April 27, 2022—Challenge launch.

June 20, 2022—Submissions for Phase 1 (written proposals) are due. AHRQ will complete the review of the proposals within 6–8 weeks of closing the announcement.

August 2022—AHRQ will announce the Phase 1 winners at the end of August 2022. Phase 2 of the Challenge will commence once the Phase 1 winners are announced and notified by August 31, 2022. The AHRQ team will schedule a live, virtual technical assistance webinar with all winners of Phase 1 to discuss scope of content, end-product quality, accessibility/compliance with Section 508, and address questions that the winners may have.

October 31, 2022—Phase 2 participants will have 60 calendar days from notification to create and submit their production(s) as described in their proposal(s). The deadline to submit the videos is October 31, 2022.

December 2022—The final winners of Phase 2 of the competition will be announced in December of 2022.

Prize Amounts

Only the participants selected as winners of Phase 1 will be eligible to enter Phase 2. Phase 1 winners will not be awarded cash prizes.

Winners of Phase 2 will be awarded $10,000 per successful video. Up to 10 cash prizes will be awarded.

Participants in Phase 2 may be disqualified if their submitted video deviates from their winning proposal or if the production quality does not meet standards per the assessment criteria stated in this announcement and the technical assistance standards. In case any Phase 2 proposals are disqualified, another proposal(s) from Phase 1 may be considered; any additional winner(s) will be contacted about submitting a video and will be given a new 60-day deadline to do so.

How To Enter the Challenge

Participants can register by visiting the Challenge.gov website or the AHRQ website (*https://www.ahrq.gov/challenges/teamstepps-video/index.html*). Participants should carefully review Challenge information and submission requirements on the website, including the intellectual property rules and assessment criteria.

Submission Requirements

Phase 1

The submitted proposals must be written in US English and submitted using the Challenge.gov website or the AHRQ website no later than June 20, 2022. Participants shall submit no more than three (3) video proposals —one proposal to replace one existing TeamSTEPPS video topic. No proposal shall describe more than one video. Each proposal will be no more than two pages, double spaced, in Calibri font, 11-point type size, with 1-inch margins. AHRQ encourages participants to include with their proposal a link to a short (no longer than 5 minutes) sample of a previously created video on a site that does not require a password. Sample videos do not need to address TeamSTEPPS principles; they should demonstrate the submitter's ability to produce an acceptable training video that will meet the specifications of this Challenge. Include in proposals plans for meeting WCAG 2.0 and Section 508 compliance standards.

Phase 2

Video submissions shall be in US English and shall not include any branding or endorsements such as logos, wording, title slides, or other designs on posters, signs, clothing, equipment, or any other objects that can be seen in the video. Participants must secure permission releases from each and all individuals who appear in the video; location releases for any shooting location that is not controlled by the participant; music licenses for any music used in the video; and permission releases/licenses to use copyrighted property, if applicable. Participants must be prepared to provide AHRQ with these releases and licenses if their videos are chosen as winners of the Challenge.

Prior to submission, Challenge participants shall ensure that the product(s) include closed-captioning and audio description in compliance with WCAG 2.0 and Section 508. The video(s) must be in a YouTube format with the proper codecs: MP4 (H.264 or H.265), MOV, AVI, WMV with an aspect of 16:9. Participants shall submit their product(s) online using the Challenge.gov website or the AHRQ website: *https://www.ahrq.gov/challenges/teamstepps-video/index.html.*

Each video is required to be accompanied by a guide that is no longer than 250 words. The guide will function as a resource for debriefing on the TeamSTEPPS concept or tool demonstrated in the video.

Review Process

All submissions will be reviewed by at least two individuals who will score them based on the assessment criteria and provide a brief comment about the submission.

The scores/comments on Phase 1 and Phase 2 submissions will be compiled, and a ranked summary provided to AHRQ staff. AHRQ will select winners based on quantitative and qualitative assessments.

Evaluation Criteria for Selecting Winning Applications

Assessment Criteria for Phase 1 TeamSTEPPS Video Proposal

Compliance (pass/fail)—Does the Phase 1 proposal adequately address required compliance standards (WCAG 2.0 and Section 508)?

Overall Approach (40 pts)—Does the proposal sufficiently describe why a particular TeamSTEPPS video has been chosen for updating? Does the proposal clearly, concisely, and adequately describe the approach chosen to update the TeamSTEPPS video? Does the proposal describe how the new video would be effective in augmenting the TeamSTEPPS program to train healthcare team members on communication and collaboration, and does it describe how the video will address equity, cultural sensitivity and health literacy? Does the proposal include a sample of past video work completed by the Challenge participants? Does the proposal include conducting audience testing?

Impact (20 pts)—Does the proposal tell a compelling and impactful story to

demonstrate how the new production would be aligned with the current healthcare landscape to fully support the TeamSTEPPS training program?

Innovation and Creativity (25 pts)—Does the proposal include innovative and appropriate methods for adult learning? Does the proposal use creative ways to update the existing TeamSTEPPS videos? Does the proposal include new insight and approaches to broadening diversity in TeamSTEPPS?

Healthcare needs (15 pts)—Does the approach clearly address healthcare needs, current issues, approaches to improve patient safety (*e.g.,* patient family engagement), changes in HIPAA laws and healthcare settings, and/or emerging trends (*e.g.,* artificial intelligence in healthcare, telemedicine)?

Assessment Criteria for Phase 2 TeamSTEPPS Video Product

Compliance (pass/fail)—Does the completed Phase 2 video meet the compliance standards?

Approach (30 pts)—Does the production clearly follow the approach in the proposal? Is the message consistent with the proposal? Does the production clearly communicate the content/theme? Is it focused on the topic and organized? Is it captivating and edifying?

Content (30 pts)—Is it appropriate for healthcare? Does it address diversity, equity, and inclusion? Is it tailored to diverse audiences from cultural, technological, and healthcare setting perspectives?

Creativity (20 pts)—How creatively does the new product convey the message? Is it innovative? Is it well designed?

Quality (20 pts)—How is the quality of the production? Is the lighting, sound, editing, and contrast appropriate? Is the dialogue clear and easy to understand? Is it visually appealing and effective? Is the captioning accurate?

Eligibility Rules for Participating in the Challenge

To be eligible under this Challenge, an individual (whether participating singly or in a group) or entity:

1. Shall have registered (*Challenge.gov*) to participate in the Challenge.

2. Shall have complied with the rules set forth in this announcement for participation in this Challenge.

3. Shall be incorporated and maintain a primary place of business in the United States (in the case of a private entity), and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

4. May not be a Federal entity or Federal employee acting within the scope of their employment. (All Federal employees should consult with their agency Ethics Official to determine whether the federal ethics rules will limit or prohibit the acceptance of a prize).

5. May not be an employee of AHRQ or any other company, organization, or individual involved with the design, production, execution, judging, or distribution of the Challenge, or their immediate family (spouse, parents and step-parents, siblings and step-siblings, and children and step-children), or household members (people who share the same residence at least 3 months out of the year).

6. May not use Federal funds from a grant to develop Challenge applications unless consistent with the purpose of the grant award.

7. May not use Federal funds from a contract to develop Challenge applications or to fund efforts in support of a Challenge submission.

8. Shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made equitably available to all individuals and entities participating in the competition.

9. Shall not be required to purchase liability insurance as a condition of participation in this competition.

Additional Rules of Participation

By participating in this Challenge, each individual (whether participating singly or in a group) or entity:

1. Agrees to follow all applicable Federal, State, and local laws, regulations, and policies.

2. Agrees to comply with all terms and conditions of participation in this Challenge.

3. Agrees that the submission will not use HHS or AHRQ logos or official seals, except as required by AHRQ. Videos submitted in response to this announcement must contain AHRQ/HHS branding as provided by AHRQ during the technical assistance session. Notwithstanding this authorized use of AHRQ/HHS branding, participants will not claim endorsement by AHRQ/HHS.

4. Videos must not contain branding of submitting organization, group, or individual. This includes logos, wording, or other designs on posters, signs, clothing, equipment, or any other objects that can be seen in the video.

5. Understands that all materials submitted to AHRQ as part of a submission become AHRQ records. Any confidential commercial or financial information contained in a submission must be clearly designated as such at the time of submission.

6. Submitters of winning videos may announce their status and may link to the final video posted on the AHRQ website, as well as share promotional materials and social media posts created by AHRQ/HHS about the competition and winning videos; however, except as a link to AHRQ, winners may not post the final video, or any draft version or any portion of the video, on their own website or through social media platforms.

7. Agrees that the submission must not infringe upon copyright or any other rights of any third party.

8. Agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

9. Agrees to indemnify the Federal Government against third-party claims for damages arising from or related to Challenge activities.

10. Phase 2 video submitters understand that circulation of winning videos could be worldwide, and that the Federal Government will not compensate the submitters for this use; winners shall receive a one-time cash prize as set forth in this announcement.

11. Understands that AHRQ reserves the right to cancel, suspend, and/or modify this prize contest, or any part of it, for any reason, at AHRQ's sole discretion. AHRQ also reserves the right not to award any prizes if no entries are deemed worthy.

12. Understands that AHRQ will not select a winner that is named on the Excluded Parties List System (EPLS).

Intellectual Property (IP) Rights

To be eligible to win this Challenge, a submission must meet the following requirements:

1. Each participant retains title and full ownership in and to their submission. Participants expressly reserve all intellectual property rights not expressly granted.

2. By participating in the Challenge, each participant (whether participating singly or in a group) acknowledges that he or she is the sole author or owner of, or has a right to use, any copyrightable works that the submission comprises, that the works are wholly original with

the participant (or is an improved version of an existing work that the participant has sufficient rights to use and improve), and that the submission does not infringe any copyright or any other rights of any third party of which participant is aware. In addition, each participant (whether participating singly or in a group) grants to the U.S. Government a paid-up, nonexclusive, royalty-free, irrevocable worldwide license in perpetuity and the right to reproduce, publish, post, link to, share, display publicly (on the web or elsewhere) and prepare derivative works, including the right to authorize others to do so on behalf of the U.S. Government.

3. Each participant must clearly delineate any intellectual property and/or confidential commercial information contained in a submission that the participant wishes to protect as proprietary data, in accordance with Additional Rules of Participation No. 5.

4. If the submission includes any third-party works (such as third-party content or open-source code), the participant must be able to provide, upon request, documentation of all appropriate licenses and releases for use of such third-party works. If the participant cannot provide documentation of all required licenses and releases, AHRQ reserves the right, in its sole discretion, to disqualify the submission.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–08908 Filed 4–26–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2022–0003]

Availability of Four Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comments on drafts of four updated toxicological profiles: Nitrobenzene, Nitrophenols, Mercury, and Copper.

DATES: Written comments must be received on or before July 26, 2022.

ADDRESSES: You may submit comments, identified by Docket Number ATSDR–2022–0003, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Innovation and Analytics, Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, Mail Stop S102–1, Atlanta, GA 30341–3717. Attn: Docket No. ATSDR–2022–0003.

Instructions: All submissions must include the Agency name and Docket Number. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Do not submit comments by email. ATSDR does not accept comments by email. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kambria Haire, Office of Innovation and Analytics, Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, Mail Stop S102–1, Atlanta, GA 30329–4027; Email: *ATSDRToxProfileFRNs@cdc.gov;* Telephone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: ATSDR has prepared drafts of four updated toxicological profiles based on current understanding of the health effects and availability of new studies and other information since their initial release. All toxicological profiles issued as ''Drafts for Public Comment'' represent the result of ATSDR's evidence-based evaluations to provide important toxicological information on priority hazardous substances to the public and health professionals. ATSDR considers key studies for these substances during the profile development process. To that end, ATSDR is seeking public comments and additional information or reports on studies about the health effects of these four substances for review and potential inclusion in the profiles. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion in the profile.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, information, and data. Comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. Do not submit comments by email. ATSDR does not accept comments by email. ATSDR will review all submissions and may choose to redact or withhold submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. ATSDR will carefully review and consider all comments submitted in preparation of the Final Toxicological Profiles and may revise the profiles as appropriate.

Legislative Background

The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) regarding the hazardous substances most commonly found at facilities on the CERCLA National Priorities List. Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances [also called the Substance Priority List (SPL)]. This list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most significant potential threat to human health. The SPL is available online at *www.atsdr.cdc.gov/spl.* ATSDR is also mandated to revise and publish updated toxicological profiles, as necessary, to reflect updated health effects and other information.

In addition, CERCLA provides ATSDR with the authority to prepare toxicological profiles for substances not found on the SPL. CERCLA authorizes ATSDR to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances (CERCLA Section 104(i)(1)(B); 42 U.S.C. 9604(i)(1)(B)); to respond to requests for health consultations (CERCLA Section 104(i)(4); 42 U.S.C. 9604(i)(4)); and to support the site-specific response actions conducted by the agency (CERCLA Section 104(i)(6); 42 U.S.C.

9604(i)(6)). Public nominations for substances from the SPL (or other substances) for toxicological profile development were requested on April 18, 2018 (83 FR 17177).

ATSDR has now prepared drafts of four updated toxicological profiles based on current understanding of the health effects and availability of new studies and other information since their initial release.

Availability

The Draft Toxicological Profiles are available online at *http://www.atsdr.cdc.gov/ToxProfiles* and at *www.regulations.gov,* Docket No. ATSDR–2022–0003.

Pamela Protzel Berman,

Associate Director, Office of Policy, Planning and Partnerships, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2022–08995 Filed 4–26–22; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee (MSHRAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Mine Safety and Health Research Advisory Committee (MSHRAC). This is a hybrid meeting, accessible both in-person and virtually. It is open to the public in person and limited only by the space available. Time will be available for public comment.

DATES: The meeting will be held on May 17, 2022, from 10:00 a.m. to 4:05 p.m., EDT, and May 18, 2022, from 10:00 a.m. to 4:00 p.m., EDT. The public comment session will be held on May 18, 2022, at 11:55 a.m., EDT and conclude at 12:15 p.m., EDT or following the final call for public comment, whichever comes first.

ADDRESSES: National Institute for Occupational Safety and Health (NIOSH) Pittsburgh Campus, Building 140, Room 140MP, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236.

Please note that the meeting location, the NIOSH Pittsburgh Campus, is a federal facility and in-person access is limited to United States citizens unless prior authorizations, taking up to 30 to 60 days, have been made. If you wish to attend either in person or virtually, please contact Ms. Berni Metzger by email at *metzger@cdc.gov* or by telephone at (412) 386–4541 at least 5 business days in advance of the meeting. If attending virtually, Ms. Metzger will provide you with the Zoom web conference access information.

Meeting Information: The conference room accommodates approximately 49 people and virtual access is limited by the number of web conference lines (500 web conference lines are available).

FOR FURTHER INFORMATION CONTACT: George W. Luxbacher, P.E., Ph.D., Designated Federal Officer, MSHRAC, NIOSH, CDC, 1600 Clifton Road, Mailstop V24–4, Atlanta, Georgia 30329–4027, Telephone: (404) 498–2808; Email: *GLuxbacher@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Considered: The agenda will include discussions on NIOSH mining safety and health research organizational structure, capabilities, projects, and outcomes. The meeting will also include an update from the NIOSH Associate Director for Mining. Agenda items are subject to change as priorities dictate.

Public Participation

Written Public Comment: The public may submit written comments or questions in advance of the meeting, to the contact person above. Written comments received in advance of the meeting will be included in the official record of the meeting and questions will be answered during the oral public comment period open to public participation.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. The public comment session will be held on May 18, 2022, at 11:55 a.m., EDT and conclude at 12:15 p.m., EDT or following the final call for public comment, whichever comes first.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–08926 Filed 4–26–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the No Wrong Door (NWD) System Management Tool OMB Control 0985–0062

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the information collection requirements of the No Wrong Door (NWD) System Management Tool OMB Control 0985–0062.

DATES: Submit written comments on the collection of information by May 27, 2022.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Kristie Kulinski, (202) 795–7379 or *kristie.kulinski@acl.hhs.gov.* Administration for Community Living.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

The Administration for Community Living (ACL) is requesting approval to collect data for the No Wrong Door (NWD) System Management Tool OMB Control 0985–0062.

ACL, the Centers for Medicare and Medicaid Services (CMS), and the Veterans Health Administration (VHA) have partnered to support states' efforts in developing coordinated systems of access, or No Wrong Door (NWD) Systems, to make it easier for people to learn about and access long-term services and supports (LTSS). When seeking services and supports, individuals and caregivers often face multiple, fragmented processes that are complex and confusing. States' access systems have been built over time as programs and funding streams have been added, creating duplicative eligibility and intake processes that are difficult for individuals and their caregivers to use.

To address these issues, the NWD System model supports state efforts to streamline access to LTSS options for all populations and provides the infrastructure to promote the collaboration of local service organizations, making service delivery more efficient and person-centered. Examples of coordinated efforts include processes where individuals are assessed once via a common or standardized data collection method that captures a core set of individual level data relevant for determining the range of necessary LTSS.

The Federal vision for the NWD System gives states flexibility in determining how best to organize, structure and operate the various functions of their NWD System. States continue to integrate, in some cases restructure, and over time strengthen their existing programs in order to realize the joint ACL/CMS/VHA vision for a fully coordinated and integrated system of access. These efforts are supported by a variety of initiatives, including the VHA's Veteran Directed Care (VDC) program, an evidence-based self-directed program where person-centered counselors from aging and disability network agencies within a state's NWD System provide facilitated assessment and care planning, arrange fiscal management services, and provide ongoing counseling and support to Veterans, their families, and caregivers.

The NWD System Management Tool (NWD MT) provides a platform for data collection necessary to evaluate the four primary functions of a NWD System: State Governance and Administration, Public Outreach and Coordination with Key Referral Sources, Person Centered Counseling, and Streamlined Access to Public LTSS Programs. In addition, this tool will include data collection for the VDC program to collect qualitative and quantitative data elements necessary to evaluate the impact of the VDC program. The VDC Tool will track key performance measures and identify best practices and technical assistance needs.

The NWD MT and the VDC Tool will enable ACL and its partners to collect and analyze data elements necessary to assess the progress of the NWD System model, track performance measures, and identify gaps and best practices.

These tools have been designed in close collaboration with states and are intended to simplify grant reporting requirements to reduce burden on local and state entities and will provide a consistent, streamlined and coordinated statewide approach to help states govern their NWD System and manage their programs efficiently.

Comments in Response to the 60-Day Federal Register Notice

The associated 60-day notice **Federal Register** *Vol. 87, No. 8* was published on *Wednesday, January 12, 2022.* Three public comments were received in response to the 60-day notice. ACL's responses to these comments are included below.

Data collection form	Comment	ACL response
NWD Management Tool	There is no funding provided to incentivize the time and effort needed to collect and report data in the NWD System Management Tool on an ongoing basis.	The NWD System Management Tool will only be required for states and territories with active discretionary grants that provide funding for grant activities, including the collection and reporting of data in the Management Tool. Accordingly, resources will be made available to grantees for data collection and reporting via their grant budgets. ACL has no expectation that all states and territories will complete the Management Tool.
NWD Management Tool	*Collecting and reporting data in the NWD System Management Tool would be time consuming and place undue burden on local sites.*	As stated above, only states and territories receiving discretionary grant funding will be required to complete the NWD System Management Tool. Resources will be provided as part of any funding opportunity requiring completion of the Management Tool. The questions in the NWD System Management Tool closely mirror those collected under prior discretionary grant reporting requirements (*e.g.,* ADRC COVID–19 CARES Act grant, NWD Business Case grant).
NWD Management Tool	*ACL's estimates of burden are inaccurate for the proposed collection of information. Our state estimates four hours annually for state completion and 248 hours for local completion of the NWD Management Tool.*	ACL has updated the burden estimate to reflect additional time at both the state and local level. The burden estimate is also updated to reflect the anticipated number of states and territories expected to complete the Management Tool annually (reduced from all 56 states and territories to 15, which is the maximum number of states and territories expected to be funded under discretionary grant opportunities over the next three years).

Data collection form	Comment	ACL response
NWD Management Tool	*The NWD Management Tool asks for program data collection that is already collected by other funders.*	ACL completed a crosswalk of the NWD System Management Tool with data elements collected for other programs and funding streams, including Older Americans Act (OAA) Title III, Center for Independent Living (CIL) Program, State Health Insurance Assistance Program (SHIP), and Medicare Improvements for Patients and Providers Act (MIPPA) funding. NWD Systems serve all populations and all payers. While there is not a direct overlap with other data collection efforts, ACL does recognize that some data elements collected for other programs may contribute to metrics in the NWD System Management Tool (*e.g.,* count of individuals 60+ served, number of outreach activities). ACL will provide accompanying guidance to grantees on where they may find Management Tool data elements collected for other programs.
NWD Management Tool	*Terms used in the NWD Management Tool may have various interpretations depending on the respondent. This may lead to data discrepancies when comparing across states and organizations. The clarity of the information to be collected would be enhanced with clearer definitions. NWD remains an amorphous term that is implemented in many different forms across the country. The OAA defines Aging and Disability Resource Centers (ADRCs) in the statute; however, the ACL vision of a state NWD system is an evolution of the ADRCs that expands beyond the statutory definition and associated operation requirements.*	The NWD System Management Tool will be accompanied by a user manual, which will include a glossary of terms and definitions. Additionally, any funding opportunity requiring reporting in the Management Tool will define ADRC and NWD so that it is clear to applicants. NWD is an initiative of the U.S. Department of Health and Services (HHS), including ACL and the Centers for Medicare and Medicaid Services (CMS), as well as the Department of Veterans Affairs (VA). ACL's support of NWD is consistent with HHS's vision.
NWD Management Tool	*The quality could be enhanced with narrative reporting (qualitative opportunities) to provide a better 360 view of the work of the NWD system. Mixing quantitative and qualitative data can provide a more holistic vision of the complexity of the work of the NWD system as well as the complexity of the clientele served.*	While there are challenges in aggregating qualitative data across grantees, ACL welcomes, but does not require, narrative reporting as part of the NWD System Management Tool. As described above, reporting in the Management Tool would be part of a discretionary funding opportunity, and as such, grantees would also have the opportunity to share a more holistic view of their NWD Systems and best practices through regular monitoring and technical assistance calls with ACL project officers.
NWD Management Tool	*Ensure that the reporting system is functional so that end users can submit data without frustration.*	ACL has piloted the NWD System Management Tool web-based platform with three states to test user functionality at the federal, state, and local level. ACL will continue to refine the platform to ensure a seamless user experience when inputting and reviewing data.
NWD Management Tool	*Regarding State Level Question 10 (''How frequently does the state conduct a review to monitor and assess the performance of its NWD System?''), a statewide review or monitoring has been conducted on the ADRCs. A NWD review or monitoring has not been conducted, but all of the programs have quality assurance processes and procedures and they, as well, are monitored. Monitoring the NWD System at this time would be arduous and burdensome to all partners.*	ACL agrees that it is not the responsibility of any one state agency to monitor the entire NWD System. A state or territory's governing body or governance structure is responsible for monitoring the access system. To address this concern in the NWD System Management Tool, and to align with the monitoring expectations of the state lead agency, ACL is modifying State Level Question 10 as follows: ''Does your state conduct a review to monitor performance of ADRCs in your NWD System?''
NWD Management Tool	*Regarding State Level Question 11 (''Does the state have a statewide IT System for NWD?''), ADRCs have a statewide data reporting system and it is those entities that anchor the NWD System—because of this—this question becomes one of interpretation.*	ACL agrees that the data collected from this question will not be robust and has decided to remove this question from the NWD System Management Tool.

Data collection form	Comment	ACL response
NWD Management Tool	*Regarding State Level Question 21 (''How many statewide toll-free numbers does the state have to increase access to the NWD System?''), individual programs have 1–800 numbers to support work—depending how you interpret the organization types above would determine how this would be answered. Interpretation leads to data that lacks meaning and utility for ACL.*	The state lead agency completing the NWD System Management Tool should identify those toll-free numbers that meet the criteria of being statewide. Toll-free numbers administered by local partners would not be reported.
VDC Tool	*We recognize that the Veterans Directed Care (VDC) Program reporting tool is specifically targeted to the entities defined as Hubs, Sole Proprietors, and providers in the VDC system. However, we do want to stress that many state NWD systems do not perform, monitor and/or track any information for VDC programs and therefore cannot provide the oversight, training, and coordination that will likely be required to implement this data collection requirement. We also note that the VDC system entities included in these requirements have substantial overlap with those local entities that will be required to submit data under the NWD data reporting system. We are concerned that the VDC reporting requirement is duplicative and will place further administrative burden on these entities specifically.*	As noted above, the NWD System Management Tool would only be required by entities receiving discretionary grant funding with resources provided to support data collection and entry. Data collected and reported in the VDC Tool is only recommended for providers in the VDC program.

Estimated Program Burden

ACL estimates the burden of this collection of information as follows:

Fifty-six lead NWD System state and territorial agencies will respond to the NWD MT bi-annually and it will take approximately half an hour to collect the data and an additional half hour to input the data into a web-based system. Additionally, an estimated 900 local agencies will take approximately two hours to collect and submit the data to their lead NWD System state agency. There may be several lead NWD System state and territorial agencies who will be submitting on behalf of their local agencies. Therefore, the approximate burden for the local level agencies may be thirty minutes less than anticipated. If all state and local agencies respond bi-annually, the national burden estimate for the NWD MT would be a total of 3,712 hours annually. This burden estimate is calculated based upon a sample of ADRC/NWD grantees. Each state entity submitting data will receive local-level data from designated NWD System entities.

The estimated response burden includes time to review the instructions, gather existing information, and complete and review the data entries in a web-based system. An estimated 275 VDC program entities will respond to the VDC Tool on a monthly-basis, all of which are also NWD local-level entities, for an annual burden of 1,650 hours.

This burden estimate is calculated based upon information provided by current VDC program providers testing an abbreviated version of the VDC Tool. The NWD MT and the VDC Tool have been developed to increase ease and uniformity of reporting and improve the ability of ACL to manage and analyze data.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
NWD Management Tool data collection and entry—State Level	56	2	1.0	112
NWD Management Tool data collection and entry—Local Level	900	2	2.0	3,600
Veteran Directed Care Tool	275	12	0.5	1,650
Total:	1,231			5,362

Dated: April 21, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–08977 Filed 4–26–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0412]

Determination That FOLVITE (Folic Acid), Oral Tablets, 1 Milligram, and Other Drug Products, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) Has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table are no longer being marketed.

Application No.	Drug name	Active ingredient(s)	Strength(s)	Dosage form/route	Applicant
NDA 005897	FOLVITE	Folic Acid	1 Milligram (mg)	Tablet; Oral	Wyeth Ayerst Pharms.
NDA 005897	FOLVITE	Folic Acid	5 mg/Milliliter (mL)	Injectable; Injection	Wyeth Ayerst Pharms.
NDA 014691	ALKERAN	Melphalan	2 mg	Tablet; Oral	Apotex Inc.
NDA 015923	HALDOL	Haloperidol Lactate	Equivalent to (EQ) 5 mg Base/mL.	Injectable; Injection	Janssen Pharms.
NDA 016042	DYAZIDE	Hydrochlorothiazide; Triamterene.	25 mg; 50 mg, 25 mg; 37.5 mg.	Capsule; Oral	GlaxoSmithKline.
NDA 017959	ADRUCIL	Fluorouracil	50 mg/mL	Injectable; Injection	Pharmacia & Upjohn Co.
NDA 017993	HYDERGINE	Ergoloid Mesylates	0.5 mg, 1 mg	Tablet; Oral	Novartis AG.
NDA 018082	DEPAKENE	Valproic Acid	250 mg/5 mL	Syrup; Oral	AbbVie Inc.
NDA 018116	CYCLOCORT	Amcinonide	0.025%, 0.1%	Cream; Topical	Astellas.
NDA 018498	CYCLOCORT	Amcinonide	0.1%	Ointment; Topical	Astellas.
NDA 018985	ORTHO–NOVUM 7/7/7	Ethinyl Estradiol; Norethindrone.	0.035 mg; 0.5 mg, 0.035 mg; 0.75 mg, 0.035 mg; 1 mg.	Tablet; Oral	Janssen Pharms.
NDA 019297	NOVANTRONE	Mitoxantrone Hydrochloride.	EQ 20 mg Base/10 mL, EQ 2 mg Base/mL.	Injectable; Injection	EMD Serono Inc.
NDA 019927	NIZORAL	Ketoconazole	2%	Shampoo; Topical	Janssen Pharms.
NDA 020207	ALKERAN	Melphalan Hydrochloride	EQ 50 mg Base/Vial	Injectable; Injection	Apotex Inc.
NDA 020262	TAXOL	Paclitaxel	6 mg/mL	Injectable; Injection	HQ Specialty Pharma.
NDA 020281	ULTRAM	Tramadol Hydrochloride	100 mg	Tablet; Oral	Janssen Pharms.
NDA 021692	ULTRAM ER	Tramadol Hydrochloride	100 mg, 200 mg, 300 mg	Tablet, Extended Release; Oral.	Valeant Pharms.
NDA 021844	DESONATE	Desonide	0.05%	Gel; Topical	Leo Pharma.
NDA 022008	REQUIP XL	Ropinirole Hydrochloride	EQ 2 mg Base, EQ 4 mg Base, EQ 6 mg Base, EQ 8 mg Base, EQ 12 mg Base.	Tablet, Extended Release; Oral.	GlaxoSmithKline LLC.
NDA 050639	CLEOCIN PHOSPHATE IN DEXTROSE 5% IN PLASTIC CONTAINER.	Clindamycin Phosphate	EQ 6 mg Base/mL, EQ 12 mg Base/mL, EQ 18 mg Base/mL.	Injectable; Injection	Pfizer.
NDA 050684	ZOSYN	Piperacillin Sodium; Tazobactam Sodium.	EQ 2 g Base/Vial; EQ 250 mg Base/Vial, EQ 3 g Base/Vial; EQ 375 mg Base/Vial, EQ 4 g Base/Vial; EQ 500 mg Base/Vial, EQ 36 g Base/Vial; EQ 4.5 g Base/Vial.	Injectable; Injection	Wyeth Ayerst Pharms.
ANDA 062336	MUTAMYCIN	Mitomycin	40 mg/Vial	Injectable; Injection	Bristol-Myers Squibb.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the drug products listed are unaffected by the discontinued marketing of the products subject to these applications. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08940 Filed 4–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Basic Visual Processes Study Section.

Date: June 8–9, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Basic Biology of Blood, Heart and Vasculature Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, (301) 435–0912, *malindakm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 22, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08958 Filed 4–26–22; 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 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: NIGMS Initial Review Group; Training and Workforce Development Study Section–D; Review of IMSD and PREP Applications.

Date: June 16–17, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Science, Natcher Bldg. 45, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tracy Koretsky, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3An.12F, Bethesda, MD 20892, 301 594 2886, *tracy.koretsky@nih.gov.*

(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)

Dated: April 22, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08968 Filed 4–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center 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 Fogarty International Center Advisory Board.

The meeting will be open to the public via online meeting. 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 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: Fogarty International Center Advisory Board.

Date: June 6–7, 2022.

Closed: June 6, 2022, 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate the second level of grant applications.

Place: Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892 (Virtual Meeting).

Open: June 7, 2022, 12:00 p.m. to 3:00 p.m.

Agenda: Update and discussion of current and planned Fogarty International Center activities.

Place: Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892 (Virtual Meeting).

Meeting Access: https://www.fic.nih.gov/About/Advisory/Pages/default.aspx.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, 301–496–1415, *kristen.weymouth@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.fic.nih.gov/About/Advisory/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: April 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08949 Filed 4–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; National Institutes of Health Workplace Civility and Equity Survey (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health, Office of the Director (OD) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Sara Mills, Program Manager, Workforce Planning and Analytics Section, 45 Center Drive, Suite 1AF08, Rockville, Maryland, 20892 or call non-toll-free number (301) 496–6744 or Email your request, including your address to: *NIHWorkplaceCES@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: NIH Workplace Civility and Equity Survey, 0925–NEW, expiration date XX/XX/XXXX, National Institutes of Health Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this survey is to assess the workplace climate and evaluate the prevalence of harassment and discrimination at the NIH. Specifically, the results of this survey will facilitate a data driven analysis of the types of harassment and/or discrimination that may be occurring or is perceived to be occurring, by its workers. To this end, where applicable, NIH will leverage these findings to identify areas within NIH that require further investigation, thereby providing opportunities for targeted prevention or mitigation strategies.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 7,879.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH Staff	31,517	1	15/60	7,879
Total	31,517	31,517		7,879

Dated: April 20, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–08985 Filed 4–26–22; 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; ADRD Program Project.

Date: June 1, 2022.

Time: 11:00 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 (Virtual Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 22, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08969 Filed 4–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIAID)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Brandie Taylor, Supervisory Program Analyst, Office of Strategic Planning, Initiative Development and Analysis, 5601 Fishers Lane, Rockville, Maryland 20892 or call non-toll-free number (240) 669–0296 or Email your request, including your address to: *taylorbr@niaid.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on February 10, 2022, pages 7848–7849 (87 FR 7848) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIAID), 0925–0668, Expiration Date 4/30/2022, EXTENSION, National Institute of Allergy and Infectious Diseases (NIAID).

Need and Use of Information Collection: There are no changes being requested for this submission. The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide information about the NIAID's customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the NIAID and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2511.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Customer satisfaction surveys	4,000	1	30/60	2,000
In-Depth Interviews (IDIs) or Small Discussion Groups	50	1	90/60	75
Individual Brief Interviews	50	1	15/60	13

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Focus Groups	30	1	2	60
Pilot testing surveys	25	1	30/60	13
Conferences and Training Pre- and Post-surveys	500	1	30/60	250
Website or Software Usability Tests	50	1	2	100
Total	4,705			2,511

Dated: April 22, 2022.

Brandie K. Taylor Bumgardner,

Project Clearance Liaison, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. 2022–08976 Filed 4–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Duchenne Muscular Dystrophy Therapy.

Date: May 4, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *ingrahamrh@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 22, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08959 Filed 4–26–22; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review; Centers of Biomedical Research Excellence (COBRE) (P20) Applications.

Date: July 18–19, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Science, Natcher Bldg. 45, Center Drive Bethesda, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manas Chattopadhyay, National Institutes of Health, 45 Center Dr., Bethesda, MD 20872, *manasc@mail.nih.gov.*

(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)

Dated: April 22, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08953 Filed 4–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed 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 Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Study Section.

Date: June 7, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institutes of Health National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2118, MSC 6902, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Study Section.

Date: June 15, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20817, (301) 443–8599, *espinozala@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Individual Fellowship (F30, F31, F32) Review Panel.

Date: June 21, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443–8599, *espinozala@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: April 22, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08957 Filed 4–26–22; 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; Alzheimer's Disease and Asians.

Date: June 8, 2022.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 22, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08966 Filed 4–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service (PHS) Funding is Sought 42 CFR Part 50 Subpart F and Responsible Prospective Contractors 45 CFR Part 94 (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mr. Joel A. Snyderman, Director, Division of Grants Compliance and Oversight, Office of Policy for Extramural Research Administration, Office of Extramural Research, National Institutes of Health, 6705 Rockledge Drive, Suite 800, Bethesda, MD 20892, or call non-toll-free number (301) 435–0930 or Email your request, including your address to: *joel.snyderman@nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on February 17, 2022 (FR 87—page 9075 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service (PHS) Funding is Sought 42 CFR part 50 Subpart F and Responsible Prospective Contractors 45 CFR part 94, 0925–0417, expiration date 4/30/2022, EXTENSION, Office of Policy for Extramural Research Administration (OPERA), Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: This request is for Office of Management and Budget (OMB) approval of a Reinstatement Without Change of a currently approved collection resulting from the development of revised regulations regarding the Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought (42 CFR part 50, subpart F) and Responsible Prospective Contractors (45 CFR part 94). The purpose of these

regulations is to promote objectivity in research by requiring institutions to establish standards to ensure that there is no reasonable expectation that the design, conduct, or reporting of PHS-funded research will be biased by any Investigator Financial Conflict of Interest (FCOI).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 677,820.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents based on applicable section of regulation	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total annual burden hours
Reporting				
Initial Reports under 42 CFR 50.605(b)(1) and (b)(3) or 45 CFR 94.5(b)(1) and (b)(3) from awardee Institutions.	992	1	2	1,984
Subsequent Reports under 42 CFR 50.605(a)(3)(iii) and (b)(2) or 45 CFR 94.5(a)(3)(iii) and (b)(2) from awardee Institutions.	50 FCOI reports as in 42 CFR 50.605(a)(3)(ii) and 45 CFR 94.5(a)(3)(ii).	1	2	100
	5 mitigation reports	1	2	10
Annual Report under 42 CFR 50.605(b)(4) or 45 CFR 94.5(b)(4) from awardee Institutions.	2,031	1	1	2,031
Subsequent Reports under 42 CFR 50.606(a) or 45 CFR 94.6 from awardee Institutions.	20	1	10	200
Recordkeeping				
Under 42 CFR 50.604(i) or 45 CFR 94.4(i) from awardee institutions	2,000	1	4	8,000
Disclosure				
Under 42 CFR 50.604(a) or 45 CFR 94.4 for Investigators	3,000	1	81	243,000
Under 42 CFR 50.604(b) or 45 CFR 94.4(e)(1) for Investigators	38,000	1	30/60	19,000
Under 42 CFR 50.604(b) or 45 CFR 94.4(e)(1) for Institutions	2,000	1	6	12,000
Under 42 CFR 50.604(c)(1) or 45 CFR 94.4(c)(1) from subrecipients	500	1	1	500
Under 42 CFR 50.604(d) or 45 CFR 94.4 for Institutions	3,000[1]	1	1	3,000
Under 42 CFR 50.604(e)(1) or 45 CFR 94.4(e)(1) for Investigators	38,000	1	4	152,000
Under 42 CFR 50.604(e)(2) or 45 CFR 94.4(e)(2) for Investigators	38,000	1	1	38,000
Under 42 CFR 50.604(e)(3) or 45 CFR 94.4(e)(3) for Investigators	992	1	30/60	496
Under 42 CFR 50.604(f) or 45 CFR 94.4(f) for institutions	2,000	1	1	2,000
Under 42 CFR 50.605(a)(1) or 45 CFR 94.5(a)(1) for Institutions	2,000[2]	1	82	164,000
Under 42 CFR 50.605(a)(3) or 45 CFR 94.5(a)(3) for Institutions	500[3]	1	3	1,500
Under 42 CFR 50.605(a)(3)(i) or 45 CFR 94.5(a)(3)(i)	50[4]	1	80	4,000
Under 42 CFR 50.605(a)(3)(ii) or 45 CFR 94.5(a)(3)(ii)	50[5]	1	80	4,000
Under 42 CFR 50.605(a)(3)(iii) or 45 CFR 94.5(a)(3)(iii)	50	1	1	50
Under 42 CFR 50.605(a)(4) or 45 CFR 94.5(a)(4)	992	1	12	11,904
Public Website Posting under 42 CFR 50.605(a)(5) or 45 CFR 94.5(a)(5) from awardee Institutions.	2,000	1	5	10,000
Under 42 CFR 50.606(c) or 45 CFR 94.6(c)	50[6]	3[7]	18/60	45
Total	136,282	136,382		677,820

[1] Assuming that 3,000 Institutions solicit disclosures on an annual basis by sending a notification to all Investigators.

[2] Although an estimated 992 reports of Conflict of Interest are expected annually, the 2,000 responding Institutions must review all financial disclosures associated with PHS-funded awards to determine whether any conflicts of interest exist. Thus, the review burden of 76,000 hours is based upon estimates that it will take on the average 2 hours for an institutional official(s) to review each of 38,000 financial disclosures associated with PHS funded awards. The burden for developing a management plan for identified FCOI is estimated at 80 hours × 992 cases = 79,360 hours.

[3] Assuming that this is a rare occurrence based on prior experience.

[4] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[5] Assuming only a fraction of the newly identified SFIs will constitute FCOI.

[6] Number based on 50.605/94.5 (a)(3)(i)—of those only a fraction will relate to a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment, but we are calculating the maximum estimated burden.

[7] Assuming an average of 3 publications annually.

Dated: April 21, 2022.

Tara A. Schwetz,

Deputy Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–08986 Filed 4–26–22; 8:45 a.m.]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Environmental Health Sciences Council.

Date: June 7–8, 2022.

Closed: June 07, 2022, 11:00 a.m. to 11:45 a.m.

Agenda: To review and evaluate to review and evaluate to review and evaluate grant applications.

Place: Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Durham, NC 27709 (Virtual Meeting).

Open: June 07, 2022, 12:00 p.m. to 2:45 p.m.

Agenda: Discussion of program policies and issues/Council Discussion.

Place: Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Durham, NC 27709, *https://www.niehs.nih.gov/news/webcasts/* (Virtual Meeting).

Open: June 08, 2022, 11:00 a.m. to 3:00 p.m.

Agenda: DERT Director's Report.

Place: Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Durham, NC 27709, *https://www.niehs.nih.gov/news/webcasts/* (Virtual Meeting).

Contact Person: Patrick Mastin, Ph.D., Deputy Division Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Durham, NC 27709, 984–287–3285 *mastin@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 21, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08952 Filed 4–26–22; 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; Advancing and Diversifying AD/ADRD Research.

Date: June 16, 2022.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Moten, Ph.D. MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 22, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08967 Filed 4–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2021–0191]

Final Record of Decision for the Waterways Commerce Cutter Acquisition Program's Final Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of record of decision.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969 as amended and the Council on Environmental Quality NEPA Regulations, the Coast Guard has prepared a Record of Decision (ROD) for the Waterways Commerce Cutter (WCC) Program's acquisition and operation of a planned 30 WCCs and by this notice, is announcing the availability of the ROD. The Coast Guard's decision to implement Alternative 1, described in the WCC's Final Programmatic Environmental Impact Statement (PEIS), will enable the Coast Guard to fulfill Aids to Navigation (ATON) mission requirements that are supported by WCCs while implementing a full range of mitigation measures.

DATES: Mr. Aaron Pagnotti, Program Manager, signed the Record of Decision on April 22, 2022.

ADDRESSES: The Final ROD, the complete text of the Final PEIS, and supporting documents related to this decision are available in the docket which can be found by searching the docket number USCG–2021–0191 using the Federal eRulemaking Portal at *https://www.regulations.gov* or at *https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Engineering-Logistics-CG-4-/Program-Offices/Environmental-Management/Environmental-Planning-and-Historic-Preservation/.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the ROD, contact Lieutenant Commander S. Krolman, Waterways Commerce Cutter Program, U.S. Coast Guard; phone 202–475–3104; email *HQS-SMB-CG-WaterwaysCommerceCutter@uscg.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, Sections 4321 *et seq.* of Title 42 United States Code, and Council on Environmental Quality Regulations (Sections 1500–1508 of Title 40 Code of Federal Regulations [CFR]), the Coast Guard announces its decision to implement the Coast Guard's preferred Alternative, Alternative 1, including the full range of mitigation measures, as described in the WCC's Final PEIS. This decision will enable the Coast Guard to carry out primary missions supported by WCCs. A detailed description of Alternative 1 is provided in Chapter 2 (Proposed Action and Alternatives) of the WCC Final PEIS.

In the Final PEIS, the Coast Guard identified the Proposed Action as its preferred alternative in meeting the purpose and need to fulfill ATON mission requirements in the Inland Waterways and Western Rivers proposed action area, which includes portions of the Alaska Inside Passage,

portions of the Great Lakes, and several other navigable waterways around the United States. The Proposed Action includes the acquisition and operation of a planned 30 WCCs to replace the capabilities of the existing inland tender fleet, thereby enabling the safe navigation of waters that support the nation's economy through maritime commerce throughout the Marine Transportation System.

Following publication of a Notice of Intent (NOI) to prepare a PEIS on April 19, 2021 (86 FR 20376), the Coast Guard held a public meeting on May 11, 2021 (86 FR 22444, April 28,2021), and then prepared a Draft PEIS in accordance with NEPA, as implemented by the CEQ Regulations (40 CFR 1500 *et seq.*); DHS Directive Number 023–01, Rev. 01 and Instruction 023–01–001, Rev. 01; and Coast Guard Commandant Instruction 5090.1. On September 24, 2021, the Coast Guard published a Notice of Availability (NOA) and a request for comments on the Draft PEIS (86 FR 53086). The Coast Guard considered and addressed in the Final PEIS comments received on the Draft PEIS during the comment period. Public comments did not result in substantive revisions or additions to the Draft PEIS. Responses to comments are in Appendix G of the Final PEIS.

On March 18, 2022, a NOA of the Final PEIS published in the **Federal Register** (87 FR 15443) initiating a 30-day opportunity to object. The Coast Guard received two comments in support of selecting the preferred alternative and did not receive any eligible objections. The Final ROD documents the rationale for approving the Final PEIS and is consistent with the Reviewing Officer's instructions.

Responsible Official: The Responsible Official for approving the Final ROD is Mr. Aaron Pagnotti, Program Mananger, who signed the ROD on April 22, 2022.

Dated: April 22, 2022.

Aaron Pagnotti,

Waterways Commerce Cutter Program Manager.

[FR Doc. 2022–08991 Filed 4–26–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test: Renewal of Test

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is renewing the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability.

DATES: The voluntary pilot initially began on August 20, 2015, as corrected on October 20, 2015, and modified and extended on August 14, 2017. The renewed test will run for an additional two years from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Applications for new participants in the ACE Export Manifest for Vessel Cargo Test must be submitted via email to CBP Export Manifest at *cbpexportmanifest@cbp.dhs.gov.* In the subject line of the email, please write ''ACE Export Manifest for Vessel Cargo Test Application''. Applications will be accepted at any time during the test period. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at *cbpexportmanifest@cbp.dhs.gov.* In the subject line of the email, please write ''Comment on ACE Export Manifest for Vessel Cargo Test''. Comments may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Brian Semeraro, Branch Chief, or David Garcia, Program Manager, Outbound Enforcement and Policy Branch, Office of Field Operations, CBP, via email at *cbpexportmanifest@cbp.dhs.gov,* or by telephone, 202–344–3277.

SUPPLEMENTARY INFORMATION:

I. Background

Under the current regulatory requirements, the complete manifest is generally not required to be submitted until after the departure of the vessel. *See* sections 4.75, 4.76, and 4.84 of title 19 of the Code of Federal Regulations (19 CFR 4.75, 4.76 and 4.84). The Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test is a voluntary test in which participants agree to submit export manifest data to U.S. Customs and Border Protection (CBP) electronically at least twenty-four hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. The ACE Export Manifest for Vessel Cargo Test is authorized under 19 CFR 101.9(b), which provides for the testing of National Customs Automation Program (NCAP) programs or procedures.

The ACE Export Manifest for Vessel Cargo Test examines the functionality of filing export manifest data for vessel cargo electronically in ACE. ACE creates a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community, as well as improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Vessel Cargo Test also assesses the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel. This capability will enhance CBP's ability to calculate the risk and effectively identify and inspect shipments prior to the loading of cargo in order to facilitate compliance with U.S. export laws.

CBP announced the procedures and criteria related to participation in the ACE Export Manifest for Vessel Cargo Test in a notice published in the **Federal Register** on August 20, 2015 (80 FR 50644). This test was originally scheduled to run for approximately two years. A correction to the notice, regarding the technical capability requirements, was published on October 20, 2015 (80 FR 63575). On August 14, 2017, CBP extended the test period (82 FR 37890). At that time, CBP also modified the original notice to make certain data elements optional and opened the test to accept additional applications for all parties who met the eligibility requirements. Through this notice, CBP is renewing the test.

The data elements, unless noted otherwise, are mandatory. Data elements which are mandatory must be provided to CBP for every shipment. Data elements which are marked ''conditional'' must be provided to CBP only if the particular information pertains to the cargo. Data elements which are marked ''optional'' may be provided to CBP but are not required to be completed. The data elements are set forth below:

(1) Mode of Transportation (containerized vessel cargo or noncontainerized vessel cargo)
(2) Name of Ship or Vessel
(3) Nationality of Ship
(4) Name of Master (optional)
(5) Port of Loading
(6) Port of Discharge
(7) Bill of Lading Number (Master and House)
(8) Bill of Lading Type (Master, House, Simple or Sub)
(9) Number of House Bills of Lading (optional)

(10) Marks and Numbers (conditional)
(11) Container Numbers (conditional)
(12) Seal Numbers (conditional)
(13) Number and Kind of Packages
(14) Description of Goods
(15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
(16) Shipper name and address
(17) Consignee name and address
(18) Notify Party name and address (conditional)
(19) Country of Ultimate Destination
(20) In-bond Number (conditional)
(21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
(22) Split Shipment Indicator (Yes/No) (optional)
(23) Portion of Split Shipment (*e.g.,* 1 of 10, 4 of 10, 5 of 10, Final, etc.) (optional)
(24) Hazmat Indicator (Yes/No)
(25) UN Number (conditional) (If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding four-digit identification number assigned to the hazardous material must be provided.)
(26) Chemical Abstract Service (CAS) Registry Number (conditional)
(27) Vehicle Identification Number (VIN) or Product Identification Number (conditional) (For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.)

For further details on the background and procedures regarding this test, please refer to the August 20, 2015 notice, as corrected by the October 20, 2015 notice, and the August 14, 2017 extension and modification.

II. Renewal of the ACE Export Manifest for Vessel Cargo Test Period

CBP will renew the test for another two years to continue evaluating the ACE Export Manifest for Vessel Cargo Test. This will assist CBP in determining whether electronic submission of manifests will allow for improvements in the functionality and capabilities at the departure level. The renewed test will run for two additional years from the date of publication.

III. Applicability of Initial Test Notice

All provisions in the August 20, 2015 notice, as corrected by the October 20, 2015 notice, and in the August 14, 2017 modification and extension remain applicable, subject to the time period provided in this renewal.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 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 the Office of Management and Budget (OMB). The collections of information in this NCAP test have been approved by OMB in accordance with the requirements of the Paperwork Reduction Act and assigned OMB control number 1651–0001.

Pete Flores,

Executive Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection.

[FR Doc. 2022–08955 Filed 4–26–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: Renewal of Test

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is renewing the Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability.

DATES: The voluntary pilot initially began on September 9, 2015, and it was modified and extended on August 14, 2017. The renewed test will run for an additional two years from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Applications for new participants in the ACE Export Manifest for Rail Cargo Test must be submitted via email to CBP Export Manifest at *cbpexportmanifest@cbp.dhs.gov.* In the subject line of the email, please write ''ACE Export Manifest for Rail Cargo Test Application''. Applications will be accepted at any time during the test period. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at *cbpexportmanifest@cbp.dhs.gov.* In the subject line of the email, please write ''Comment on ACE Export Manifest for Rail Cargo Test''. Comments may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Brian Semeraro, Branch Chief, or David Garcia, Program Manager, Outbound Enforcement and Policy Branch, Office of Field Operations, CBP, via email at *cbpexportmanifest@cbp.dhs.gov,* or by telephone, 202–325–3277.

SUPPLEMENTARY INFORMATION:

I. Background

The Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test is a voluntary test in which participants agree to submit export manifest data to U.S. Customs and Border Protection (CBP) electronically at least two hours prior to loading of the cargo onto the rail car, in preparation for departure from the United States or, for empty rail cars, upon assembly of the train. The ACE Export Manifest for Rail Cargo Test is authorized under § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of National Customs Automation Program (NCAP) programs or procedures.

The ACE Export Manifest for Rail Cargo Test examines the functionality of filing export manifest data for rail cargo electronically in ACE. ACE creates a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community, as well as improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Rail Cargo Test also assesses the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the train. This capability will enhance CBP's ability to calculate the risk and effectively identify and inspect shipments prior to the loading of cargo in order to facilitate compliance with U.S. export laws.

CBP announced the procedures and criteria related to participation in the ACE Export Manifest for Rail Cargo Test in a notice published in the **Federal Register** on September 9, 2015 (80 FR 54305). This test was originally scheduled to run for approximately two years. On August 14, 2017, CBP extended the test period (82 FR 37893). At that time, CBP also modified the original notice to make certain data elements optional and opened the test to accept additional applications for all parties who met the eligibility

requirements. Through this notice, CBP is renewing the test.

The data elements, unless noted otherwise, are mandatory. Data elements which are mandatory must be provided to CBP for every shipment. Data elements which are marked ''conditional'' must be provided to CBP only if the particular information pertains to the cargo. Data elements which are marked ''optional'' may be provided to CBP but are not required to be completed. The data elements are set forth below:

(1) Mode of Transportation (containerized rail cargo or noncontainerized rail cargo) (optional)
(2) Port of Departure from the United States
(3) Date of Departure
(4) Manifest Number
(5) Train Number
(6) Rail Car Order
(7) Car Locator Message
(8) Hazmat Indicator (Yes/No)
(9) 6-character Hazmat Code (conditional) (If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.)
(10) Marks and Numbers (conditional)
(11) SCAC (Standard Carrier Alpha Code) for exporting carrier
(12) Shipper name and address (For empty rail cars, the shipper may be the railroad from which the rail carrier received the empty rail car to transport.)
(13) Consignee name and address (For empty rail cars, the consignee may be the railroad to which the rail carrier is transporting the empty rail car.)
(14) Place where the rail carrier takes possession of the cargo shipment or empty rail car (optional)
(15) Port of Unlading
(16) Country of Ultimate Destination (optional)
(17) Equipment Type Code (optional)
(18) Container Number(s) (for containerized shipments) or Rail Car Number(s) (for all other shipments)
(19) Empty Indicator (Yes/No)

If the empty indicator is no, then the following data elements must also be provided, unless otherwise noted:

(20) Bill of Lading Numbers (Master and House)
(21) Bill of Lading Type (Master, House, Simple or Sub)
(22) Number of house bills of lading (optional)
(23) Notify Party name and address (conditional)
(24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
(25) Cargo Description
(26) Weight of Cargo (may be expressed in either pounds or kilograms)
(27) Quantity of Cargo and Unit of Measure
(28) Seal Number (only required if the container was sealed)
(29) Split Shipment Indicator (Yes/No) (optional)
(30) Portion of split shipment (*e.g.* 1 of 10, 4 of 10, 5 of 10, Final, etc.) (optional)
(31) In-bond Number (conditional)
(32) Mexican Pedimento Number (only for shipments for export to Mexico) (optional)

For further details on the background and procedures regarding this test, please refer to the September 9, 2015 notice and August 14, 2017 extension and modification.

II. Renewal of the ACE Export Manifest for Rail Cargo Test Period

CBP will renew the test for two years to continue evaluating the ACE Export Manifest for Rail Cargo Test. This will assist CBP in determining whether electronic submission of manifests will allow for improvements in the functionality and capabilities at the departure level. The renewed test will run for two years from the date of publication.

III. Applicability of Initial Test Notice

All provisions in the September 2015 notice and in the August 2017 modification and extension remain applicable, subject to the time period provided in this renewal.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 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 the Office of Management and Budget (OMB). The collections of information in this NCAP test have been approved by OMB in accordance with the requirements of the Paperwork Reduction Act and assigned OMB control number 1651–0001.

Pete Flores,

Executive Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection.

[FR Doc. 2022–08954 Filed 4–26–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0122]

Screening Requirements for Carriers

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 27, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 2888) on January 19, 2022, allowing for a 60-day comment period. This notice allows for

an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Screening Requirements for Carriers.

OMB Number: 1651–0122.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date and revise this information collection to allow electronic submission. There is no change to the information collected.

Type of Review: Revision.

Affected Public: Carriers.

Abstract: Section 273(e) of the Immigration and Nationality Act (8 U.S.C. 1323(e)) (the Act) authorizes the Department of Homeland Security (DHS) to establish procedures which carriers must undertake for the proper screening of their non-immigrant passengers prior to embarkation at the port from which they are to depart for the United States, in order to become eligible for a reduction, refund, or waiver of a fine imposed under section 273(a)(1) of the Act. (This authority was transferred from the Attorney General to the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002.) To be eligible to obtain such a reduction, refund, or waiver of a fine, the carrier must provide evidence to U.S. Customs and Border Protection (CBP) that it screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR part 273.

Some examples of the evidence the carrier may provide to CBP include: A description of the carrier's document screening training program; the number of employees trained; information regarding the date and number of improperly documented non-immigrants intercepted by the carrier at the port(s) of embarkation; and any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Proposed Change

Applicants may submit this information via electronic means, *e.g.,* email.

Type of Information Collection: Screening Requirements for Carriers.

Estimated Number of Respondents: 41.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 41.

Estimated Time per Response: 100 hours.

Estimated Total Annual Burden Hours: 4,100.

Dated: April 22, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–08979 Filed 4–26–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0027]

Record of Vessel Foreign Repair or Equipment Purchase (CBP Form 226)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 27, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 87 FR Page 4262) on January 27, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request

for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1651–0027.

Form Number: CBP Form 226.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: *https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase.*

Proposed Change

This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data, but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: Record of Vessel Foreign Repair or Equipment Purchase.

Estimated Number of Respondents: 421.

Estimated Number of Annual Responses per Respondent: 28.

Estimated Number of Total Annual Responses: 11,788.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 23,576.

Dated: April 22, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–08983 Filed 4–26–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of the Uniting for Ukraine Parole Process

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces the implementation of a U.S. Department of Homeland Security (DHS) parole process called *Uniting for Ukraine.* Pursuant to this process, DHS will offer certain Ukrainian citizens and their immediate family members who were recently displaced by Russia's war of aggression in Ukraine, pass biometric and biographic vetting, have sufficient financial support in the United States, and meet other eligibility requirements, an opportunity to apply for and receive advance authorization to travel to the United States for the purpose of seeking a discretionary grant of parole for urgent humanitarian reasons or significant public benefit for up to two years. The process is intended to be a safe, legal, and orderly pathway to support vulnerable Ukrainian citizens and their immediate family members in Europe who have been displaced from their country as a result of Russia's unprovoked invasion.

DATES: DHS will make the *Uniting for Ukraine* parole process available on April 25, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King, Jr. Avenue SE, Washington, DC 20528–0445

SUPPLEMENTARY INFORMATION:

I. Background

On February 24, 2022, Russia's military launched an unprovoked full-scale invasion of the sovereign nation of Ukraine, marking the largest conventional military action in Europe since World War II [1] and causing the fastest growing refugee crisis in modern history. As of April 10, 2022, nearly 12 million people have fled Russia's invasion, including seven million displaced inside Ukraine.[2] Russia's forces have continued to engage in significant, sustained bombardment of major cities, indiscriminately targeting civilian populations and causing widespread terror.[3] While most of those fleeing the violence remain in Europe,[4] the United States has committed to welcoming up to 100,000 displaced Ukrainians and others fleeing Russian aggression.[5] Among other legal pathways, the United States will consider, on a case-by-case basis, granting Ukrainians advance authorization to travel to the United States for the purpose of seeking a discretionary grant of parole for urgent humanitarian reasons or significant public benefit.[6]

The Immigration and Nationality Act (INA) provides the Secretary of Homeland Security with discretionary authority to parole noncitizens into the United States temporarily, under such reasonable conditions that the Secretary may prescribe, on a case-by-case basis, for ''urgent humanitarian reasons or significant public benefit.'' INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole''). Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States. INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). DHS may set the duration of the parole based on the purpose for granting the parole request, and may impose reasonable conditions on parole. INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). DHS may terminate parole in its discretion at any time. *See* 8 CFR 212.5(e). Individuals who are paroled into the United States generally may apply for employment authorization. *See* 8 CFR 274a.12(c)(11).

[1] ''Russia invades Ukraine on multiple fronts in 'brutal act of war','' *PBS,* Feb. 24, 2022, available at: *https://www.pbs.org/newshour/world/russia-invades-ukraine-on-multiple-fronts-in-brutal-act-of-war* (last visited Apr. 20, 2022); Natalia Zinets and Aleksandar Vasovic, ''Missiles rain down around Ukraine,'' *Reuters,* Feb. 24, 2022, available at: *https://www.reuters.com/world/europe/putin-orders-military-operations-ukraine-demands-kyiv-forces-surrender-2022-02-24/* (last visited Apr. 20, 2022).

[2] ''Russia's invasion of Ukraine in maps—latest updates,'' *Financial Times,* Apr. 20, 2022, available at: *https://www.ft.com/content/4351d5b0-0888-4b47-9368-6bc4dfbccbf5* (last visited Apr. 20, 2022).

[3] Ukraine: Humanitarian Impact Situation Report No. 1, United Nations Office for the Coordination of Humanitarian Affairs, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Apr. 20, 2022).

[4] Map: Where Ukraine refugees are heading, *ABC News,* Mar. 30, 2022, available at *https://abcnews.go.com/International/map-ukrainian-refugees-heading/story?id=83178031.*

[5] *FACT SHEET: The Biden Administration Announces New Humanitarian, Development, and Democracy Assistance to Ukraine and the Surrounding Region,* White House Briefing Room, Mar. 24, 2022, available at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/24/fact-sheet-the-biden-administration-announces-new-humanitarian-development-and-democracy-assistance-to-ukraine-and-the-surrounding-region/* (last visited Apr. 20, 2022).

[6] *See* INA section 212(d)(5), 8 U.S.C. 1182(d)(5); 8 CFR 212.5(f).

Uniting for Ukraine establishes a process by which eligible Ukrainian citizens and their immediate family members, if supported by an individual or entity in the United States, can apply for advance authorization to travel to the United States for the purpose of seeking a discretionary grant of parole. If advance authorization is granted, the recipient will be permitted to board a flight to the United States for the purpose of requesting parole. This notice outlines the process by which U.S.-based persons can apply to financially support eligible Ukrainian citizens and their immediate family members, the process by which those Ukrainians may request advance authorization to travel to the United States, and the relevant screening and vetting that is required prior to issuance of such travel authorization and any grant of parole.

The decision to parole a noncitizen into the United States is made at the port of entry, on a case-by-case basis, pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A); as a result, approval of travel authorization to apply for parole at a U.S. port of entry, *see* 8 CFR 212.5(f), does not guarantee that the individual will be paroled. If parole is granted pursuant to this process, it will generally be for a term of up to two years.

II. Ongoing Armed Conflict, Human Rights Abuses, and Humanitarian Situation in Ukraine

Russia's full-scale military invasion of Ukraine, beginning on February 24, 2022, has indiscriminately targeted civilian populations, placing civilians throughout the country at significant risk of physical harm.[7] As of mid-April 2022, Russian forces continue sustained shelling campaigns of cities and towns across Ukraine that have harmed, killed, and injured civilians and struck hospitals, schools, and apartment buildings.[8] Artillery attacks and air strikes by Russia's military forces have become regular occurrences in cities across Ukraine since the start of the February 2022 invasion.[9] Aerial bombardments in and around major cities have been reported as Russia's forces continue to target critical infrastructure.[10] In an April 13, 2022 update, the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) reported 4,521 civilian casualties during the ongoing Russian invasion of Ukraine, with more casualties expected as the fighting continues.[11] OHCHR also notes that these estimates likely significantly undercount civilian fatalities.[12]

Russia's unprovoked war against Ukraine continues to ''generate further population displacement, damage civilian infrastructure, and exacerbate humanitarian needs across the country.'' [13] Since February 24, significant infrastructural damage in Ukraine from Russia's air strikes has ''left hundreds of thousands of people without electricity or water, while bridges and roads damaged by shelling have left communities cut off from markets for food and other basic supplies.'' [14] In February 2022, the U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA) estimated that millions of Ukrainian nationals were in need of water, sanitation and hygiene assistance.[15] Those without access to alternative water sources have been most heavily impacted.[16]

Food security remains an ongoing is concern in Ukraine, with more than one million Ukrainian nationals in need of food assistance—including a significant number that are severely or moderately food insecure.[17] The impact on women has been particularly pronounced: ''available data show that female-headed households are an estimated 1.3 times more often experiencing food insecurity, compared to the overall population.'' [18] According to the United Nations, women and girls also face ''higher risks of human rights violations and sexual exploitation and abuse, including transactional sex, survival sex and conflict-related sexual violence.'' [19]

Critical medicines, health supplies and equipment, and shelter and protection for those displaced from their home are also in short supply.[20] According to the United Nations, more than a million Ukrainian nationals were in need of health care assistance, even prior to the initiation of conflict; the conflict has significantly exacerbated these challenges.[21] Hospitals have struggled with the volume of COVID cases and Ukraine has one of the lowest vaccination rates in Europe.

These factors, coupled with the ongoing violence, have led to large scale displacements of Ukrainians. Since Russia invaded Ukraine, over five million people have, as of April 19, 2022, fled Ukraine for Poland, Hungary, Slovakia, Romania, and Moldova.[22] Another seven million have been internally displaced inside Ukraine.[23]

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[7] *Press briefing notes on Ukraine,* UN OHCHR, Mar. 8, 2022, available at: *https://www.ohchr.org/en/press-briefing-notes/2022/03/press-briefing-notes-ukraine* (last visited Apr. 20, 2022).

[8] *War Crimes by Russia's Forces in Ukraine, Press Statement,* U.S. Secretary of State Antony J. Blinken, Mar. 23, 2022, available at: *https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/* (last visited Apr. 20, 2022).

[9] ''Fear, darkness and newborn babies: inside Ukraine's underground shelters,'' *The Guardian,* Feb. 26, 2022, available at: *https://www.theguardian.com/world/2022/feb/26/fear-darkness-and-newborn-babies-inside-ukraine-underground-shelters* (last visited Apr. 20, 2022).

[10] ''Russia's invasion of Ukraine in maps—latest updates,'' *Financial Times,* Apr. 20, 2022, available at: *https://www.ft.com/content/4351d5b0-0888-4b47-9368-6bc4dfbccbf5* (last visited Apr. 20, 2022).

[11] UN OHCHR, ''Ukraine: civilian casualty update 13 April 2022,'' Apr. 13, 2022, available at: *https://www.ohchr.org/en/news/2022/04/ukraine-civilian-casualty-update-13-april-2022* (last visited Apr. 20, 2022).

[12] *See supra* note 7.

[13] *Ukraine—Complex Emergency,* U.S. Agency for International Development, Mar. 25, 2022, available at: *https://www.usaid.gov/sites/default/files/documents/2022-03-25_USG_Ukraine_Complex_Emergency_Fact_Sheet_8.pdf* (last visited Apr. 20, 2022).

[14] *Ukraine: Humanitarian Impact, Situation Report No. 01,* UNOCHA Ukraine, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Apr. 20, 2022).

[15] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 73, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Apr. 20, 2022).

[16] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 39, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Apr. 20, 2022).

[17] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 79, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Apr. 20, 2022).

[18] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 51, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Apr. 20, 2022).

[19] *Rapid Gender Analysis of Ukraine: Secondary data review,* UNHCR, Mar. 29, 2022, *https://data2.unhcr.org/en/documents/details/91723* (last visited Apr. 20, 2022).

[20] *Ukraine: Humanitarian Impact, Situation Report No. 01,* UNOCHA Ukraine, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Apr. 20, 2022).

[21] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 87, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Apr. 20, 2022); *Impact of Health Reform on the Primary Healthcare Level in Conflict-Affected Areas of Donetsk and Luhansk Oblasts,* Médicos del Mundo, June 2021, available at: *https://reliefweb.int/report/ukraine/impact-healthcare-reform-primary-healthcare-level-conflict-affected-areas-donetsk-and* (last visited Apr. 20, 2022).

[22] Operational Data Portal, UNHCR, Apr. 19, 2022, available at: *https://data2.unhcr.org/en/situations/ukraine* (last visited Apr. 20, 2022).

[23] *One in Six People Internally Displaced in Ukraine,* International Organization on Migration, Apr. 21, 2022, available at: *https://reliefweb.int/*

Continued

III. Uniting for Ukraine

Pursuant to the process established by *Uniting for Ukraine,* U.S.-based individuals who agree to provide financial support to Ukrainian citizens and their immediate family members (supporters) will be able to initiate a process that will ultimately allow those Ukrainian citizens and their immediate family members (Ukrainian beneficiaries) to seek advance authorization to travel to the United States for the purpose of seeking parole into the United States at a U.S. port of entry. *See* INA section 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A) (permitting parole of a noncitizen into the United States for urgent humanitarian reasons or significant public benefit); 8 CFR 212.5(f). The determination as to whether to parole a particular noncitizen who presents such authorization remains a case-by-case, discretionary determination made upon arrival at the port of entry.

IV. Participation in Uniting for Ukraine and Filing Process

1. Eligibility

Certain Ukrainian citizens, and certain non-Ukrainian immediate family members,[24] who were physically present in Ukraine as of February 11, 2022 and have a U.S.-based supporter are eligible for this process. The process is triggered when a prospective supporter files a Form I–134, *Declaration of Financial Support,* with U.S. Citizenship and Immigration Services (USCIS) through an online portal. USCIS will review that form in order to verify and vet the information submitted. Once USCIS determines that the Form I–134 includes sufficient evidence of financial support, the relevant Ukrainian beneficiary will be notified and will be prompted to submit any additional required information. To be eligible, the Ukrainian beneficiary must possess a valid Ukrainian passport, or if a child without their own passport, be included in a parent's passport. At this time, only children traveling with a parent or a legal guardian will be eligible for *Uniting for Ukraine.* Individuals who are not eligible for *Uniting for Ukraine* may make an appointment at the nearest U.S. Embassy or consulate for additional information about available options.

The Ukrainian beneficiary also must clear biographic and biometric background checks, and will need to meet public health requirements, including, as appropriate, proof of required vaccinations, as determined by DHS's Chief Medical Officer, in consultation with the Centers for Disease Control and Prevention (CDC). Pursuant to these requirements, Ukrainian beneficiaries must demonstrate proof of first doses of measles, polio, and COVID–19 vaccines and must complete a screening for tuberculosis for all individuals two years of age or older. These requirements may be adjusted in accordance with evolving public health needs; the most up-to-date requirements will be available at *www.dhs.gov/ukraine.*

2. Processing Steps

Filing and confirmation of financial support: The process is initiated when a supporter—either an individual or an individual acting on behalf of an organizations—files a Form I–134, *Declaration of Financial Support,* online using the myUSCIS platform. This declaration must include biographic and financial information on the supporter, and biographic identifying information on the Ukrainian beneficiary.

The individual who submits and signs the Form I–134 must be a U.S.-based person in lawful status, a parolee, or a beneficiary of deferred action or Deferred Enforced Departure. The individual can, however, represent an organization. If the individual is acting on behalf of an organization, and if that organization is providing the financial or other services to support the Ukrainian beneficiary, this information should be provided as part of the evidence submitted with the Form I–134.

USCIS will conduct background checks on the supporter to protect against exploitation and abuse and to determine the supporters' financial suitability to support beneficiaries. If the supporter is approved, USCIS will notify the Ukrainian beneficiary electronically with an invitation to create a myUSCIS account.

Ukrainian beneficiary account registration: Following USCIS's approval of the named supporter, the Ukrainian beneficiary will receive an electronic communication from USCIS with instructions on how to set up an account with myUSCIS and other next steps. The Ukrainian beneficiary will be required to confirm their biographic information on myUSCIS and attest to completion of all other requirements, including the required vaccinations and screening listed above.

Vetting and Clearance: Biographic information provided by the prospective Ukrainian beneficiary will be vetted against national security and law enforcement databases. The my USCIS system will transmit biographic information for Ukrainian beneficiaries directly to U.S. Customs and Border Protection (CBP) and into CBP's Automated Targeting System (ATS) for vetting. Only Ukrainian beneficiaries who complete all the requirements, including vaccinations, and clear the vetting of their biographic information will receive the necessary advanced authorization to travel to the United States to seek parole

Once vetting is complete and advance authorization to travel has been approved, Ukrainian beneficiaries will receive a notification in myUSCIS in an automated manner. Cleared individuals will be authorized to travel via commercial routes to the United States for a period of 90 days. Carriers utilizing CBP's Document Validation program will be able to access this authorization to facilitate generation of a boarding pass. Carriers who are not participants in the Document Validation program will utilize manual verification mechanisms to generate a boarding pass.

Travel and public health related requirements: Ukrainian beneficiaries who receive advance authorization to travel to the United States will be responsible for arranging and funding their travel to the United States. In addition, Ukrainian beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with CDC, with respect to health and travel,[25] including

report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022 (last visited Apr. 24, 2022).

[24] Ukrainians' immediate family members who are not Ukrainian citizens may also be considered for parole under *Uniting for Ukraine.* Immediate family members, for the purposes of *Uniting for Ukraine,* include: The spouse or common-law partner of a Ukrainian citizen; and their unmarried children under the age of 21. Non-Ukrainian immediate family members authorized to travel under this process must accompany the principal Ukrainian when completing travel to the United States. Unaccompanied minors and family groups that include minors traveling with adults that are not the child's parent or legal guardian are not currently eligible for this process.

[25] Changes to requirements for travel by air were implemented by, *inter alia,* Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (''Presidential Proclamation''), and a related CDC orders, 86 FR 61224 (Nov. 5, 2021) and 87 FR 20405 (Apr. 7, 2022). *See also* CDC, *Requirement for Proof of Negative COVID–19 Test or Recovery from COVID–19 for All Air Passengers Arriving in the United States, https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf* (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf* (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. *See* CDC, *Requirement for Proof of Negative COVID–19 Test Result or Recovery from COVID–19 for All Airline Passengers Arriving into the United States, https://www.cdc.gov/quarantine/*

vaccination and/or testing requirements for diseases like COVID–19, polio, measles, and tuberculosis.

Parole determination at a U.S. port of entry: Upon arrival at a port of entry, Ukrainian beneficiaries will be inspected by a CBP officer who will make a case-by-case processing determination, to include consideration of parole. Individuals granted parole pursuant to this process will generally be paroled for a period of up two years. Individuals granted parole under this process will be eligible to apply for employment authorization with USCIS.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval, any new reporting requirements they impose. OMB has approved USCIS Form I–134, *Declaration of Financial Support,* and assigned the revision to OMB control number 1615–0014.

USCIS is making some changes to this form in connection with the implementation of the *Uniting for Ukraine* process and has submitted a request to OMB for emergency approval of the required changes under 5 CFR 1320.13. Following OMB approval of the emergency request, USCIS will publish a notice under the PRA and will make some revisions to the currently approved burden for OMB control number 1615–0014.

VI. Implementation

This process will be implemented beginning on April 25, 2022.

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2022–09087 Filed 4–25–22; 4:15 pm]

BILLING CODE 9110–9M–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: Department of Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place.

DATES: The meeting will be held as a webinar on Wednesday, May 18, 2022, from 1:00 p.m. to 5:00 p.m., and on Thursday, May 19, 2022, from 1:00 p.m. to 5:00 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held on-line and via teleconference. Instructions for accessing the meeting will be posted at *www.fgdc.gov/ngac.* Comments can be sent to Ms. Dionne Duncan-Hughes, Group Federal Officer by email to *gs-faca@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Mahoney, Federal Geographic Data Committee (FGDC), USGS, by mail at 909 First Avenue, Room 703, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 375–2565.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix 2), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The NGAC provides advice and recommendations related to management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of the Geospatial Data Act of 2018 (GDA) and the Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC meeting is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC meeting is available at: *www.fgdc.gov/ngac.*

Agenda Topics:

—FGDC Update
—GDA Reporting
—Landsat Advisory Group
—Partnerships/Stakeholder Engagement
—3D Elevation Program
—Executive Order 14008/Climate Mapping Initiative
—Public Comment

Meeting Accessibility/Special Accommodations: The webinar meeting is open to the public and will take place from 1:00 p.m. to 5:00 p.m. on May 18, 2022, and from 1:00 p.m. to 5:00 p.m. on May 19, 2022. Members of the public wishing to attend the meeting should visit *www.fgdc.gov/ngac* or contact Mr. John Mahoney (see **FOR FURTHER INFORMATION CONTACT**). Webinar/conference line instructions will be provided to registered attendees prior to the meeting. Individuals requiring special accommodations to access the public meeting should contact Mr. John Mahoney (see **FOR FURTHER INFORMATION CONTACT**) at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: There will be an opportunity for public comment during both days of the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the Committee for consideration. To allow for full consideration of information by the Committee members, written comments must be provided to John Mahoney (see **FOR FURTHER INFORMATION CONTACT**) at least three (3) business days prior to the meeting. Any written comments received will be provided to the committee members before the meeting.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2022–08924 Filed 4–26–22; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain CPAP Pillows, DN 3615;* 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,

pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf (Dec. 2, 2021).

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 Pro•Pap on April 20, 2022. 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 CPAP pillows. The complainant names as respondent: Lumia Products Co. LLC of San Diego, CA. The complainant requests that the Commission issue a limited exclusion order and a cease and desist order.

Proposed respondent, 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. 3615'') 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: April 22, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08992 Filed 4–26–22; 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

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0108]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Forensic Firearm Training Request for Non-ATF Employees—ATF Form 7110.15

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension with Change of a Currently Approved Collection.

(2) *The Title of the Form/Collection:* Forensic Firearm Training Request for Non-ATF Employees.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 7110.15.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government.

Other: State, Local, or Tribal Government.

Abstract: The Forensic Firearm Training Request for Non-ATF Students—ATF Form 7110.15 is used by Federal, State and local, and international law enforcement personnel to register, obtain course information, and/or evaluate forensic firearms investigative techniques training offered by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 75 respondents will respond to this collection once annually, and it will take each respondent approximately 6 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 7.5 or 8 hours, which is equal to 75 (total respondents) * 1 (# of response per respondent) * .1 (6 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: April 21, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–08898 Filed 4–26–22; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On April 21, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Massachusetts, in a lawsuit entitled *United States* v. *Schnitzer Steel Industries, Inc.,* Civil Action No. 1:22–cv–10604.

The United States filed this lawsuit under Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7613(b). The Complaint seeks civil penalties, injunctive relief, and mitigation for violations of Title V of the CAA, 42 U.S.C. 7671–7671q, and its implementing regulations at 40 CFR part 82, subpart F, designed to protect stratospheric ozone from the effects of refrigerant emissions, at 40 metal recycling facilities throughout the United States owned and operated by Schnitzer. The alleged violations include, among other things, (a) failing to recover refrigerants from small appliances, motor vehicle air conditioners (''MVACs''), and MVAC-like appliances (collectively, ''appliances'') prior to recycling; (b) failing to verify that all refrigerants had been properly recovered from appliances prior to their delivery to Schnitzer's facilities; and (c) accepting signed refrigerant recovery statements or contracts from scrap material suppliers knowing or having reason to know they were false.

Under the proposed consent decree, Schnitzer will pay the United States a civil penalty of $1,550,000, plus interest, and implement compliance measures at all 40 facilities worth over $1,700,000. For example, the decree requires Schnitzer to, among other things, implement an EPA-approved refrigerant recovery management program (''RRMP''), including the provision of refrigerant recovery services, screening procedures for scrap appliances and vehicles, and related employee training. The decree also requires Schnitzer to perform a mitigation project involving the destruction of all R–12 refrigerant recovered from scrap appliances at its 40 facilities. R–12, which contains chlorofluorocarbons (CFCs), has a global warming potential 10,000 times that of carbon dioxide.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Schnitzer Steel Industries, Inc.,* D.J. Ref. No. 90–5–2–1–12074. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* Paper copies of the consent decree are available upon written request and payment of reproduction costs. Such requests and payments should be

addressed to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

With each such request, please enclose a check or money order for $9.75 (25 cents per page reproduction cost) per paper copy, payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–08927 Filed 4–26–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Generic Clearance for the Collection of Qualitative Data To Support National Institute of Justice Research and Assessment

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 27, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Benjamin Adams, Social Science Analyst, National Institute of Justice, 810 Seventh Street NW, Washington, DC 20531 (email: *benjamin.adams@usdoj.gov;* telephone: 202–616–3687).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

—Evaluate whether the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used;

—Evaluate whether and if so how the quality, utility, and clarity of the information collected can be enhanced; and

—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, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Generic Clearance for the Collection of Qualitative Data to Support National Institute of Justice Research and Assessment.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Not applicable (new collection).

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Respondents/affected entities:* Administrators or staff of state and local agencies or programs in the relevant fields; administrators or staff of non-government agencies or programs in the relevant fields; individuals; policymakers at various levels of government.

Abstract: The National Institute of Justice (NIJ) is requesting a generic clearance for the purpose of conducting qualitative research and assessment. NIJ's mission is to advance scientific research, development, and evaluation to enhance the administration of justice and public safety. The proposed information collection activities will enable NIJ to better understand emerging crime and justice issues pertinent to its research mission, inform the development of intramural and extramural research projects, and ensure relevant information is available for use in the planning, management, and assessment of NIJ research portfolios. NIJ anticipates using a variety of techniques including, but not limited to, individual in-depth interviews, semi-structured small group discussions, focus groups, and questionnaires to reach these goals.

NIJ will only submit a collection for approval under this generic clearance if the collections are voluntary; the collections are low burden for respondents and are low- or no-cost for both the respondents and the Federal Government; the collections are noncontroversial; personally identifiable information is collected only to the extent necessary and is not retained; information gathered will not be used for the purpose of substantially informing influential policy decisions; and information gathered will yield qualitative information.

Following standard Office of Management and Budget (OMB) requirements, NIJ will submit an individual request to OMB for every group of data collection activities undertaken under this generic clearance. NIJ will provide OMB with a copy of the individual instruments or questionnaires (if one is used), as well as other materials describing the project. Currently, NIJ anticipates the need to conduct qualitative research that will include the collection of information from law enforcement agencies, jails, prisons, and the state agencies, local governments, and nonprofit organizations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 2,500 respondents will be involved in the anticipated qualitative research over the 3-year clearance period. Specific estimates for the average response time are not known for the work covered under a generic clearance, however, an estimate of overall burden is included in item 6 below.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden for identified and future projects covered under this generic clearance over the 3-year clearance period is approximately 3,000 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 22, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–08938 Filed 4–26–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday, May 19, 2022. This meeting will be held virtually.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities. The Committee advises on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The agenda for the meeting is as follows:

12:00 p.m. Commissioner's welcome and review of agency developments

12:30 p.m. Proposed changes to the Census of Fatal Occupational Injuries variables and outputs

1:30 p.m. Break

1:45 p.m. Revised item structure for the Consumer Price Index

2:45 p.m. Business Response Survey

3:45 p.m. Discussion of future topics and concluding remarks

4:00 p.m. Conclusion

The meeting is open to the public. Anyone planning to attend the meeting should contact Lisa Fieldhouse, Data Users Advisory Committee, at *fieldhouse.lisa@bls.gov.* Any questions about the meeting should be addressed to Ms. Fieldhouse. Individuals who require special accommodations should contact Ms. Fieldhouse at least two days prior to the meeting date.

Signed at Washington, DC, this 21st day of April 2022.

Eric Molina,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2022–09022 Filed 4–26–22; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0012]

Temporary Labor Camps; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA is soliciting public comments concerning the proposal to extend OMB approval of the information collection requirements contained in the Temporary Labor Camps Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by June 27, 2022.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov*. Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2012–0012). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining said information (29 U.S.C. 657).

OSHA is requesting approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). The main purpose of these provisions is to eliminate the incidence of communicable disease among temporary labor camp residents. The standard requires camp superintendents to report immediately to the local health officer the name and address of any individual in the camp known to have, or suspected of having, a communicable disease (29 CFR 1910.142(l)(1)). Whenever there is a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, the standard requires the camp superintendent to report said illness immediately to the health authority (29 CFR 1910.142(l)(2)). In addition, the standard requires separate toilet rooms to be provided for each sex where the toilet rooms are shared. These rooms must be marked ''for men'' and ''for women'' by signs printed in English and in the native language of the persons occupying the camp or marked with easily understood pictures or symbols (29 CFR 1910.142(d)(4)).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- the accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- the quality, utility, and clarity of the information collected; and
- ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). The Agency is requesting an adjustment increase in the number of burden hours from 47 hours to 48 hours. There was an increase in the number of cases from 564 cases to 577. This was due to the increase in the incidents reported of notifiable diseases from 870 per 100,000 to 1,028 per 100,000 people.

The agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Temporary Labor Camps (29 CFR 1910.142).

OMB Control Number: 1218–0096.

Affected Public: Businesses or other for-profits.

Number of Respondents: 56,160.

Frequency of Responses: On occasion.

Total Number of Responses: 577.

Average Time per Response: Time per response is 5 minutes to report each incident to local public health authorities.

Estimated Total Burden Hours: 48.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0012). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 18, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–08907 Filed 4–26–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Meeting of the Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Announcement of meeting.

SUMMARY: The Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) will be holding a meeting.

DATES: The Advisory Board will meet May 10–11, 2022, via teleconference, from 1:00 p.m. to 5:00 p.m. Eastern time on each day.

ADDRESSES: Submission of comments, requests to speak, and materials for the record: You must submit comments, materials, and requests to speak at the Advisory Board meeting by May 3, 2022, identified by the Advisory Board name and the meeting date of May 10–11, 2022, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, for example ''Request to Speak: Advisory Board on Toxic Substances and Worker Health'').
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210.

Instructions: Your submissions must include the Agency name (OWCP), the committee name (the Advisory Board), and the meeting date (May 10–11, 2022). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available, publicly, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OWCP cautions

interested parties against submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 693–4672; email *Mcginnis.Laura@DOL.GOV.*

SUPPLEMENTARY INFORMATION: The Advisory Board will meet via teleconference: Tuesday, May 10, 2022, from 1:00 p.m. to 5:00 p.m. Eastern time; and Wednesday, May 11, 2022, from 1:00 p.m. to 5:00 p.m. Eastern time. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

Public comment session: Tuesday, May 10, 2022, from 4:15 p.m. to 5:00 p.m. Eastern time. Please note that the public comment session ends at the time indicated or following the last call for comments, whichever is earlier. Members of the public who wish to provide public comments should plan to call in to the public comment session at the start time listed.

The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and (6) such other matters as the Secretary considers appropriate. The Advisory Board sunsets on December 19, 2024.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Review and follow-up on Advisory Board's previous recommendations, data requests, and action items;
- Discussion of resources requested;
- Review responses to Board questions;
- Review of claims by Board members;
- Follow up on prior Board recommendations;
- Review of Board tasks, structure and work agenda;
- Consideration of any new issues; and
- Public comments.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP posts the transcripts and minutes on the Advisory Board web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions and Access to Public Record

Advisory Board meetings: All Advisory Board meetings are open to the public. Information on how to participate in the meeting remotely will be posted on the Advisory Board's website.

Submission of comments: You may submit comments using one of the methods listed in the **SUMMARY** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (May 10–11, 2022). OWCP will post your comments on the Advisory Board website and provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Requests to speak and speaker presentations: If you want to address the Advisory Board at the meeting you must submit a request to speak, as well as any written or electronic presentation, by May 3, 2022, using one of the methods listed in the **SUMMARY** section. Your request may include:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The Advisory Board Chair may grant requests to address the Board as time and circumstances permit.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

For further information regarding this meeting, you may contact Michael Chance, Designated Federal Officer, at *chance.michael@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

Signed at Washington, DC.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2022–08685 Filed 4–26–22; 8:45 am]

BILLING CODE 4510–CR–P

LIBRARY OF CONGRESS

Copyright Office

[Docket Number 2022–2]

Standard Technical Measures and Section 512

AGENCY: Library of Congress, U.S. Copyright Office.

ACTION: Notification of Inquiry.

SUMMARY: The U.S. Copyright Office is gathering information on the development and use of standard technical measures for the protection and identification of copyrighted works. The Office seeks public comment on this topic to enhance the public record and to advise Congress. This Notice of Inquiry on standard technical measures is separate from the Office's consultations on voluntarily deployed technical measures for identifying or protecting copyrighted works online, announced in the **Federal Register** on December 22, 2021, with the opening plenary session held on February 22, 2022.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on May 27, 2022. If the Office determines that an additional round of written comments is needed, it will issue a separate notice.

ADDRESSES: For reasons of governmental efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All

comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/policy/stm.* If electronic submission is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Aurelia J. Schultz, Counsel for Policy and International Affairs, by email at *aschu@copyright.gov* or Benjamin Brady, Counsel for Policy and International Affairs, by email at *bbrady@copyright.gov*. They can each be reached by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: In 2015, the U.S. Copyright Office initiated a study on section 512 of Title 17, enacted as part of the Digital Millennium Copyright Act (DMCA).[1] Public input for the Study included two rounds of comments and several roundtables.[2] The comments and transcripts of the roundtable proceedings are available on the Copyright Office website at *http://copyright.gov/policy/section512/* under ''Public Comments'' and ''Public Roundtables,'' respectively.[3] The Office issued its report, *Section 512 of Title 17,* on May 21, 2020; it is available at *http://www.copyright.gov/policy/section512/section-512-full-report.pdf.*

Among other topics, the Study examined section 512's ''safe harbor'' framework, which limits an internet service provider's liability for infringement if the provider meets certain conditions. One of these conditions is that the internet service provider ''accommodates and does not interfere with standard technical measures.'' [4] Section 512(i) defines standard technical measures (STMs) as measures ''used by copyright owners to identify or protect copyright[ ]'' that ''have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process.'' [5] These measures must be ''available to any person on reasonable and nondiscriminatory terms'' and cannot ''impose substantial costs on service providers or substantial burdens on their systems or networks.'' [6]

Several participants observed that, in the two decades since the passage of the DMCA, no STMs have been identified under section 512(i).[7] Although some participants expressed an interest in building consensus around existing technologies,[8] others warned that the consultative multi-industry process the statute requires might be difficult or impossible to achieve.[9]

In its Report, the Office concluded that a complete consensus across industries and one-size-fits-all technical solutions are unlikely to emerge. The Office suggested that Congress clarify that the ''broad consensus'' in section 512(i) does not require agreement by all stakeholders on a given STM.[10] The Office also suggested that stakeholders and Congress consider ''legislative, regulatory, or practical avenues to encourage the adoption and development'' of STMs.[11] The Office encouraged ''stakeholder collaboration to leverage their diverse expertise in order to find and adapt solutions as technology and piracy evolve.'' [12]

Shortly after the Report's release in 2020, Senators Thom Tillis and Patrick Leahy of the Senate Judiciary Committee wrote to the Copyright Office requesting additional information on potential improvements to the safe harbor framework.[13] The Senators specifically inquired about ways in which the Office ''can help stakeholders identify and adopt standard technical measures without congressional action.'' [14] In response, the Office held a virtual stakeholder meeting in September 2020, with three separate discussions covering the legal foundation of STMs, current technologies and their potential for adoption as STMs, and means of identifying or developing STMs going forward.[15] Recognizing the importance of the ''collaboration and cooperation of all stakeholders involved in the online ecosystem,'' the Office invited participation by representatives from a wide range of stakeholders.[16] Videos of these public discussions are available at *http://www.copyright.gov/512/* under ''Standard Technical Measures Discussion.'' [17] In the Office's view, the

[1] Section 512 Study: Notice and Request for Public Comment, 80 FR 81862 (Dec. 31, 2015).

[2] *Id.;* Section 512 Study: Request for Additional Comments, 81 FR 78636 (Nov. 8, 2016); Section 512 Study: Announcement of Public Roundtables, 81 FR 14896 (Mar. 18, 2016); Section 512 Study: Announcement of Public Roundtable, 84 FR 1233 (Feb. 1, 2019).

[3] References to the transcripts are indicated by ''Tr.'' followed by the page(s) and line(s) of the reference, the date of the roundtable, and the speaker's name and affiliation.

[4] 17 U.S.C. 512(i)(1)(B).

[5] 17 U.S.C. 512(i)(2)(A).

[6] 17 U.S.C. 512(i)(2)(B), (C).

[7] *See, e.g.,* Authors Guild, Inc., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015, Notice of Inquiry at 27 (Apr. 1, 2016) (''As a result, there has been no impetus to conduct the sort of standards creation process to develop STMs that was contemplated by Congress . . . .''); Comput. & Commc'ns Indus. Ass'n (''CCIA''), Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015, Notice of Inquiry at 24 (Mar. 31, 2016) (''CCIA Initial Comments'') (''CCIA is unaware of any successful or emerging inter-industry technological effort that satisfies the requirements of Section 512(i)(2).''); Copyright All., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015, Notice of Inquiry at 26 (Apr. 1, 2016) (referring to STMs as an ''entirely un-utilized device''); Software & Info. Indus. Ass'n, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015, Notice of Inquiry at 4 (Apr. 1, 2016) (observing that ''the multi-stakeholder process that the statute envisioned never occurred, and is not likely to occur''); Tr. 19:8–11 (May 13, 2016) (Keith Kupferschmid, Copyright All.) (noting that section 512(i) ''really hasn't been used virtually at all''); Tr. 68:22–69:6 (May 3, 2016) (Lisa Willmer, Getty Images) (stating that ''it's clear that leaving it to voluntary action is not enough'' and that ''there's no technology that meets that definition'').

[8] *See* Tr. at 70:14–18 (May 13, 2016) (Jeffrey Sedlik, PLUS Coal.) (''[T]he technology is there and ready to use. And there is a voluntary initiative by all the stakeholders to get together and come together and create a solution that doesn't necessarily involve revising the statute.''). Despite the interest expressed during the 2016 roundtables, the development of any STMs still had not occurred by 2019. *See* Tr. at 439:21–440:2 (Apr. 8, 2019) (Nancy Wolff, Digit. Media Licensing Ass'n (''DMLA'')) (''[T]he idea that it's a multi-industry standard process with everyone involved, I don't think that's the way that really has worked. I haven't seen any of that happening.'').

[9] *See* CCIA Initial Comments at 24–25 (''In light of the fact that Section 512(i) amounts to a private sector technology mandate that would govern many thousands of diverse platforms, it should not be surprising that no one-size-fits-all system meeting the statute's high standards has evolved.''); Google Inc., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015, Notice of Inquiry at 16 (Apr. 1, 2016) (''Given the wide array of OSPs of different sizes, users, and service offered, a one-size-fits-all requirement imposed by private stakeholders would be unworkable for many OSPs, especially smaller ones . . . .''); Tr. at 438:12–17 (Apr. 8, 2019) (Nancy Wolff, DMLA) (''The way [STMs are] defined just doesn't work because technical measures aren't done by a broad consensus of users and technology companies. They really come out of different sectors that are familiar with their own type of content.''); Tr. at 111:8–16 (May 13, 2016) (Dean Marks, Motion Picture Ass'n of Am.) (''[I]n the kind of notice-and-takedown or anti-piracy copyright protection context online, [development of STMs] just hasn't worked that way, I think possibly because there is such a variety of platforms and players and different types of sites and technology. You know, when the DMCA was passed, there wasn't even peer-to-peer technology. So I think the context just changes so rapidly that it's made it more difficult.'').

[10] U.S. Copyright Off., Section 512 of Title 17, at 177 (2020) (''Section 512 Report'').

[11] *Id.*

[12] *Id.* at 179.

[13] Letter from Sens. Thom Tillis & Patrick Leahy to Maria Strong, Acting Reg. of Copyrights (May 29, 2020), *https://copyright.gov/laws/hearings/response-to-may-29-2020-letter.pdf.*

[14] *Id.* at 2.

[15] The panel discussions were held on September 22, 23, and 29, 2020. More information is available at *https://www.copyright.gov/events/stm-discussion.*

[16] Letter from Maria Strong, Acting Reg. of Copyrights, to Sens. Thom Tillis & Patrick Leahy at 11 (June 29, 2020), *https://copyright.gov/laws/hearings/response-to-may-29-2020-letter.pdf* (''Strong, June 29, 2020, Letter'').

[17] *See* U.S. Copyright Off., *Standard Technical Measures: Legal Foundation* (Sept. 22, 2020), *https://stream-media.loc.gov/copyright/STM-Legal-Foundation.mp4;* U.S. Copyright Off., *Standard*

September 2020 event highlighted a lack of consensus among stakeholders and raised more questions than answers.

In June 2021, Senators Tillis and Leahy again wrote to the Copyright Office expressing concern about the lack of progress on achieving the DMCA's goal of encouraging stakeholder collaboration in the development of STMs.[18] The Senators asked the Office to look into the deployment of technical measures to identify and protect copyrighted works online generally and to explore the identification and implementation of STMs under section 512(i).[19]

The Office's Notice of Inquiry from December 2021 addresses the Senators' first request concerning the voluntary development of technical measures to identify and protect copyrighted works online generally.[20] Today's Notice of Inquiry addresses the second request by examining issues surrounding STMs as defined in the current statutory framework and seeking input on alternatives.

In the Section 512 Report and a subsequent letter to Congress, the Office described several hurdles to identifying and adopting STMs under section 512(i), including ambiguities in the statutory language that potentially restrict or discourage their use,[21] the limited application and availability of specific technologies to certain subsets of stakeholders,[22] and practical challenges impeding the Office from either facilitating the development of STMs or playing a direct role in their development or use.[23] To provide Congress with a better understanding of how these issues might be addressed, the Office requests comments on the following questions. In your response, please identify which question(s) you are answering.

Questions About Existing Technologies as STMs

1. Are there existing technologies that meet the current statutory definition of STMs in section 512(i)? If yes, please identify. If no, what aspects of the statutory definition do existing technologies fail to meet?

2. What has hindered the adoption of existing technologies as STMs? Are there solutions that could address those hindrances?

Questions About Section 512(i)

3. *Process under the current statute:*

(a) *Formal Process:* Does section 512(i) implicitly require a formal process for adoption of an STM? If so, what are the requirements for such a process, and what should such a process entail?

(b) *Informal Process:* If the statute does not require a formal process, is an informal process appropriate or necessary? What type of informal process would facilitate the identification and adoption of an STM, and what should such a process entail?

(c) *Entities:* What entity or entities would be best positioned to convene the process, whether formal or informal? What, if anything, is needed to authorize such an entity to convene the process? Is there any role under section 512(i) for third parties, such as regulatory agencies or private standard-setting bodies, to determine whether a particular technology qualifies as an STM? If so, what is the nature of that role? How would the third party determine that a particular technology qualifies as an STM? What would be the effect of such a determination?

(d) *Courts:* What role, if any, do or should courts play in determining whether a particular technology qualifies as an STM under section 512(i)? How would a court determine that a particular technology qualifies as an STM? What would be the effect of such a determination? For example, would such a determination be binding or advisory? Would it bind non-parties or apply outside of the court's jurisdiction? What would be the effect of pending appeals or inconsistent determinations across jurisdictions?

4. *International Organizations:* Could technologies developed or used by international organizations or entities become STMs for purposes of section 512(i)? If so, through what process?

5. *Consensus:* Under section 512(i)(2)(A), a measure can qualify as an STM if it has been ''developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process.''

(a) What level of agreement constitutes a ''broad consensus''?

(b) What groupings qualify as ''multi-industry''?

(c) Can the phrase ''multi-industry'' as used in the statute mean a grouping within a subset of industries? Could such sub-industry divisions adopt separate STMs? What would be appropriate sub-industry divisions?

6. *Availability:*

(a) Under section 512(i)(2)(B), an STM must also be ''available to any person on reasonable and nondiscriminatory terms.'' Is this a threshold requirement for a technology to qualify as an STM or an obligation to make a technology available on reasonable and nondiscriminatory terms once it is designated as an STM?

(b) How has concern over the potential availability and accessibility of a technology affected the adoption of STMs? What terms would be reasonable and nondiscriminatory for STMs? In what ways would it be possible to enforce these terms?

7. *Costs and burdens:* Under section 512(i)(2)(C), an STM must not ''impose substantial costs on service providers or substantial burdens on their systems or networks.'' How should the substantiality of costs and burdens on internet service providers be evaluated? Should this evaluation differ based on variations in providers' sizes and functions?

8. *Internet service provider responsibilities:* Section 512(i)(1)(B) states that an internet service provider must ''accommodate[ ] and [ ] not interfere'' with STMs to qualify for the statutory safe harbor. What actions does this standard require service providers to take or to affirmatively avoid taking? Must all internet service providers have the same obligations for every STM? What obstacles might prevent service providers from accommodating STMs? What could ameliorate such obstacles?

Questions About Potential Changes to Section 512

9. *Definition:* How could the existing definition of STMs in section 512 of Title 17 be improved?

10. *Obligations:* Currently, section 512(i)(1) conditions the safe harbors established in section 512 on an internet service provider accommodating and not interfering with STMs.

(a) Is the loss of the section 512 safe harbors an appropriate remedy for interfering with or failing to accommodate STMs? If not, what would be an appropriate remedy?

(b) Are there other obligations concerning STMs that ought to be required of internet service providers?

(c) What obligations should rightsholders have regarding the use of STMs?

11. *Adoption through rulemaking:*

Technical Measures: Current Technologies and Their STM Potential (Sept. 23, 2020), *https://stream-media.loc.gov/copyright/STM-Current-Technologies-and-their-STM-Potential.mp4;* U.S. Copyright Off., *Standard Technical Measures: Looking Forward* (Sept. 29, 2020), *https://stream-media.loc.gov/copyright/STM-Looking-Forward.mp4.*

[18] Letter from Sens. Patrick Leahy & Thom Tillis to Shira Perlmutter, Reg. of Copyrights, at 2 (June 24, 2021).

[19] *Id.* at 2–3.

[20] Technical Measures: Public Consultations, 86 FR 72638 (Dec. 22, 2021).

[21] Section 512 Report at 179; *see also* Strong, June 29, 2020, Letter at 12–13.

[22] Section 512 Report at 67–68, 71–72.

[23] Strong, June 29, 2020, Letter at 12 (June 29, 2020).

(a) What role could a rulemaking play in identifying STMs for adoption under 512(i)?

(b) What entity or entities would be best positioned to administer such a rulemaking?

(c) What factors should be considered when conducting such a rulemaking, and how should they be weighted?

(d) What should be the frequency of such a rulemaking?

(e) What would be the benefits of such a rulemaking? What would be the drawbacks of such a rulemaking?

12. *Alternatives:* Are there alternative approaches that could better achieve Congress's original goals in enacting section 512(i)?

Other Issues

13. Please identify and describe any pertinent issues not referenced above that the Copyright Office should consider.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

[FR Doc. 2022–08946 Filed 4–26–22; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number: NASA–22–033; Docket Number: NASA–2022–0002]

National Environmental Policy Act; Mars Sample Return Campaign; Correction

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent; notice of meetings; request for comments; correction.

SUMMARY: The National Aeronautics and Space Administration (NASA) published a document in the **Federal Register** of April 15, 2022, concerning a notice of intent; notice of meetings; and request for comments. The document inadvertently omits the meeting number (access code) for the virtual public scoping meetings which is required for audio-only users to gain access to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slaten, National Aeronautics and Space Administration, by electronic mail at *Mars-sample-return-nepa@lists.nasa.gov* or by telephone at 202–258–0016.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 2022, in FR Doc. 2022–08088, on page 22578, in the third column, correct the third sentence in the second paragraph of the **DATES** section from ''The call-in number for audio-only users is: +1–510–210–8882'' to read ''The call-in number for audio-only users is: 1–510–210–8882 and the Meeting Number (access code) is 901–525–785.''

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2022–08937 Filed 4–26–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the Committee on Strategy for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Friday, April 29, 2022, from 10:00–10:30 a.m. EDT.

PLACE: This meeting will be held by teleconference organized through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's Opening Remarks; Approval of Prior Meeting Minutes; Update on NSF's FY 2022 Current Plan.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates are available from the NSB website at *https://www.nsf.gov/nsb/meetings/index.jsp#up.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–09041 Filed 4–25–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on External Engagement hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, April 28, 2022, from 2:00–3:00 p.m. EST.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Approve February 2022 minutes; Discuss NSB survey feedback and draft recommendations to update NSB honorary awards; Recent and upcoming engagement; and Discuss the next iteration of the Committee, what should it aim to do?

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Nadine Lymn, *nlymn@nsf.gov,* 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. Meeting information including a YouTube link is available from the NSB website at *https://www.nsf.gov/nsb/meetings/index.jsp#up.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–09037 Filed 4–25–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Awards and Facilities Committee hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Friday, April 29, 2022, from 12:00–2:30 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Committee Chair's Opening Remarks; Schedule of Future Information, Context, and Action Items; Approval of Prior Minutes; Context Item: Inclusion of Leadership-Class Computing Facility in a Future MREFC Budget; Context Item: NOIRLab Operations & Maintenance Award; Context Item: Mag Lab Operations & Maintenance Award; Written Context Item: Regional Class Research Vessel Management Reserve.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Michelle McCrackin, *mmccrack@nsf.gov,* (703) 292–7000. Meeting

information and updates may be found at *www.nsf.gov/nsb.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–09040 Filed 4–25–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the Committee on Strategy for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Friday, April 29, 2022, from 10:30–11:00 a.m. EDT.

PLACE: This meeting will be held by teleconference organized through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's Opening Remarks; Update on NSF's FY 2023 Budget Request.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Members of the public can observe this meeting through a You Tube livestream. Meeting information including a You Tube link is available from the NSB website at *https://www.nsf.gov/nsb/meetings/index.jsp#up.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–09045 Filed 4–25–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the Committee on Oversight for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday April 28, 2022, from 12:00–1:00 p.m. EDT.

PLACE: This meeting will be held by teleconference organized through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's Opening Remarks; Approval of prior Committee minutes; Office of the Inspector General (OIG) update; CFO update; Discussion of Committee on Oversight work.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. Meeting information including a YouTube link is available from the NSB website at *https://www.nsf.gov/nsb/meetings/index.jsp#up.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–09038 Filed 4–25–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0184]

Information Collection: Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance

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, ''Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance.''

DATES: Submit comments by June 27, 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–2021–0184. 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:* 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–2021–0184 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–2021–0184.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement can be found under ADAMS Accession No. ML21348A723.
- *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 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.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0184 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:* Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance.

2. *OMB approval number:* 3150–0209.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* All recipients that receive Federal financial assistance from the NRC.

7. *The estimated number of annual responses:* 600.

8. *The estimated number of annual respondents:* 200.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 2,050.

10. *Abstract:* The regulations under part 5 of title 10 of the *Code of Federal Regulations* implement the provisions of Title IX of the Education Amendments of 1972, as amended, except section 904 and 906 of those amendments (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688 and *Baystock* v. *Clayton County, Georgia* under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.,* 140 S. Ct. 1731, 1741, 590 U.S.). The provisions are designed to eliminate, with certain exceptions, discrimination on the basis of sex (including pregnancy, sexual orientation, and gender identity) in any education program or activity receiving Federal financial assistance (FFA), whether or not such program or activity is offered or sponsored by an educational institution as defined in the Title IX regulations. Except as provided in §§ 5.205 through 5.235(a), the Title IX regulations apply to every recipient and to each education program or activity operated by the recipient that receives FFA from the NRC.

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: April 21, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–08904 Filed 4–26–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143; NRC–2022–0097]

Nuclear Fuel Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has received an application from Nuclear Fuel Services, Inc. (NFS or the licensee) to amend special nuclear materials (SNM) license number SNM–124. The amended license would authorize the licensee to perform uranium purification and conversion services at the NFS site pursuant to a contract with the U.S. Department of Energy's National Nuclear Security Administration (NNSA).

DATES: A request for a hearing or petition for leave to intervene must be filed by June 27, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0097 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this action using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0097. 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.
- *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. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Downs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7744, email: *James.Downs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated November 18, 2021 (ADAMS under Accession No. ML21327A099), an application from

Nuclear Fuel Services, Inc. (NFS or licensee) to amend special nuclear material (SNM) license number SNM–124. The NRC also received, by letters dated February 24, 2022, a supplement to this application (ADAMS Accession Nos. ML22066B006 and ML22069A315). The amended license would authorize the licensee to perform uranium purification and conversion services at the NFS site pursuant to a contract with the Department of Energy's National Nuclear Security Administration (NNSA). According to NFS this contract would bridge the gap between shutting-down NNSA legacy uranium processing equipment and starting-up a new NNSA process utilizing electrorefining technology. Under section 70.72 of title 10 of the *Code of Federal Regulations* (10 CFR), this work requires a license amendment because NFS determined that the uranium purification and conversion services: (1) Have the potential to introduce new accident scenarios to the existing NRC-licensed activities that, unless mitigated or prevented, would exceed the performance requirements of 10 CFR 70.61 and have not previously been described in the integrated safety analysis summary; and (2) use new processes, technologies, or control systems for which the licensee has no prior experience.

An NRC administrative completeness review, dated March 25, 2022 (ADAMS Accession No. ML22080A238), found the application, as supplemented, acceptable for a technical review. During the technical review, the NRC will review the application, as supplemented, in areas that include, but are not limited to, radiation safety, chemical safety, fire safety, security, environmental protection, and material control/accountability. Prior to reaching a decision on the request to amend SNM license number SNM–124, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (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 this. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. 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).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. 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).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

III. 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 discussed below, 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 *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the 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. ET 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., ET, 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, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, 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.

Dated: April 22, 2022.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Chief, Fuel Facility Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–09004 Filed 4–26–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0022]

Information Collection: NRC Form 361—Reactor Plant Event Notification Worksheet

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 361—Reactor Plant Event Notification Worksheet.''

DATES: Submit comments by June 27, 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 (unless this document describes a different method for submitting comments on a specific subject); 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–2022–0022. 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:* 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–2022–0022 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–2022–0022. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0022 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 Nos. ML22027A594, ML22027A592, ML22027A593. The supporting statement is available in ADAMS under Accession No. ML21364A108.
- *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–2022–0022 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 361—Reactor Plant Event Notification Worksheet.
2. *OMB approval number:* 3150–0238.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 361.
5. *How often the collection is required or requested:* On occasion, as defined, NRC licensee events are reportable when they occur.
6. *Who will be required or asked to respond:* Holders of NRC licenses for commercial nuclear power plants, fuel cycle facilities, NRC material licensees, and non-power reactors.
7. *The estimated number of annual responses:* 556.
8. *The estimated number of annual respondents:* 556.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 278.
10. *Abstract:* The NRC requires its licensees to report by telephone certain reactor events and emergencies that have potential impact to public health and safety. In order to efficiently process the information received through such reports for reactors, the NRC created Forms 361 to provide a templated worksheet for recording the information. NRC licensees are not required to fill out or submit the worksheet, but the form provides the usual order of questions and discussion to enable a licensee to prepare answers for a more clear and complete telephonic notification. Without the templated format of the NRC Forms 361, the information exchange between licensees and NRC Headquarters Operations Officers via telephone could result in delays as well as unnecessary transposition errors.

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: April 21, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–08906 Filed 4–26–22; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Employer's Quarterly Report of Contributions under the Railroad Unemployment Insurance Act; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 231g), as amended by the Railroad Unemployment Improvement Act of 1988 (Pub. L. 100–647), the RRB determines the amount of an employer's contribution, primarily on the basis of the RUIA benefits paid, both unemployment and sickness, to the employees of the railroad employer. These experienced-based contributions take into account the frequency, volume, and duration of the employees' unemployment and sickness benefits. Each employer's contribution rate includes a component for administrative expenses as well as a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR 345.

RRB Form DC–1, Employer's Quarterly Report of Contributions under the Railroad Unemployment Insurance Act, is used by railroad employers to report and remit their quarterly contributions to the RRB. Employers can use either the manual version of the form or its internet equivalent. One response is requested of each respondent. Completion is mandatory.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 8618 on February 15, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer's Quarterly Report of Contributions under the RUIA.

OMB Control Number: 3220–0012.

Form(s) submitted: DC–1.

Type of request: Extension without change of a currently approved collection.

Affected public: Private Sector: Businesses or other for-profits.

Abstract: Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Changes proposed: The RRB proposes no changes to the manual and electronic versions of Form DC–1.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
DC–1 (*RRB.Gov*)	720	25	300
DC–1 (*Pay.Gov*)	1,680	25	700

Form No.	Annual responses	Time (minutes)	Burden (hours)
Total	2,400		1,000

2. Title and purpose of information collection: Application for Survivor Death Benefits; OMB 3220–0031.

Under Section 6 of the Railroad Retirement Act (RRA) (45 U.S.C. 231e), lump-sum death benefits are payable to surviving widow(er)s, children, and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee only if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depends on whether the deceased employee was ''insured'' under the RRA at the time of death. If the deceased employee was not insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The requirements for applying for benefits are prescribed in 20 CFR 217, 219, and 234.

The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for. To collect the information, the RRB uses Forms AA–21, *Application for Lump-Sum Death Payment and Annuities Unpaid at Death;* AA–21cert, *Application Summary and Certification;* G–131, *Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment;* and G–273a, *Funeral Director's Statement of Burial Charges.* One response is requested of each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 8619 on February 15, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Survivor Death Benefits.

OMB Control Number: 3220–0031.

Form(s) submitted: AA–21, AA–21cert, G–131, and G–273a.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the Railroad Retirement Act. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

Changes proposed: The RRB proposes the following changes to Forms AA–21, AA–21cert, and G–273a:

- Forms AA–21—add the RRB headquarters mailing address in Section 10, *How to Return Your Application,* of Form AA–21 in order to provide address information for returning completed forms.
- Form G–273a—add the RRB headquarters mailing address to the last sentence of the second paragraph of Form G–273a above Item 1, *Date of Death,* in order to provide address information for returning completed forms.
- The RRB proposes no changes to Form AA-cert or Form G–131.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–21cert with assistance	3,500	20	1,167
AA–21 without assistance	200	40	133
G–131	100	5	8
G–273a	4,000	10	667
Total	7,800		1,975

3. *Title and Purpose of information collection:* Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042.

Section 2(c) of the Railroad Retirement Act (RRA) (45 U.S.C.231a), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age, date of retirement, and years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, 234, and 295.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, a spouse annuity the RRB uses non-OMB Form AA–3, *Application for Spouse/Divorced Spouse Annuity,* and electronic OMB Forms AA–3cert, *Application Summary and Certification,* and AA–3sum, *Application Summary.*

The AA–3 application process gathers information from an applicant about their marital history, work history, benefits from other government agencies, and Medicare entitlement for a spouse annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the system generates, for the applicant's review, either Form AA–3cert or AA–3sum, which is a summary of the information that the applicant provided or verified. Form AA–3cert, *Application Summary and Certification,* requires a traditional pen and ink ''wet'' signature. Form AA–3sum, *Application Summary,* documents an alternate signing method called ''Attestation,'' which is an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of Form AA–3 is used. One response is requested of each respondent. Completion of the form is required to obtain a benefit.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 8619 on February

15, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Spouse Annuity Under the Railroad Retirement Act.

OMB Control Number: 3220–0042.

Form(s) submitted: AA–3cert and AA–3sum.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Act provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the Act. The application obtains information supporting the claim for benefits based on being a spouse of an annuitant. The information is used for determining entitlement to and amount of the annuity applied for.

Changes proposed: The RRB proposes no changes to Forms AA–3cert and AA–3sum.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
Form AA–3cert (Ink Signature)	6,180	30	3,090
Form AA–3sum (Attestation)	3,520	29	1,701
Total	9,700		4,791

4. *Title and Purpose of information collection:* Statement of Claimant or Other Person; OMB 3220–0183.

To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant. Under the railroad retirement program these statements may relate to a change in an annuity beginning date(s), date of marriage(s), birth(s), prior railroad or non-railroad employment, an applicant's request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR 217 and 320 respectively.

The RRB utilizes Form G–93, *Statement of Claimant or Other Person,* to obtain from applicants or other persons, the supplemental or corrective information needed to determine applicant eligibility for an RRA annuity or RUIA benefits. One response is requested of each respondent. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 8920 on February 15, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement of Claimant or Other Person.

OMB Control Number: 3220–0183.

Form(s) submitted: G–93.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2 of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, pertinent information and proofs must be submitted by an applicant so that the Railroad Retirement Board can determine his or her entitlement to benefits. The collection obtains information supplementing or changing information previously provided by an applicant.

Changes proposed: The RRB proposes no changes to Form G–93.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–93	1,300	15	325

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–1275 or *Brian.Foster@rrb.gov.*

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.

Brian Foster,

Clearance Officer.

[FR Doc. 2022–08997 Filed 4–26–22; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94774; File No. SR–NASDAQ–2022–032]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Equity 7, Section 118(a)

April 21, 2022.

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 April 12, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, Section 118, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of fees, at Equity 7, Section 118(a), to incent members to grow the extent to which they participate in Nasdaq's routing strategy for Designated Retail Orders (''RFTY'').

RFTY is an order routing option designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to Designated Retail Orders (''DROs'').[3] As set forth in Equity 7, Section 118(a), for securities in each Tape, the Exchange presently charges a $0.0030 per share executed fee to a member for shares executed above 4 million shares during the month for RFTY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS other than the Nasdaq Market Center. For purposes of calculating the 4 million share threshold described above and assessing the charge set forth herein, the Exchange excludes RFTY orders that execute at taker-maker venues. The Exchange charges no fee per share executed to a member for shares executed up to 4 million shares during the month for RFTY orders that remove liquidity from the Nasdaq Market Center or that execute in a venue with a protected quotation under Regulation NMS.

In adopting the existing fee structure for RFTY, the Exchange intended to provide incentives for members to adopt RFTY while also allowing the Exchange to mitigate the costs it incurs when RFTY routes large volumes of orders to venues that charge access fees.[4] Although the Exchange continues to believe that the RFTY fee structure is appropriate, it also recognizes that the specter of incurring fees inhibits new or existing light users of RFTY from increasing their use of this strategy, even as the Exchange works to augment the value that RFTY offers. The Exchange now proposes to amend the RFTY fee structure to provide a new incentive for new or existing light RFTY users to grow the extent of their use of RFTY during the month.[5] The Exchange intends for this new incentive to be temporary,[6] and hopes that even after it no longer applies, participants that benefited from it will continue to make significant use of RFTY, notwithstanding the associated fees, in recognition of the value it provides to them and their customers.

Specifically, the Exchange proposes to amend Equity 7, Section 118(a) to state that the Exchange will charge no fee per share executed during regular market hours to a member that executes orders using RFTY, when the member exceeds the 4 million share executed threshold for RFTY orders described above, if the member also grows the volume of its shares executed using RFTY during regular market hours during the month by at least 100 percent relative to a baseline month of March 2022.[7] Again, the Exchange intends for this amendment to reward RFTY users that grow substantially the extent of their use of the RFTY strategy during regular market hours.[8]

The Exchange notes that those participants that are dissatisfied with the proposed amendment to the RFTY fee schedule are free to shift their order flow to competing venues that offer more favorable terms for routing and executing retail orders. Such participants may also refrain from using RFTY or adjust their use of RFTY to avoid incurring execution fees.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–75987 (September 25, 2015), 80 FR 59210 (October 1, 2015) (SR–NASDAQ–2015–112). A DRO is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a ''natural person'' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as ''Designated Retail Orders'' comply with these requirements.

[4] *See* Securities Exchange Act Release No. 34–90164 (October 13, 2020), 85 FR 66379 (October 19, 2020) (SR–NASDAQ–2020–067).

[5] The proposed amendment is applicable both to existing RFTY users as well as to new users that exceed 4 million shares executed using RFTY during regular market hours during a month. Since new users would, by definition, lack March 2022 baseline RFTY volume against which to measure subsequent growth, such new users would meet the growth requirement through whatever volume of RFTY shares they execute during regular market hours during the first month of use.

[6] The Exchange has yet to propose a date for sunsetting this incentive; it will do so in a future rule filing.

[7] The proposal also corrects typographical errors in the Rule whereby the Exchange, in several instances, mistakenly refers to RFTY as ''RTFY.'' The Exchange anticipates submitting another rule filing in the near future to make the same corrections to other instances in typographical error in the Rulebook.

[8] The Exchange proposes to apply this incentive to members with shares executed using RFTY during regular market hours, and to members that grow shares executed using RFTY during regular market hours, because the Exchange believes that the full functionality and value of RFTY will be most apparent to members during regular market hours, when market makers and liquidity providers are available to execute orders. The Exchange wishes to target use and growth of RFTY during that time period.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [11]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. The Exchange is also subject to intense competition for retail order flow with off-exchange competitors, including wholesale market makers.

The Exchange believes its proposed amendment to the RFTY fee schedule is a reasonable attempt to incent new and existing RFTY users to grow the extent of their usage substantially. Under the proposed rule change, RFTY users that grow their volumes of RFTY shares executed during regular market hours during the month by at least 100 percent relative to March 2022 will not incur fees for executing their orders using RFTY during regular market hoursthat [sic] exceed 4 million shares that month.[13] The Exchange notes that it employs similar growth programs in other contexts for similar purposes.[14]

The Exchange notes that those participants that are dissatisfied with the proposed amendment to the RFTY fee schedule are free to shift their order flow to competing venues that offer more favorable terms for routing and executing retail orders. Such participants may also refrain from using RFTY or adjust their use of RFTY to avoid incurring execution fees.

The Proposal Is an Equitable Allocation of Fees and Is Not Unfairly Discriminatory

The Exchange believes its proposal will allocate its charges fairly among its market participants and is not unfairly discriminatory.

The Exchange believes that it is an equitable allocation and not unfairly discriminatory to continue to charge a transaction fee to certain participants that execute more than 4 million shares using RFTY during regular market hours during the month, while charging no fees to other participants that execute similar volumes using RFTY, because in the latter case, the Exchange's decision to charge no fees during regular market hours is a reward to participants that double the extent of the share volume they execute using RFTY during regular market hours during the month, relative to a baseline month of March 2022.[15] As noted above, the Exchange expects this incentive to be a temporary measure to boost usage in RFTY and to compete for retail order flow. As also discussed earlier, the Exchange employs similar growth programs in other contexts for similar purposes.

The Exchange notes that those participants that are dissatisfied with the proposed amendment to the RFTY fee schedule are free to shift their order flow to competing venues that offer more favorable terms for routing and executing retail orders. Such participants may also refrain from using RFTY or adjust their use of RFTY to avoid incurring execution fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will inappropriately burden any category of market participant. Although under the proposal, the Exchange will charge a transaction fee to certain participants that execute more than 4 million shares using RFTY during regular market hours during the month, and charge no fees to other participants that execute similar volumes using RFTY, the Exchange believes this is appropriate because in the latter case, the Exchange's decision to charge no fees is a reward to participants that double the extent of the share volume they execute using RFTY during regular market hours during the month, relative a baseline month of March 2022. As noted above, the Exchange expects this incentive to be a temporary measure to boost usage in RFTY and to compete for retail order flow. As also discussed earlier, the Exchange employs similar growth programs in other contexts for similar purposes.

Those participants that are dissatisfied with the proposed amendment to the RFTY fee schedule are free to shift their order flow to competing venues that offer more favorable terms for routing and executing retail orders. Such participants may also refrain from using RFTY or adjust their use of RFTY to avoid incurring execution fees.

[11] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] As noted above, the Exchange believes it is reasonable to apply this incentive to members with shares executed using RFTY during regular market hours, and to members that grow shares executed using RFTY during regular market hours, because the Exchange believes that the full functionality and value of RFTY will be most apparent to members during regular market hours, when market makers and liquidity providers are available to execute orders. The Exchange wishes to target use and growth of RFTY during that time period.

[14] *See, e.g.,* Equity 4, Section 114(j) (Nasdaq Growth program), Equity 7, Section 118(a) (providing a credit to members that, among other things, increase the extent of their average daily volumes of Midpoint Extended Life Orders by 100% or more during the month relative to June 2021).

[15] As noted above, the proposed incentive program is available both to new and existing RFTY users, although in practice, the Exchange expects that only existing users will qualify for it.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–032 and should be submitted on or before May 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08912 Filed 4–26–22; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94775; File No. SR–Phlx–2022–17]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 3306(a)(3), in Light of Planned Changes to the System as Well as To Address Existing Issues

April 21, 2022.

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 April 11, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3306(a)(3), in light of planned changes to the System as well as to address existing issues, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, the Exchange is making functional enhancements and improvements to specific Order Types [3] and Order Attributes [4] that are currently only available via the RASH Order entry protocol.[5] Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange's System and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol [6] so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to the RASH Order entry protocol.[7] The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[8]

To support and prepare for these upgrades and enhancements, the Exchange proposes to amend Rule 3306(a)(3), which governs the entry of Orders, so that it aligns with how the System, once upgraded, will handle the partial cancellation of Orders to reduce their share size. The proposed filing also addresses issues with the existing Rule text and the current implementation of that Rule text by the System.

In pertinent part, existing Rule 3306(a)(3) states as follows, with respect how the Exchange handles partial Order cancellations to reduce share size:

> In addition, a partial cancellation of an Order to reduce its share size will not affect the priority of the Order on the book; provided, however that such a partial cancellation may not be made with respect to a Pegged Order (including a Discretionary Order that is Pegged).

The first clause of this text states the general rule that participants may instruct the Exchange to partially cancel their Orders in order to reduce share size, and when handling such partial cancellation instructions, the Exchange will adjust the size of the Orders without affecting their existing priority. The second clause states an exception to this general rule, which the Exchange intends to mean that when the Exchange processes partial cancellations of Orders with the Pegging Attribute (including Discretionary Orders with Pegging) that participants enter via RASH or FIX (as opposed to OUCH or FLITE), the partially cancelled Orders will lose their priority.

Going forward, planned upgrades will provide for the Exchange to process partial cancellations of all Order Types and Attributes entered through all of its Order Entry Protocols, including RASH, OUCH, FIX, and FLITE, and it will do so without loss of priority, such that the existing exception to the general rule in 3306(a)(3) will no longer be necessary. Thus, the Exchange proposes to eliminate this exception by deleting it from the Rule. This proposal will provide better outcomes to participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the Exchange notes that the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols.

Additionally, the proposed Rule change will address ambiguities in the existing Rule text. The existing Rule text does not state expressly the Exchange's current practice of restricting the loss of priority following a partial cancellation to Pegged Orders when such Orders are entered through RASH or FIX. The existing language suggests that partial cancellations of these Orders cause a loss of priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH and FLITE. The proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all Orders and all applicable and available Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule is ambiguous as to the intended scope of its exception to the general rule for ''Pegged Orders.'' Although the Rule

[3] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See* Equity 1, Section 1(e).

[4] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[5] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows member organizations to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. *See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[6] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from member organizations, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for member organizations to send Orders and receive status updates on those Orders. *See https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[7] The Exchange designed the OUCH protocol to enable member organizations to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

[8] The Exchange notes that its sister exchange, The Nasdaq Stock Market, LLC (''Nasdaq''), recently filed a similar proposed rule change with the Commission, *see* Securities Exchange Act Release No. 34–94492 (March 23, 2022), 87 FR 18405 (March 30, 2022) (SR–NASDAQ–2022–020), and that Nasdaq BX, Inc. plans to do the same in parallel with the Exchange.

states that the exception applies to ''Pegged Orders (including a Discretionary Order that is Pegged),'' the Exchange does not intend for Orders with Midpoint Pegging to be part of this exception, and it applies the Rule accordingly. In other words, the Exchange processes partial cancellations for Orders with Midpoint Pegging (*i.e.,* Non-Display Orders assigned the Midpoint Peg Attribute and Midpoint Peg Post-Only Orders) without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and available and applicable Order Entry Protocols.

The Exchange intends to implement the foregoing changes during the Second Quarter of 2022. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposed amendment to Rule 3306(a)(3) is consistent with the Act. Eliminating the exception to the general Rule providing for the Exchange to process partial cancellations without loss of priority will benefit participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols. This proposed amendment reflects planned upgrades that will allow the Exchange to process partial cancellation of Orders entered through all pertinent and available Order Entry Protocols without loss of priority.

Additionally, the proposed Rule change is consistent with the Act because it will eliminate ambiguities in the existing Rule text that do not fully reflect the Exchange's intended meaning or application of the Rule. As noted above, the existing Rule text does not state that the Exchange limits the loss of priority for partially cancelled Orders to Pegged Orders when such Orders are entered through RASH or FIX. The existing language suggests that partial cancellations of these Orders lose priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH or FLITE. The proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all applicable and available Orders and Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule does not reflect the Exchange's intent that Orders with Midpoint Pegging are not included in this exception, even though it applies the Rule in this manner. In other words, the Exchange processes partial cancellations for Midpoint Pegging Orders without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and applicable and available Order Entry Protocols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and Order Entry Protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Types and Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, the proposed changes will not unduly burden intra-market competition among various Exchange participants. The Exchange's proposal to allow the partial cancellation of an Order without the Order losing priority will not impact intra-market competition because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2022–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–17. 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–Phlx–2022–17 and should be submitted on or before May 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08913 Filed 4–26–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94773; File No. SR–ISE–2022–10]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Amend ISE Options 4, Section 5, Series of Options Contracts Open for Trading

April 21, 2022.

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 April 11, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 4, Section 5, ''Series of Options Contracts Open for Trading.'' Specifically, this proposal seeks to amend Supplementary Material .07 to Options 4, Section 5.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 4, Section 5, ''Series of Options Contracts Open for Trading.'' Specifically, the Exchange proposes to amend Supplementary Material .07 to Options 4, Section 5 to account for conflicts between different provisions within the Short Term Options Series Rules.

In 2021, ISE amended Options 4, Section 5 to limit the intervals between strikes in equity options listed as part of the Short Term Option Series Program, excluding Exchange-Traded Fund Shares and ETNs, that have an expiration date more than twenty-one days from the listing date (''Strike Interval Proposal'').[3] The Strike Interval Proposal adopted a new Supplementary Material .07 to Options 4, Section 5 which included a table that intended to

[3] *See* Securities Exchange Act Release No. 91930 (May 18, 2021), 86 FR 27907 (May 24, 2021) (SR–ISE–2021–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4, Section 5, ''Series of Options Contracts Open for Trading'' To Limit Short Term Options Series Intervals Between Strikes).

specify the applicable strike intervals that would supersede Supplementary Material .03(e) [4] for Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date. The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Options Series Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.

At this time, the Exchange proposes to amend the rule text within Supplementary Material .07 to Options 4, Section 5 to clarify the current rule text and amend the application of the table to account for potential conflicts within the Short Term Options Series Rules. Currently, the table within Supplementary Material .07 to Options 4, Section 5 is as follows: [5]

Tier	Share price					
	Average daily volume	Less than $25	$25 to less than $75	$75 to less than $150	$150 to less than $500	$500 or greater
1	Greater than 5,000	$0.50	$1.00	$1.00	$5.00	$5.00
2	Greater than 1,000 to 5,000	1.00	1.00	1.00	5.00	10.00
3	0 to 1,000	2.50	5.00	5.00	5.00	10.00

The first sentence of Supplementary Material .07 to Options 4, Section 5 provides, ''With respect to listing Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date, the following table will apply as noted within Supplementary Material .03(e).''

First, the Exchange proposes to amend the first sentence of Supplementary Material .07 to instead provide, ''With respect to listing Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date, the following table, *which specifies the applicable interval for listing,* will apply as noted within Supplementary Material .03(*f*).'' The table within Supplementary Material .07 provides for the listing of intervals based on certain parameters (average daily volume and share price). The Exchange proposes to add the phrase ''which specifies the applicable interval for listing'' to make clear that the only permitted intervals are as specified in the table within Supplementary Material .07, except in the case where Supplementary Material .03(e) provides for a greater interval as described in more detail below.

Second, the Exchange proposes to amend the first sentence of Supplementary Material .07 to cite to Supplementary Material .03(f) [6] instead of .03(e) [7] as paragraph (f) indicates when the table within Supplementary Material .07 applies.

Third, the Exchange proposes to add a new sentence within Supplementary Material .07 to Options 4, Section 5 which states, ''To the extent there is a conflict between applying Supplementary Material .03(e) and the below table, the greater interval would apply.'' Today, there are instances where a conflict is presented as between the application of the table within Supplementary Material .07 and the rule text within Supplementary Material .03(e) with respect to the correct interval. Adding the proposed sentence would make clear to Members the applicable intervals where there is a conflict between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e), thereby providing certainty as to the outcome. The Exchange proposes to insert the words ''greater than'' because it proposes to permit Supplementary Material .03(e) of Options 4, Section 5 to govern only in the event that the interval would be greater. The same analysis would not be conducted where the result would be a lesser interval. By way of example,

Example 1: Assume a Tier 1 stock that closed on the last day of Q1 with a quarterly share price less than $150. Next, assume during Q2 the share price rose above $150. Utilizing the table within Supplementary Material .07, the interval would be $1.00 even though the price rose above $150 because the Share Price was calculated utilizing data from the prior calendar quarter. Utilizing Supplementary Material .03(e), the interval would be $2.50 if the price rose above $150. The greater interval would then be $2.50 as per Supplementary Material .03(e) in this scenario. Therefore, the following strikes would

[4] Supplementary Material .03(e) of Options 4, Section 5 states, ''Strike Interval. During the month prior to expiration of an option class that is selected for the Short Term Option Series Program pursuant to this Rule (''Short Term Option''), the strike price intervals for the related non-Short Term Option (''Related non-Short Term Option'') shall be the same as the strike price intervals for the Short Term Option. The Exchange may open for trading Short Term Option Series on the Short Term Option Opening Date that expire on the Short Term Option Expiration Date at strike price intervals of (i) $0.50 or greater where the strike price is less than $100, and $1 or greater where the strike price is between $100 and $150 for all option classes that participate in the Short Term Options Series Program; (ii) $0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150.''

[5] The Share Price would be the closing price on the primary market on the last day of the calendar quarter and the Average Daily Volume would be the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter The Average Daily Volume would be the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume shall be calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at The Options Clearing Corporation. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume shall be calculated using the quarter prior to the last trading calendar quarter. *See* Supplementary Material .07 to Options 4, Section 5.

[6] Supplementary Material .03(f) of Options 4, Section 5 provides, ''Notwithstanding (e) above, when Short Term Options Series in equity options, excluding Exchange-Traded Funds (''ETFs'') and ETNs, have an expiration more than twenty-one days from the listing date, the strike interval for each options class shall be based on the table within Supplementary Material .07.''

[7] Supplementary Material .03(e) of Options 4, Section 5, provides, ''Strike Interval. During the month prior to expiration of an option class that is selected for the Short Term Option Series Program pursuant to this Rule (''Short Term Option''), the strike price intervals for the related non-Short Term Option (''Related non-Short Term Option'') shall be the same as the strike price intervals for the Short Term Option. The Exchange may open for trading Short Term Option Series on the Short Term Option Opening Date that expire on the Short Term Option Expiration Date at strike price intervals of (i) $0.50 or greater where the strike price is less than $100, and $1 or greater where the strike price is between $100 and $150 for all option classes that participate in the Short Term Options Series Program; (ii) $0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150.''

be eligible to list: $152.5 and $157.5. For strikes less than $150, the following strikes would be eligible to list: $149 and $148 because Short Term Options Series with expiration dates more than 21 days from the listing date as well as Short Term Options Series with expiration dates less than 21 days from the listing date would both be eligible to list $1 intervals pursuant to Supplementary Material .07 and Supplementary Material .03(e) of Options 5, Section 4.

Example 2: Assume a Tier 2 stock that closed on the last day of Q1 with a quarterly share price less than $25. Next, assume during Q2 the share price rose above $100. Utilizing the table within Supplementary Material .07 the interval would be $1.00 even though the price rose above $100 because the Share Price was calculated utilizing data from the prior calendar quarter. Utilizing Supplementary Material .03(e), the interval would be $1.00 if the price rose above $100. The $1 interval is the same in both cases in this scenario and therefore there is no conflict. Now assume during the quarter the price rose above $150. Utilizing the table within Supplementary Material .07, the interval would continue to be $1.00 because the Share Price relied on data from the prior calendar quarter, however, pursuant to Supplementary Material .03(e), the interval would be $2.50. The greater interval would then be $2.50 as per Supplementary Material .03(e) in this scenario.

Example 3: Assume a Tier 3 stock that closed on the last day of Q1 with a quarterly share price less than $25. Next, assume during Q2 the share price rose above $100. Utilizing the table within Supplementary Material .07 the interval would be $2.50 even though the price rose above $100 because the Share Price relied on data from the prior calendar quarter. Utilizing Supplementary Material .03(e), the interval would be $1.00 if the price rose above $100. The greater interval would then be $2.50 as per the table in Supplementary Material .07 in this scenario.

Fourth, the Exchange proposes to delete the last sentence of the first paragraph of Supplementary Material .07 to Options 4, Section 5 which states, ''The below table indicates the applicable strike intervals and supersedes Supplementary Material .03(d) which permits additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.'' The table within Supplementary Material .07 impacts strike intervals, while Supplementary Material .03(d) [8] describes adding series of options. The table within Supplementary Material .07 supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series. Therefore, the table within Supplementary Material .07 and Supplementary Material .03(d) do not conflict with each other. Deleting the reference to Supplementary Material .03(d) will avoid confusion.

Fifth, and finally, the Exchange provides within the last sentence of Supplementary Material .07 to Options 4, Section 5 that, ''Notwithstanding the limitations imposed by Supplementary Material .07, this proposal does not amend the range of strikes that may be listed pursuant to Supplementary Material .03, regarding the Short Term Option Series Program.'' The Exchange proposes to remove this rule text. While the range limitations continue to be applicable to the table within Supplementary Material .07, the strike ranges do not conflict with strike intervals and therefore the sentence is not necessary. Removing the last sentence of Supplementary Material .07 to Options 4, Section 5 will avoid confusion. Also, the rule text within Supplementary Material .03(f) of Options 5, Section 4 otherwise indicates when Supplementary Material .07 would apply.

Implementation

The Exchange proposes to implement this rule change on August 1, 2022. The Exchange will issue an Options Trader Alert to notify Members of the implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Strike Proposal continues to limit the intervals between strikes listed in the Short Term Options Series Program that have an expiration date more than twenty-one days.

The Exchange's proposal to add clarifying language to the first sentence of Supplementary Material .07 of Options 4, Section 5, is consistent with the Act because it will make clear that the only permitted intervals are as specified in the table within Supplementary Material .07, except in the case where Supplementary Material .03(e) provides for a greater interval. This amendment will bring greater transparency to the rule.

Amending the first sentence of Supplementary Material .07 to cite to Supplementary Material .03(f) instead of .03(e) is consistent with the Act because paragraph (f) indicates when the table within Supplementary Material .07 applies.

Adopting a new sentence within Supplementary Material .07 of Options 4, Section 5 to address a potential conflict between the Short Term Options Series Program rules, specifically as between the application of the table within Supplementary Material .07 and the rule text within Supplementary Material .03(e), with respect to the correct interval is consistent with the Act. The table within Supplementary Material .07 supersedes other strike interval rules, but does not supersede the addition of option series. Therefore, these rules do not conflict with the table. Deleting the reference to Supplementary Material .03(d) will avoid confusion. This new rule text will make clear to Members the applicable intervals when there is a conflict between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e), thereby providing certainty as to the outcome. The proposed new rule text promotes just and equitable principles of trade by adding transparency to the manner in which ISE implements its listing rules, and protects investors and the general public by removing uncertainty.

Removing the last sentence of the first paragraph of Supplementary Material .07 to Options 4, Section 5 is consistent with the Act because the table within Supplementary Material .07 impacts strike intervals, while Supplementary Material .03(d) describes the addition of options series. The table within Supplementary Material .07 supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series.

[8] Supplementary Material .03(d) of Options 5, Section 4 provides, ''Additional Series. If the Exchange opens less than thirty (30) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.''

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Therefore, the table within Supplementary Material .07 and Supplementary Material .03(d) do not conflict with each other. Deleting the reference to Supplementary Material .03(d) will avoid confusion.

Removing the last sentence of Supplementary Material .07 to Options 4, Section 5 is consistent with the Act because while the range limitations continue to be applicable, the strike ranges do not conflict with strike intervals, rendering the sentence unnecessary. Removing the last sentence of Supplementary Material .07 to Options 4, Section 5 will avoid confusion. Also, the rule text within Supplementary Material .03(f) of Options 5, Section 4 otherwise indicates when Supplementary Material .07 would apply.

The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Options Series Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date. The Exchange's proposal intends to continue to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs,[11] rendering these strikes less useful. Also, the Strike Interval Proposal continues to reduce the number of strikes listed on ISE, allowing Lead Market Makers and Market Makers to expend their capital in the options market in a more efficient manner, thereby improving overall market quality on ISE.

Additionally, by making clear that the greater interval would control as between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e), the Exchange is reducing the number of strikes listed in a manner consistent with the intent of the Strike Interval Proposal, which was to reduce strikes which were farther out in time. The result of this clarification is to select wider strike intervals for Short Term Option Series in equity options which have an expiration date more than twenty-one days from the listing date. This rule change would harmonize strike intervals as between inner weeklies (those having less than twenty-one days from the listing date) and outer weeklies (those having more than twenty-one days from the listing date) so that strike intervals are not widening as the listing date approaches.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Strike Interval Proposal continues to limit the number of Short Term Options Series Program strike intervals available for quoting and trading on ISE for all ISE Participants.

Adding clarifying language to the first sentence of Supplementary Material .07 of Options 4, Section 5 to make clear which parameter the table within Supplementary Material .07 of Options 4, Section 5 amends within the Short Term Options Series Program will bring greater transparency to the rules. Amending the first sentence of Supplementary Material .07 to cite to Supplementary Material .03(f) instead of .03(e) does not impose an undue burden on competition because paragraph (f) indicates when the table within Supplementary Material .07 applies. Adopting a new sentence to address potential conflicts as between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e) of Options 4, Section 5, within the Short Term Options Series Program, will bring greater transparency to the manner in which ISE implements its listing rules. The table within Supplementary Material .07 impacts strike intervals, while Supplementary Material .03(d) describes adding series of options. The table within Supplementary Material .07 supersedes other strike interval rules, but does not supersede the addition of series. Removing the last sentence of the first paragraph of Supplementary Material .07 to Options 4, Section 5 does not impose an undue burden on competition because the table within Supplementary Material .07 supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series. Also, deleting the reference to Supplementary Material .03(d) will avoid confusion. Finally, removing the last sentence of Supplementary Material .07 to Options 4, Section 5 will remove any potential confusion. While the range limitations continue to be applicable, the strike ranges do not conflict with strike intervals and are not necessary.

While this proposal continues to limit the intervals of strikes listed on ISE, the Exchange continues to balance the needs of market participants by continuing to offer a number of strikes to meet a market participant's investment objective. The Exchange's Strike Interval Proposal does not impose an undue burden on inter-market competition as this Strike Interval Proposal does not impact the listings available at another self-regulatory organization.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–10 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–ISE–2022–10. 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

[11] For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the money.

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–ISE–2022–10, and should be submitted on or before May 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08911 Filed 4–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34569; File No. 812–15312]

Churchill Asset Management LLC and Nuveen Churchill Private Capital Income Fund

April 21, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) and section 61(a) of the Act.

Summary of Application: Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies (''BDCs'') to issue multiple classes of shares with varying sales loads and asset-based service and/or distribution fees.

Applicants: Churchill Asset Management LLC and Nuveen Churchill Private Capital Income Fund.

Filing Dates: The application was filed on March 3, 2022 and amended on April 11, 2022.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 16, 2022, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: John McCally, Churchill Asset Management LLC, 8500 Andrew Carnegie Blvd., Charlotte, NC 28262; Steven B. Boehm, Esq., Payam Siadatpour, Esq., Anne G. Oberndorf, Esq., Eversheds Sutherland (US) LLP, 700 Sixth Street NW, Suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated April 11, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08902 Filed 4–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 94778; File No. SR–NASDAQ–2022–017]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify Equity 4, Section 4120 To Add Categories of Regulatory and Operational Halts, To Reorganize the Remaining Text of the Rule, and To Make Conforming Changes to Related Rules

April 21, 2022.

On February 22, 2022, The Nasdaq Stock Market LLC filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Equity 4, Section 4120 to add categories of regulatory and operational halts, to reorganize the remaining text of the rule, and to make conforming changes to related rules. The proposed rule change was published for comment in the **Federal Register** on March 11, 2022.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 25, 2022.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071.

[4] 15 U.S.C. 78s(b)(2).

that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 9, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2022–017).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08915 Filed 4–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94776; File No. SR–BX–2022–006]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 4756(a)(3), in Light of Planned Changes to the System as Well as To Address Existing Issues

April 21, 2022.

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 April 11, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rule 4756(a)(3), in light of planned changes to the System as well as to address existing issues, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, the Exchange is making functional enhancements and improvements to specific Order Types [3] and Order Attributes [4] that are currently only available via the RASH Order entry protocol.[5] Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange's System and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol [6] so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to the RASH Order entry protocol.[7] The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[8]

To support and prepare for these upgrades and enhancements, the Exchange proposes to amend Rule 4756(a)(3), which governs the entry of Orders, so that it aligns with how the System, once upgraded, will handle the partial cancellation of Orders to reduce their share size. The proposed filing also addresses issues with the existing Rule text and the current implementation of that Rule text by the System.

In pertinent part, existing Rule 4756(a)(3) states as follows, with respect how the Exchange handles partial Order cancellations to reduce share size:

> In addition, a partial cancellation of an Order to reduce its share size will not affect the priority of the Order on the book; provided, however, that such a partial cancellation may not be made with respect to a Pegged Order (including a Discretionary Order that is Pegged).

The first clause of this text states the general rule that participants may instruct the Exchange to partially cancel their Orders in order to reduce share size, and when handling such partial cancellation instructions, the Exchange will adjust the size of the Orders without affecting their existing priority. The second clause states an exception to this general rule, which the Exchange intends to mean that when the Exchange processes partial cancellations of Orders with the Pegging Attribute (including Discretionary Orders with Pegging) that participants enter via RASH or FIX (as opposed to OUCH or FLITE), the partially cancelled Orders will lose their priority.

Going forward, planned upgrades will provide for the Exchange to process partial cancellations of all Order Types and Attributes entered through all of its Order Entry Protocols, including RASH, OUCH, FIX, and FLITE, and it will do so without loss of priority, such that the

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See* Equity 1, Section 1(a)(11).

[4] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[5] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. *See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[6] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. *See https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[7] The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

[8] The Exchange notes that its sister exchange, The Nasdaq Stock Market, LLC (''Nasdaq), recently filed a similar proposed rule change with the Commission, *see* Securities Exchange Release No. 34–94492 (March 23, 2022), 87 FR 18405 (March 30, 2022) (SR–NASDAQ–2022–020), and that Nasdaq PHLX LLC plans to do the same in parallel with the Exchange.

existing exception to the general rule in 4756(a)(3) will no longer be necessary. Thus, the Exchange proposes to eliminate this exception by deleting it from the Rule. This proposal will provide better outcomes to participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the Exchange notes that the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols.

Additionally, the proposed Rule change will address ambiguities in the existing Rule text. The existing Rule text does not state expressly the Exchange's current practice of restricting the loss of priority following a partial cancellation to Pegged Orders when such Orders are entered through RASH or FIX. The existing language suggests that partial cancellations of these Orders cause a loss of priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH and FLITE. The proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all Orders and all applicable and available Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule is ambiguous as to the intended scope of its exception to the general rule for ''Pegged Orders.'' Although the Rule states that the exception applies to ''Pegged Orders (including a Discretionary Order that is Pegged),'' the Exchange does not intend for Orders with Midpoint Pegging to be part of this exception, and it applies the Rule accordingly. In other words, the Exchange processes partial cancellations for Orders with Midpoint Pegging (*i.e.,* Non-Display Orders assigned the Midpoint Peg Attribute) without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and available and applicable Order Entry Protocols.

The Exchange intends to implement the foregoing changes during the Second Quarter of 2022. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposed amendment to Rule 4756(a)(3) is consistent with the Act. Eliminating the exception to the general Rule providing for the Exchange to process partial cancellations without loss of priority will benefit participants by enabling them to reduce the share size of their Orders without the need to sacrifice the priority of their Orders.

The Exchange believes that it is reasonable to allow the partial cancellation of an Order without the Order losing priority because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

Moreover, the proposal will simplify and harmonize the Exchange's processing of partial cancellations across its Order Entry Protocols. This proposed amendment reflects planned upgrades that will allow the Exchange to process partial cancellation of Orders entered through all pertinent and available Order Entry Protocols without loss of priority.

Additionally, the proposed Rule change is consistent with the Act because it will eliminate ambiguities in the existing Rule text that do not fully reflect the Exchange's intended meaning or application of the Rule. As noted above, the existing Rule text does not state that the Exchange limits the loss of priority for partially cancelled Orders to Pegged Orders when such Orders are entered through RASH or FIX. The existing language suggests that partial cancellations of these Orders lose priority in all cases, regardless of the Exchange's Order Entry Protocol utilized to enter the Orders. In fact, the Exchange does process partial cancellations of these Orders without loss of priority when the Orders are entered through OUCH or FLITE. The proposed Rule change will address this issue by providing for consistent handling of partial cancellations across all applicable and available Orders and Order Entry Protocols and by eliminating exceptions in the existing Rule text.

Similarly, the existing Rule does not reflect the Exchange's intent that Orders with Midpoint Pegging are not included in this exception, even though it applies the Rule in this manner. In other words, the Exchange processes partial cancellations for Midpoint Pegging Orders without loss of priority. The Exchange recognizes that the Rule text does not specifically address Orders

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

with Midpoint Pegging. Again, the proposed Rule change will eliminate this issue going forward because the Exchange will adopt consistent handling of partial cancellations across all Orders and applicable and available Order Entry Protocols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and Order Entry Protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Types and Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, the proposed changes will not unduly burden intra-market competition among various Exchange participants. The Exchange's proposal to allow the partial cancellation of an Order without the Order losing priority will not impact intra-market competition because the participant that entered the Order continues to express its willingness to trade at the price entered when the Order first came onto the Book. Moreover, if the Order is displayed, other participants quoting at the same price are aware of the priority of their Orders relative to the partially cancelled Order. While a partial cancellation may provide these other participants with greater opportunities to provide a fill, the Exchange does not believe that it would be reasonable for these participants to jump ahead of an Order with time priority merely because the size of the Order has been reduced. Similarly, if the partially cancelled Order is non-displayed, other participants would have no awareness of its price, its original size, or its reduced size. Again, while other participants at that price may have an increased opportunity to provide a fill when the Order's size is reduced, they would not have an expectation that the priority of their Orders would change vis-à-vis that of an Order that arrived on the Book at an earlier time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2022–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2022–006. 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–BX–2022–006 and should be submitted on or before May 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08914 Filed 4–26–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11719]

60-Day Notice of Proposed Information Collection: Affidavit of Identifying Witness

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this

notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to June 27, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0011'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PPTFormsOfficer@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

- *Regular Mail:* Send written comments to: PPT Forms Officer, U.S. Department of State, CA/PPT/S/PMO, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166–1199.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Affidavit of Identifying Witness.
- *OMB Control Number:* 1405–0088.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS–0071.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 32,260.
- *Estimated Number of Responses:* 32,260.
- *Average Hours per Response:* 5 min.
- *Total Estimated Time Burden:* 2,688 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Affidavit of Identifying Witness is submitted in conjunction with an application for a U.S. passport. It is used by Passport Agents, Passport Acceptance Agents, and Consular Officers to collect information for the purpose of establishing the identity of the applicant. This affidavit is completed by the identifying witness when the applicant is unable to establish their identity to the satisfaction of a person authorized to accept passport applications.

Methodology

The Affidavit of Identifying Witness is submitted in conjunction with an application for a U.S. passport. Due to legislative mandates, Form DS–0071 is only available at acceptance facilities, passport agencies, and U.S. embassies and consulates. This form must be completed and signed in the presence of an authorized Passport Agent, Passport Acceptance Agent, or Consular Officer.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–08984 Filed 4–26–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Solicitation for Nominations for Appointment to the Aviation Rulemaking Advisory Committee (ARAC)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Solicitation for nominations for appointment to ARAC.

SUMMARY: The FAA is publishing this notice to solicit nominations for membership on ARAC.

DATES: Nominations must be received no later than 5:00 p.m. Eastern Time on May 18, 2022.

ADDRESSES: Nominations can be submitted electronically (by email) to *9-awa-arac@faa.gov.* The subject line should state ''ARAC Nomination.''

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4191; email to *9-awa-arac@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

ARAC was established on January 22, 1991, under the Federal Advisory Committee Act (FACA) pursuant to Title 5 of the United States Code, Appendix 2. The purpose of ARAC is to provide information, advice, and recommendations to the Secretary of Transportation, through the FAA Administrator, concerning rulemaking activities, such as aircraft operations, airman and air agency certification, airworthiness standards and certification, airports, maintenance, noise, and training.

Description of Duties

ARAC will undertake only tasks assigned to it by FAA and provide direct, first-hand information, advice, and recommendations by meeting and exchanging ideas on the tasks assigned. In addition, ARAC will respond to ad-hoc informational requests from FAA.

Membership

The ARAC is composed of members appointed by the Secretary of Transportation upon recommendation by the FAA Administrator. All ARAC members serve at the pleasure of the Secretary of Transportation. ARAC will have no more than 30 members and is composed of representatives from organizations directly and indirectly impacted by FAA regulations. These organizations include aircraft owners and operators, airmen and flight crewmembers, airports, aircraft maintenance providers, aircraft manufacturers, public citizen and passenger groups, training providers, and labor organizations. The designated organizations are intended to provide balanced representation in terms of knowledge, expertise, and points of view of interested parties relative to the ARAC's tasks. Each voting member holds appropriate authority in the designated organization to speak for it and the community or industry represented. In addition, members provide a balance in points of view regarding the functions and tasks to be performed by ARAC. Members are appointed for a 2-year term.

Nomination Process

The Secretary is seeking individual nominations for membership to the ARAC. Any interested person may nominate one or more qualified individuals for membership on ARAC. Self-nominations are also accepted. Nominations must include, in full, the following materials to be considered for membership. Failure to submit the

required information may disqualify a candidate from the review process.

a. A biography, including professional and academic credentials.

b. A résumé or curriculum vitae, which must include relevant job experience, qualifications, as well as contact information (email, telephone, and mailing address).

c. A one-page statement describing how the candidate will benefit ARAC, taking into account the candidate's unique perspective that will advance the conversation. This statement must also identify the stakeholder group that the candidate would represent.

Finally, candidates should state their previous experience on a Federal advisory committee and/or aviation rulemaking committee (if any), their level of expertise in the stakeholder group they wish to represent, and the size of the constituency they represent or are able to reach.

Current ARAC members who wish to be reappointed to the committee must respond to this solicitation notice.

Evaluations will be based on the materials submitted.

The Secretary will make every effort to appoint members to serve on ARAC from among those candidates determined to have the technical expertise required to meet Departmental needs, and in a manner to ensure an appropriate balance of membership. The selection of committee members will be consistent with achieving the greatest impact, scope, and credibility among diverse stakeholders. An effort will be made to appoint members who represent a range of organizations directly or indirectly impacted by FAA regulations. To the extent practicable, the membership of the committee will include persons with lived experience and knowledge of the needs of underrepresented groups. The Secretary reserves the discretion to appoint members to serve on ARAC who were not nominated in response to this notice if necessary to meet Departmental needs in a manner to ensure an appropriate balance of membership.

Issued in Washington, DC, on April 21, 2022.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2022–08928 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–1094]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Flight Engineers and Flight Navigators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 26, 2021. The collection involves FAA Form 8400–3, Application for an Airman Certificate and/or Rating, (for flight engineer and flight navigator) and applications for approval of related training courses that are submitted to FAA for evaluation. The information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. This collection is also necessary to determine training course acceptability for those schools training flight engineers or navigators.

DATES: Written comments should be submitted by May 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: Sandra Ray by email at: *Sandra.ray@faa.gov;* phone: 412–329–3088.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0007.

Title: Flight Engineers and Flight Navigators.

Form Numbers: 8400–3.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 26, 2021 (86 FR 67580). The information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. This collection is also necessary to determine training course acceptability for those schools training flight engineers or navigators. FAA Form 8400.3, Application for an Airman Certificate and/or Rating, (for flight engineer and flight navigator) and applications for approval of related training courses are available online and are submitted to FAA for evaluation. The information is reviewed to determine applicant eligibility and compliance with prescribed provisions of Title 14 CFR part 63, Certification: Flight Crewmembers Other Than Pilots. Form 8400–3 is multiple-use form also used for control tower operators and aircraft dispatchers.

Respondents: Airman Applicants and Training Schools.

Frequency: As needed.

Estimated Average Burden per Response: Varies per requirement.

Estimated Total Annual Burden: 268 Hours.

Issued in Washington, DC, on April 22, 2022.

Sandra L. Ray,

Aviation Safety Inspector.

[FR Doc. 2022–08931 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0334]

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Safety Statement Requirement for Manufacturers of Small Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of

Management and Budget (OMB) approval new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 7, 2019. The collection involves manufacturers of small unmanned aircraft providing a safety statement to owners of the UAS they produce. This is a statutory requirement. To minimize the burden on small businesses, the FAA has developed an example safety statement that can be used to satisfy the requirement.

DATES: Written comments should be submitted by May 27, 2022.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jessica Orquina, Senior Communications Specialist, by email at: *jessica.a.orquina@faa.gov;* phone: 202–267–7493.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Requests for Comments; Clearance of New Approval of Information Collection: Safety Statement Requirement for Manufacturers of Small Unmanned Aircraft.

Form Numbers: N/A.

Type of Review: This is a new information collection request.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 7, 2019 (Document Citation: 84 FR 72438).

Section 2203 of the FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114–90) requires manufacturers of small unmanned aircraft to make available to the owner a safety statement that satisfies requirements detailed in that section. The requirements include:

1. Information about, and sources of, laws and regulations applicable to small unmanned aircraft;

2. Recommendations for using small unmanned aircraft in a manner that promotes the safety of person and property;

3. The date that the safety statement was created or last modified; and

4. Language approved by the Administrator regarding the following:

a. A person may operate the small unmanned aircraft as a model aircraft (as defined in section 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note)) or otherwise in accordance with Federal Aviation Administration authorization or regulation, including requirements for the completion of any applicable airman test.

b. The definition of a model aircraft under section 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note).

c. The requirements regarding the operation of a model aircraft under section 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note).

d. The Administrator may pursue enforcement action against a person operating model aircraft who endangers the safety of the national airspace system.

By statute, manufacturers will be required to make a safety statement available to small UAS owners. This manufacturer insert serves as an example safety statement that UAS manufacturers may use. The FAA provides an example safety statement and guidance to assist manufacturers to comply with this requirement.

The FAA received comments to the 60-day **Federal Register** Notice from Airlines from America and two individuals.

- The FAA considered all comments equally.
- The FAA agrees with Airlines for America: ''The Safety Statement is an important safety and oversight tool to ensure that sUAS manufacturers are compliant with FAA accepted consensus safety standards, while imposing minimal burden upon the sUAS industry.''
- Since the requirement for manufacturers to make safety statements available is statutory, this information collection request is not an overstep by the FAA, but part of the process to implement Section 2203 of the FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114–90). In addition, to reduce the burden on manufacturers, the FAA has provided a sample safety statement for manufacturers to use to satisfy this requirement or as a guide to create a custom safety statement. The FAA has updated the sample safety statement as needed and will continue to do so.

Respondents: Manufacturers of small UAS sold in the U.S. (Association for Unmanned Vehicle Systems International (AUVSI) reports there are 471 active manufacturers in February 2019.)

Frequency: Updates as required due to changes in Agency regulations, rules, or policy.

Estimated Average Burden per Response: 40 Hours.

Estimated Total Annual Burden: Estimated cost per respondent is $3,200.

Issued in Washington, DC.

Jessica Ann Orquina,

Acting Manager, Executive Office, AUS–10, UAS Integration Office.

[FR Doc. 2022–08929 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0012]

Agency Information Collection Activities: Emergency Approval Request

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 9, 2022.

ADDRESSES: You may send comments within 10 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1)

Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2022–0012.

FOR FURTHER INFORMATION CONTACT: Melissa Corder, 202–366–5853, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Temporary Waivers of 49 CFR part 24 Regulatory Requirements.

Background: As Lead Agency for the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), the Federal Highway Administration (FHWA) may issue temporary waivers of specific non-statutory regulatory requirements of 49 CFR part 24 under section 24.7 for its Federal-aid programs. A section 24.7 waiver is needed when programmatic circumstances in a State or on a nationwide basis require alternate procedures be allowed to meet program needs for relocating persons displaced as part of a highway project.

The requests for waiver of some regulatory requirements of 49 CFR part 24 are infrequent, for good cause and occur on a case by case basis to address programmatic or project related nuances or circumstances. The temporary waiver of specific 49 CFR part 24 non-statutory regulatory requirements by FHWA ensures that displaced persons receive the relocation assistance necessary to move to and occupy replacement housing or for a nonresidential displaced person to move to a replacement location.

Use of temporary waivers of specific 49 CFR part 24 regulatory requirements by a State Department of Transportation (SDOT) are voluntary, and requests to implement alternate procedures in accordance with such temporary waivers of specific 49 CFR part 24 regulatory requirements are granted on either a programmatic or case by case project basis as approved by FHWA.

The nominal amount of information the SDOT obtains as part of its use of the temporary waiver is readily available from sources used as part of their normal relocation work, and without cost to the displaced person or the SDOT. The information is used to document the determination of benefit amounts made by the SDOT to make the monetary needs for successful relocation of a displaced person within their financial means.

Respondents: 52.

Estimated Average Burden per Response: 15.

Estimated Total Annual Burden: 780.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: April 22, 2022.

Michael Howell,

Information Collection Officer.

[FR Doc. 2022–08982 Filed 4–26–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0011]

Agency Information Collection Activities: Emergency Approval Request

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 9, 2022.

ADDRESSES: You may send comments within 10 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2022–0011.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, Office of Safety, 202–366–2201, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Safe Streets and Roads for All Grant Program.

Background: The Department of Transportation's Office of the Secretary and the Federal Highway Administration are committed to a comprehensive strategy to address the unacceptable number of traffic deaths and serious injuries occurring on our roads and streets. The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), Section 24112 aligns with the Department's safety priority through the creation of the Safe Streets and Roads for All Grant Program. This grant program supports local initiatives to prevent death and serious injury on roads and streets. This grant program is for Metropolitan Planning Organizations, political sub-divisions of a State, federally recognized Tribal governments and multijurisdictional groups of the entities comprised above.

This grant program includes both grant funds to develop a comprehensive safety action plan; to conduct planning, design and development activities for projects and strategies identified in a comprehensive action plan or to carry out projects and strategies identified in a comprehensive action plan. To receive applications for grant funds, evaluate the effectiveness of projects that have been awarded grant fund and to monitor project financial conditions and project progress, a collection of information is necessary.

Eligible applicants will request grant funds in the form of a grant application. This grant application will assist in soliciting proposals for funding from eligible applicants. In addition, reporting requirements will be submitted by grant recipients during the grant agreement, implementation, and evaluation phases.

Responding to the grant opportunity is on a voluntary-response basis, utilizing an electronic grant platform. The grant application is planned as a one-time information collection and OST/FHWA estimates that the application will take approximately 20 hours to complete an application for a comprehensive action plan grant and approximately 100 hours to complete an application for a implementation grant.

Respondents: Metropolitan planning organizations, political subdivisions of a State, federally recognized Tribal

governments and multijurisdictional groups of entities comprised above.

Frequency: Once each year.

Estimated Average Burden per Response: Approximately 20 hours for the comprehensive action plan grants and 100 hours for the implementation grants per respondent.

Estimated Total Annual Burden Hours: Approximately 120 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 23 U.S.C. 134 and 135; and 23 CFR chapter 1, subchapter E, part 450.

Dated: April 22, 2022.

Michael Howell,

FHWA Information Collection Officer.

[FR Doc. 2022–08981 Filed 4–26–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0134]

Commercial Driver's License: Tornado Bus Company (Tornado); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request from the Tornado Bus Company (Tornado). Tornado requests an exemption from certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) for its drivers who currently hold a Mexican Licencia Federal de Conductor (LFC), and are seeking permanent resident status in the United States through the Department of Homeland Security and have over two years' experience driving in the United States (U.S.) and Mexico. The exemption would cover general entry-level driver training (ELDT) requirements, required knowledge testing for the commercial driver's license (CDL), required skills testing for the CDL, and requirements for knowledge and skills testing to obtain a CDL passenger endorsement. FMCSA analyzed the exemption application and public comments and determined that the application does not demonstrate that the exemption would likely ensure a level of safety equivalent to or greater than would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–2722. *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2020–0134'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click ''Browse Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2020–0134'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level achieved without the exemption (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Under 49 CFR 380.609, as of February 7, 2022, entry-level driver training (ELDT) is required for individuals applying for a Commercial Driver's License (CDL) for the first time; upgrading a current CDL from Class B to Class A; or obtaining a Passenger (P), School bus (S), or Hazardous materials (H) endorsement for the first time. All drivers of commercial motor vehicles (CMVs) requiring a CDL must have the knowledge and skills specified in 49 CFR 383.111 and 383.113, respectively. An applicant for a P endorsement to a CDL must satisfy both the knowledge and skills required by 49 CFR 383.117.

Applicant's Request

Tornado requested an exemption from the following regulatory requirements: 49 CFR 380.609 (General ELDT requirements); 49 CFR 383.111 (Required knowledge); 49 CFR 383.113 (Required skills); and 49 CFR 383.117 (Requirements for passenger endorsement) for its drivers who currently hold an LFC and are seeking permanent resident status in the United States from the Department of Homeland Security. Tornado requested the exemption because it is experiencing a shortage of qualified drivers to support its operation, with adverse effects on its finances.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, Tornado emphasizes that the operation of its vehicles would not be impacted since all drivers will have over two years of experience driving buses in the U.S. and Mexico. When hired, all Tornado drivers receive training in the U.S., which includes the

following topics: (1) Hours of service; (2) vehicle inspections; (3) drug and alcohol; (4) safety and security; (5) Americans With Disabilities Act (ADA); (6) equipment training; and (7) Smith System Training (defensive driving classroom and operational). Tornado did not provide specific information addressing the content or rigor of the training it provides.

V. Public Comments

On July 14, 2021, FMCSA published notice of Tornado's application and requested public comments (86 FR 37209). The Agency received comments from the International Brotherhood of Teamsters (Teamsters) and two individuals. All three commenters opposed the exemption request. The Teamsters said that Tornado has not sufficiently demonstrated that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. According to the Teamsters:

> Tornado states that the drivers for which they are seeking exemptions from the FMCSRs will have had over two years of experience driving in the U.S. and Mexico. But that experience is not differentiated by country. By their broad statement, it cannot be determined if a driver has more than one-day's experience driving in the U.S., and that most of the time has been spent operating in Mexico.

The Teamsters added:

> Tornado offers no specifics like the number of hours of in-classroom training it offers its drivers hired in the U.S., other than stating what subjects it includes in its training. Tornado's application for exemption contains no safety analysis and it states that its operation 'is significantly affected financially' once their drivers obtain permanent residence status due to the time consumption to process their CDL. Financial considerations should never outweigh safety.

In summary, the Teamsters concluded, ''these drivers who receive permanent residence status must operate in the U.S. with a U.S. CDL. They no longer can use the Mexican LFC. Therefore, they must take the necessary steps to qualify for the U.S. CDL.''

The two individual commenters stated that the Agency should not grant exemptions based on financial considerations and that doing so would result in a weakening of the necessary training that these drivers would otherwise receive.

VI. FMCSA Safety Analysis and Decision

FMCSA evaluated the Tornado application and the public comments and is denying the exemption. In order to obtain a CDL an applicant must pass both skills and knowledge tests to demonstrate the proficiency required to safely operate a CMV on a public road. In addition, beginning February 7, 2022, the Agency's entry-level driver training standards apply to individuals applying for a CDL for the first time; an upgrade of their CDL (*e.g.,* a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time.

Because the applicant did not provide any specific information on either the content or rigor of the training it provides for its drivers hired to operate in the U.S., FMCSA has no basis to conclude that granting the exemption would achieve a level of safety equivalent to, or greater than the level achieved without the exemption.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–08934 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0051]

Commercial Driver's License Requirements: Dealers' Choice Truckaway System, Inc. dba Truckmovers; Irontiger Logistics, Inc.; TM Canada, Inc.; Victory Driveaway, Inc., Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request submitted by the following affiliated driveaway motor carriers: Dealers' Choice Truckaway System, Inc. dba Truckmovers; Irontiger Logistics, Inc.; TM Canada, Inc.; and Victory Driveaway, Inc. These driveaway carriers jointly sought an exemption from the requirement that drivers transporting empty passenger vehicles with seating capacities of 16 or more but a gross vehicle weight rating (GVWR) and a gross vehicle weight (GVW) of less than 26,001 pounds possess a commercial drivers' license (CDL) to do so. The applicants explain that they are often called on to transport what they describe as minibuses from points of manufacture or distribution to school districts around the country, and that the requirement that drivers hold a CDL to deliver these empty vehicles is an unnecessary restriction that contributes to the driver shortage. FMCSA analyzed the request and public comments and determined that the application provided no evidence that the exemption would ensure a level of safety equivalent to or greater than that achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2021–0051'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click ''Browse Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2021–0051'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than,

the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The regulations in 49 CFR 383.3 require that every individual operating a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce hold a valid CDL. Under 49 CFR 383.5, a CMV includes a motor vehicle or combination of motor vehicles used in commerce to transport passengers if the motor vehicle is a small vehicle that does not meet Group A or B requirements but is designed to transport 16 or more passengers, including the driver.

Applicant's Request

The applicants requested an exemption from the CDL requirements for a driver operating empty passenger CMVs (''minibuses'') with seating capacities ranging from 6 to 33, and sometimes more. In all cases, however, the GVWR and GVW of these vehicles are less than 26,001 pounds. The applicants state that they have experienced challenges finding CDL drivers and that bus manufacturers may not be able to move minibuses to distributors and customers.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, the applicants emphasize that the drivers would transport empty passenger CMVs with a GVW less than 26,001 pounds, would remain subject to the driver qualification standards in 49 CFR part 391, and would hold a valid operators' license.

V. Public Comments

On July 14, 2021, FMCSA published notice of the application and requested public comments (86 FR 37207). The Agency received comments from the Advocates for Highway and Auto Safety (Advocates) and an individual; both opposed the exemption request. Advocates stated: ''The current application must be denied as it fails to meet the statutory requirements for such a petition and the exemptions sought would significantly degrade public safety. Notably, Petitioners fail to indicate any alternative solutions they have attempted to implement to address these issues before filing the current Application. The current application would result in a needless threat to public safety by permitting an untold number of CMVs to be transported by individuals without a valid CDL. This would be a drastic departure from current established federal regulations. Further, the applicant has failed to provide FMCSA with the required analysis and supporting information necessitated by statute and thus, should be denied.'' The individual commenter stated that the applicant failed to mention the increased safety issues that come with driving larger and longer vehicles.

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated the joint application and the public comments and decided to deny the exemption. Driving a CMV requires a higher level of knowledge, experience, skills, and physical abilities than that required to drive a non-commercial vehicle. In order to obtain a CDL, an applicant must pass both skills and knowledge tests geared to these higher standards. Additionally, CDL holders are held to a higher standard when operating any type of motor vehicle on public roads. Serious traffic violations committed by a CDL holder can affect their ability to maintain their CDL certification. CDL operators must adhere to a strict and comprehensive set of regulations to keep themselves and other drivers safe on the road.

As Advocates and the individual commenter indicated, the application does not meet the statutory requirements for such a petition, and the requested exemptions sought would significantly degrade public safety. An exemption from the CDL requirements in part 383 would also automatically exempt the drivers from the drug and alcohol testing regulations in 49 CFR part 382. The applicants do not provide countermeasures to be undertaken to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. Furthermore, the applicants fail to provide the required analysis and supporting information required by statute for submitting this application for exemption.

The Agency cannot ensure that the exemption would achieve the requisite level of safety and therefore must deny the application.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–08936 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0083]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators (ICDs)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from three individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with ICDs to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 27, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA–2022–0083 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0083, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET,

Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2022–0083), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* insert the docket number FMCSA–2022–0083 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0083, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The three individuals listed in this notice have requested an exemption from § 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

III. Qualifications of Applicants

Timothy Broome

Mr. Broome is a CMV driver in South Carolina. A January 18, 2022, letter from Mr. Broome's cardiologist reports that his ICD was initially implanted in December 2004 for paroxysmal ventricular tachycardia. His cardiologist's letter reports that on October 27, 2011, Mr. Broom's ICD was explanted and replaced with a different model, and on August 13, 2019, that model was explanted and replaced with his current model. His letter also reports that Mr. Broome was treated in January 2018 with a ventricular tachycardia ablation, that he has experienced no ICD shocks or therapies since December 2017, his underlying heart condition is NYHA Class 1—functional status, he is asymptomatic, and his left ventricular ejection fraction was 25 to 30 percent on his last echocardiogram in 2018.

Bryce Alyn Norman

Mr. Norman of California does not operate but intends to operate a CMV if granted an exemption. A November 4, 2021, letter from his cardiologist reports that Mr. Norman has catecholaminergic polymorphic ventricular tachycardia, that he had a cardiac arrest in 2019 and now has an ICD and is taking medication. The cardiologist's letter states that he sees no contraindications for Mr. Norman to drive a CMV as long as he is compliant with his medication. A letter of March 9, 2022, from a second cardiologist provides the same diagnosis, stating that Mr. Norman has had no other events since 2019, his ICD has never deployed, he is asymptomatic, and his current heart condition is stable.

Abiud Ortuno

Mr. Ortuno is a CMV driver in the Florida. A February 18, 2022, letter from Mr. Ortuno's cardiologist reports that an ICD was implanted in December 2020 for Brugada syndrome. His cardiologist's letter reports that Mr. Otuno has not experienced shocks from the device, that he has stable cardiac functioning,

[1] These criteria may be found in 49 CFR part 391, Appendix A to Part 391—Medical Advisory Criteria, Section D. Cardiovascular: § 391.41(b)(4), paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

and indicates that that he may operate a CMV from a cardiac standpoint.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–08989 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption to Daimler Trucks North America (Daimler) for nine of its commercial motor vehicle (CMV) drivers, identified below. Under this exemption, the nine drivers are not subject to the commercial driver's license (CDL) requirements and therefore are exempt from the requirements of the Agency's drug and alcohol regulations. This exemption will permit the Daimler drivers to test-drive Daimler vehicles on U.S. roads to better understand product requirements in ''real world'' environments, and verify results. FMCSA reviewed the drivers' commercial license records provided by Daimler, and believes the requirements for a German commercial license, the work restrictions imposed on Daimler drivers because of nonimmigrant visa requirements, and the terms and conditions set forth below will ensure that Daimler's operation, under this exemption, will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: The exemption is effective April 27, 2022 and expires April 27, 2027.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente; FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366–4325; *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2012–0032'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Current Regulatory Requirements

Under 49 CFR 383.23, no person subject to the CDL requirements shall operate a CMV unless such person has taken and passed certain knowledge and driving skills tests. Such drivers are also subject to the controlled substances and alcohol testing requirements of 49 CFR part 382, including the Drug and Alcohol Clearinghouse (Clearinghouse) requirements set forth in 49 CFR part 382, subpart G.

The Clearinghouse is a central repository of drivers' drug and alcohol program violations. Under the Clearinghouse regulations in 49 CFR part 382, subpart G, employers are required to query the system to determine whether current and prospective employees have incurred a drug or alcohol program violation that would prohibit them from performing safety-sensitive functions as defined in 49 CFR 382.107. Additionally, employers are required to report driver drug and alcohol program violations to the Clearinghouse.

IV. Applicant's Request

Daimler has requested an exemption from 49 CFR 383.23, which states that no person may operate a CMV, as defined in 49 CFR 383.5, until passing the applicable knowledge and skills test necessary to obtain a Commercial Learner's Permit (CLP) or CDL. Daimler further requested an exemption for the nine drivers from the Clearinghouse requirements of 49 CFR part 382, subpart G, stating that, for a driver to register and for a motor carrier to conduct full/limited queries and/or report violations to the Clearinghouse, a valid State-issued CDL number is required.

The following drivers would be covered by the exemption: Manfred Wilhelm Guggolz, Thorsten Sascha Kugel, Steffen Keppeler, Lars Nock, Jorg Wolfgang Spielvogel, Frank-Michael Kircher, Jochen Hans Horwath, Dominik Cammerer, and Carsten Schewe. Each of these drivers has a valid German commercial license. The exemption would allow these nine drivers to operate CMVs in interstate commerce to support Daimler field tests to meet future vehicle safety and environmental regulatory requirements, and to promote the development of technology advancements in vehicle safety systems and emissions reductions. Daimler

stated that the drivers would be in country for no more than six weeks per year.

V. Method To Ensure an Equivalent or Greater Level of Safety

According to Daimler, the requirements for a German commercial license ensure that the same level of safety is met or exceeded as if these drivers had a CDL issued by one of the States. Daimler explained that the drivers are familiar with the operation of CMVs worldwide and would be accompanied at all times by a driver who holds a State-issued CDL and is familiar with the routes to be traveled. Additionally, Daimler provided statements of driving history for each of the nine drivers. Daimler also stated that the drivers would comply with the requirements of the drug and alcohol program, with the exception of the Clearinghouse requirements, to ensure safety equivalency.

VI. Public Comments

On December 9, 2020, FMCSA published notice of the Daimler application and requested public comments (85 FR 79260). The Agency received one comment from a private citizen; Mr. Mark Whelan, who questioned why the Daimler drivers should not be required to obtain a State-issued CDL and undergo drug testing.

VII. FMCSA Decision

FMCSA has determined that the process for obtaining a CDL in Germany is comparable to the process for obtaining a State-issued CDL and therefore adequately ensures the drivers can safely operate a CMV in the United States.

Under this exemption, the Daimler drivers would not be subject to the drug and alcohol testing requirements, set forth in 49 CFR part 382, which apply only to drivers who are subject to the CDL requirements in 49 CFR part 383, the Canadian National Safety Code, or the Licencia Federal de Conductor (Mexico), and to their employers (49 CFR 382.103(a)). Therefore, to ensure a likely equivalent level of safety, the terms and conditions of this exemption require that Daimler implement a corporate drug and alcohol testing program substantially equivalent to the testing requirements in part 382. FMCSA determines that because the Daimler drivers are not subject to 49 CFR part 382, an exemption from the Clearinghouse requirements in subpart G is unnecessary.

Based on the information provided by Daimler, as described in section IV, including the drivers' experience and safety records, FMCSA concludes that the exemption, subject to the terms and conditions set forth in section VIII, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, in accordance with 49 U.S.C. 31315(b)(1).[1]

VIII. Terms and Conditions for the Exemption

This exemption applies only to the following Daimler drivers: Manfred Wilhelm Guggolz, Thorsten Sascha Kugel, Steffen Keppeler, Lars Nock, Jorg Wolfgang Spielvogel, Frank-Michael Kircher, Jochen Hans Horvath, Dominik Cammerer, and Carsten Schewe. These drivers are granted an exemption from the CDL requirement in 49 CFR 383.23 to allow them to drive CMVs in the United States without a State-issued CDL. Consequently, the drivers are not subject to the requirements of 49 CFR part 382, including the Clearinghouse requirements in subpart G. When operating under this exemption, the Daimler drivers are subject to the following terms and conditions:

(1) The drivers and Daimler must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR parts 350–399);

(2) The drivers must be able to provide this exemption document to enforcement officials;

(3) The drivers must be in possession of a valid German commercial driver's license;

(4) The drivers must be employed by Daimler and must operate the CMV within the scope of their duties for Daimler;

(5) At all times while operating a CMV under this exemption, the drivers must be accompanied by a holder of a State-issued CDL who is familiar with the routes traveled;

(6) Daimler must notify FMCSA in writing if any of these drivers is convicted of an offense listed in § 383.51 or a disqualifying offense under § 391.15 of the Federal Motor Carrier Safety Regulations; and

(7) Daimler must implement a drug and alcohol testing program substantially equivalent to the applicable requirements in 49 CFR part 382, subparts A–F, and require that the drivers be subject to those requirements.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, Daimler must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the Daimler drivers while operating a CMV under the terms of this exemption. The notification must include the following information:

a. Identifier of the Exemption: ''Daimler;''
b. Name of operating carrier and USDOT number;
c. Date of the accident;
d. City or town, and State, in which the accident occurred, or closest to the accident scene;
e. Driver's name and license number;
f. Co-driver's name (if any) and license number;
g. Vehicle number and state license number;
h. Number of individuals suffering physical injury;
i. Number of fatalities;
j. The police-reported cause of the accident, if provided by the enforcement agency;
k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and
l. The total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

IX. Termination

FMCSA has no reason to believe the motor carrier and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–08935 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–EX–P

[1] FMCSA has granted Daimler drivers similar exemptions: July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410); July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742); and September 28, 2020 (85 FR 60782).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption from the commercial driver's license (CDL) requirements to Daimler Trucks North America (Daimler) for one of its commercial motor vehicle (CMV) drivers, Ms. Gesa Reimelt, a product engineer in powertrain solutions. She holds a valid German commercial license and wants to test drive Daimler vehicles on U.S. roads to better understand product requirements in ''real world'' environments and verify results. Under this exemption, Ms. Reimelt is exempt from the the Agency's drug and alcohol regulations in 49 CFR part 382, which apply only to CDL holders. FMCSA reviewed Ms. Reimelt's commercial license records provided by Daimler, and believes the requirements for a German commercial license, the work restrictions imposed on Daimler drivers because of nonimmigrant visa requirements, and the terms and conditions set forth below, including a Daimler-administered drug and alcohol testing program, will ensure that her operation under this exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: The exemption is effective April 27, 2022 and expires April 27, 2027.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–2722. *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2012–0032'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click ''Browse Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2012–0032'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Current Regulatory Requirements

Current Regulation(s) Requirements

Under 49 CFR 383.23, no person shall operate a CMV without having taken and passed knowledge and driving skills tests for a commercial learner's permit or CDL that meet the Federal standards contained in subparts F, G, and H of Part 383 for the CMV that person operates or expects to operate. The Clearinghouse maintains records of all drug and alcohol program violations in a central repository and requires that employers query the system to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety-sensitive functions covered by the FMCSA and U.S. Department of Transportation (DOT) drug and alcohol testing regulations.

Applicant's Request

Daimler has requested an exemption from 49 CFR 383.23 because Ms. Reimelt is unable to obtain a CDL due to her lack of residency in the United States. Daimler further requested an exemption from the Clearinghouse requirements of 49 CFR part 382, subpart G, for Ms. Reimelt because a valid State-issued CDL number is required for a driver to register and for a motor carrier to run full/limited queries and/or report violations to the Clearinghouse.

Gesa Reimelt has a valid German commercial license. The exemption would allow her to operate a CMV in interstate commerce to support Daimler field tests to meet future vehicle safety and environmental requirements, and to promote technical advancements in vehicle safety systems and emissions reductions. Daimler stated that the driver would be in this country for no more than six weeks per year.

IV. Method To Ensure an Equivalent or Greater Level of Safety

According to Daimler, the requirements for a German commercial license ensure that the same level of safety is met or exceeded as if this driver had a CDL issued by one of the States. Daimler explained that Gesa Reimelt is familiar with the operation of CMVs worldwide and would be accompanied at all times by a driver who holds a State-issued CDL and is familiar with the routes to be traveled. Additionally, Daimler provided a statement of Ms. Reimelt's driving history. Daimler also stated that she would ensure safety equivalency by complying with the requirements of the drug and alcohol program, as

administered by Daimler, with the exception of the Clearinghouse requirements.

V. Public Comments

On August 19, 2021, FMCSA published notice of the Daimler application and requested public comments (86 FR 46752). The Agency received no comments.

VI. FMCSA Decision

FMCSA has determined that the process for obtaining a CDL in Germany is comparable to the process for obtaining a State-issued CDL and therefore adequately ensures that this driver can safely operate a CMV in the United States.

Under this exemption, Gesa Reimelt is not subject to the drug and alcohol testing requirements, set forth in 49 CFR part 382, which apply only to drivers who are subject to the CDL requirements in 49 CFR part 383, the Canadian National Safety Code, or the Licencia Federal de Conductor (Mexico), and to their employers (49 CFR 382.103(a)). Therefore, to ensure an equivalent level of safety, the terms and conditions of this exemption require Daimler to implement a corporate drug and alcohol testing program substantially equivalent to the testing requirements in part 382. Because Ms. Reimelt is not subject to 49 CFR part 382, an exemption from the Clearinghouse requirements in subpart G is unnecessary.

Based on the information provided by Daimler, as described in section IV, including the driver's experience and safety record, FMCSA concludes that the exemption, subject to the terms and conditions set forth in section VII, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, in accordance with 49 U.S.C. 31315(b)(1).[1]

VII. Terms and Conditions for the Exemption

This exemption applies only to Daimler driver Gesa Reimelt. This driver is granted an exemption from the CDL requirement in 49 CFR 383.23 to allow her to drive CMVs in the United States without a State-issued CDL. Consequently, Ms. Reimelt is not subject to the requirements of 49 CFR part 382, including the Clearinghouse requirements in subpart G. When operating under this exemption, she is subject to the following terms and conditions:

(1) The driver and Daimler must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399);

(2) The driver must be in possession of the exemption document and a valid German commercial license;

(3) The driver must be employed by and operate the CMV within the scope of her duties for Daimler;

(4) At all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a State-issued CDL who is familiar with the routes traveled;

(5) Daimler must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving Ms. Reimelt;

(6) Daimler must notify FMCSA in writing if Ms. Reimelt is convicted of an offense listed in § 383.51 or a disqualifying offense under § 391.15 of the Federal Motor Carrier Safety Regulations; and

(7) Daimler must implement a drug and alcohol testing program substantially equivalent to the requirements in 49 CFR part 382 (and 49 CFR part 40 regarding collection procedures, the panel of drugs tested and the thresholds, and the processing of samples, etc.), excluding the Clearinghouse requirements in subpart G.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, Daimler must notify FMCSA within 5 business days of any positive drug or alcohol tests, or accident (as defined in 49 CFR 390.5), involving Gesa Reimelt while operating a CMV under the terms of this exemption. The notification about accidents must include the following information:

a. Identifier of the Exemption: ''Daimler -Reimelt;''

b. Name of operating carrier and USDOT number;

c. Date of the accident;

d. City or town, and State, in which the accident occurred, or closest to the accident scene;

e. Driver's name and license number;

f. Co-driver's name (if any) and license number;

g. Vehicle number and State license number;

h. Number of individuals suffering physical injury;

i. Number of fatalities;

j. The police-reported cause of the accident, if provided by the enforcement agency;

k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and

l. The total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

VIII. Termination

FMCSA has no reason to believe the motor carrier and driver covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–08932 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–EX–P

[1] FMCSA has granted Daimler drivers similar exemptions: July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410); July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); September 10, 2018 (83 FR 45742); and September 28, 2020 (85 FR 60782).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Merchant Marine Academy Board of Visitors; Public Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation, Maritime Administration announces that the U.S. Merchant Marine Academy (USMMA) will hold a meeting of the USMMA Board of Visitors (BOV). The meeting will be available in-person at USMMA with a virtual component available.

DATES: May 13, 2022, from 1:00 p.m. to 3:00 p.m. EST.

Requests to attend the meeting must be received by May 8, 2022. Permission to attend in-person will be based on space available. Requests will be taken as they are received until available spaces are full. After on-campus seating space in the meeting room has been

exhausted, all others desiring to attend will be able to join the virtual session.

Requests to submit written materials to be reviewed during the meeting must be received no later than May 3, 2022.

Requests for accommodations for a disability must be received by May 8, 2022.

USMMA will post virtual meeting access details no later than May 10, 2022, via its website and Social Media channels.

ADDRESSES: The meeting will be held in the Schuyler Otis Bland Library's Crabtree Conference Room on May 13, 2022, from 1:00 p.m. to 3:00 p.m. EST. General information about the committee, is available on the USMMA BOV internet website at *https://www.usmma.edu/about/leadership/board-visitors.* Meeting access information will also be available at *https://www.usmma.edu/* on the date specified in the **DATE** section above.

FOR FURTHER INFORMATION CONTACT: The BOV's Designated Federal Officer and Point of Contact, George Rhynedance, 516–726–6048 or *rhynedanceg@usmma.edu.*

SUPPLEMENTARY INFORMATION:

I. Background

The USMMA BOV is a Federal Advisory Committee originally established as a Congressional Board by Section 51312 of Title 46, United States Code ''to provide independent advice and recommendations on matters relating to the United States Merchant Marine Academy.'' The Board was originally chartered under the Federal Advisory Committee Act (FACA) on October 24, 2017.

II. Agenda

The meeting agenda will cover, *but is not limited to,* the following proposed topics:

1. Board maintenance items (elections, minutes, reports, etc.);
2. Update on Sea Year Pause and EMBARC program;
3. Update on the six priorities from the USMMA Strategic Plan (including COVID since the last meeting, infrastructure and modernization progress, Sexual Assault Prevention and Response program status);
4. Update on the Class of 2025; and
5. Update on the state of the Regiment of Midshipmen.

III. Public Participation

This meeting is open to the public and will be held physically at the Academy and through a virtual forum. Members of the public who wish to attend in-person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with their name and affiliation. Permission to attend will be based on space available. Requests will be taken as they are received until available spaces are full. After on-campus seating space in the meeting conference room has been exhausted, all others desiring to attend will be able to join the virtual session. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Any member of the public is permitted to file a written statement with the BOV. Written statements should be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section no later than May 3, 2022.

Only written statements will be considered by the BOV; no member of the public will be allowed to present questions from the floor or speak during the meeting unless requested to do so by a member of the Board.

The meeting notice shall be placed in the **Federal Register** no later than 15 days prior to the scheduled date of the meeting, as required by 41 CFR part 102–3.150.

(Authority: 46 U.S.C. 51312; 5 U.S.C. 552b; 5 U.S.C. app. 2; 41 CFR parts 102–3.140 through 102–3.165).

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–09002 Filed 4–26–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2023 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a notice that the IRS has made available the 2023 Grant Application Package and Guidelines (Publication 3319) for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant for the 2023 grant year, which runs from January 1, 2023, through December 31, 2023. The application period runs from May 2, 2022, through June 16, 2022.

DATES: All applications and requests for continued funding for the 2023 grant year must be filed electronically by 11:59 p.m. (Eastern Time) on June 16, 2022. The IRS is authorized to award multi-year grants not to exceed three years. For an organization not currently receiving a grant for 2022, an organization that received a single year grant in 2022, or an organization whose multi-year grant ends in 2022, the organization must apply electronically at *www.grants.gov.* For an organization currently receiving a grant for 2022 that is requesting funding for the second or third year of a multi-year grant, the organization must submit a Non-Competing Continuation Request for continued funding electronically at *www.grantsolutions.gov.* All organizations must use the funding number of TREAS–GRANTS–052023–001, and the Catalog of Federal Domestic Assistance program number is 21.008, see *www.sam.gov.* The LITC Program Office is scheduling a Zoom webinar for May 5, 2022 to cover the full application process. See *www.irs.gov/advocate/low-income-taxpayer-clinics* for complete details, including any changes to the date, time, and the posting of materials.

FOR FURTHER INFORMATION CONTACT: Bill Beard at (949) 575–6200 (not a toll-free number) or by email at *beard.william@irs.gov.* The LITC Program Office is located at: IRS, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA: LITC, 1111 Constitution Avenue NW, Room 1034, Washington, DC 20224. Copies of the *2023 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev. 5–2022), can be downloaded from the IRS internet site at *www.irs.gov/advocate* or ordered by calling the IRS Distribution Center toll-free at 1–800–829–3676. (Note: The ability to mail out publications from the Distribution Center may be impacted by COVID–19 and staffing levels. If so, the publication may only be available online.) See, *https://www.youtube.com/watch?v=BAHNRTCi7MI* for a short video about the LITC program.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Internal Revenue Code (IRC) section 7526, the IRS will annually award up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualified organizations, subject to the limitations set forth in the statute. Grants may be awarded for the

development, expansion, or continuation of low income taxpayer clinics. For fiscal year 2022, Congress appropriated a total of $13,000,000 in federal funds for LITC matching grants. See Consolidated Appropriations Act, 2022, Public Law 117–103, Division E (March 15, 2022).

A qualified organization may receive a matching grant of up to $100,000 per year. A qualified organization is one that represents low-income taxpayers in controversies with the IRS and informs individuals for whom English is a second language (ESL taxpayers) of their taxpayer rights and responsibilities, and does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred).

Examples of a qualified organization include (1) a clinical program at an accredited law, business, or accounting school whose students represent low-income taxpayers in tax controversies with the IRS, and (2) an organization exempt from tax under IRC section 501(a) whose employees and volunteers represent low-income taxpayers in controversies with the IRS and may also make referrals to qualified volunteers to provide representation.

A clinic will be treated as representing low-income taxpayers in controversies with the IRS if at least 90 percent of the taxpayers represented by the clinic have incomes that do not exceed 250 percent of the federal poverty level, taking into account geographic location and family size. Federal poverty guidelines are published annually in the **Federal Register**. See, for example, 87 FR 3315 (Jan. 21, 2022).

In addition, the amount in controversy for the tax year to which the controversy relates generally cannot exceed the amount specified in IRC section 7463 (currently $50,000) for eligibility for special small tax case procedures in the United States Tax Court. The IRS may award grants to qualified organizations to fund one-year, two-year, or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant year. IRC section 7526(c)(5) requires dollar-for-dollar matching funds.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system for taxpayers who are low-income or speak English as a second language by: Providing *pro bono* representation on their behalf in tax disputes with the IRS; educating them about their rights and responsibilities as taxpayers; and identifying and advocating for issues that impact them.

Selection Consideration

Despite the IRS's efforts to foster parity in availability and accessibility in the selection of organizations receiving LITC matching grants and the continued increase in clinic services nationwide, there remain communities that are underrepresented by clinics. Although each application and request for continued funding for the 2023 grant year will be given due consideration, the IRS is particularly interested in receiving applications from the following underserved geographic areas and counties that have limited or no service:

Arizona—Apache, Coconino, and Navajo
Florida—Baker, Bradford, Brevard, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Hamilton, Hernando, Lafayette, Lake, Madison, Nassau, Orange, Osceola, Seminole, St. John's, Sumter, Suwanee, Taylor, and Volusia
Idaho—Ada, Adams, Bannock, Bear Lake, Bingham, Boise, Bonneville, Butte, Canyon, Caribou, Clark, Clearwater, Custer, Franklin, Freemont, Gem, Idaho, Jefferson, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Owyhee, Payette, Power, Teton, Valley, and Washington
Montana—Entire state
Nevada—Entire state
North Carolina—Alamance, Anson, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Sampson, Scotland, Stokes, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson
North Dakota—Entire state
Pennsylvania—Bradford, Clinton, Monroe, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Tioga, Union, and Wyoming
Puerto Rico—Entire territory

In determining whether to award a grant, the IRS will consider a variety of factors, including: (1) The number of taxpayers who will be assisted by the organization, including the number of ESL taxpayers in that geographic area; (2) the existence of other LITCs assisting the same population of low-income and ESL taxpayers; (3) the quality of the program offered by the organization, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing representation services to low-income taxpayers; (4) the quality of the application, including the reasonableness of the proposed budget; (5) the organization's compliance with all federal tax obligations (filing and payment); (6) the organization's compliance with all federal nontax monetary obligations (filing and payment); (7) whether debarment or suspension (31 CFR part 19) applies or whether the organization is otherwise excluded from or ineligible for a federal award; and (8) alternative funding sources available to the organization, including amounts received from other grants and contributors and the endowment and resources of the institution sponsoring the organization.

Applications that pass the eligibility screening process will undergo a Technical Evaluation. Details regarding the scoring process can be found in Publication 3319. An organization submitting a request for continued funding for the second or third year of a multi-year grant will be required to submit an abbreviated Non-competing Continuation Request and will be subject to a streamlined screening process. The final funding decisions are made by the National Taxpayer Advocate, unless recused. The costs of preparing and submitting an application (or a request for continued funding) are the responsibility of each applicant. Applications and requests for continued funding may be released in response to Freedom of Information Act requests. Therefore, applicants must not include any individual taxpayer information.

The LITC Program Office will notify each applicant in writing once funding decisions have been made.

Erin M. Collins,

National Taxpayer Advocate.

[FR Doc. 2022–08889 Filed 4–26–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 3115

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 3115, Application for Change in Accounting Method.

DATES: Written comments should be received on or before June 27, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Include Office of Management and Budget (OMB) Control Number 1545–2070 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Form 3115, Application for Change in Accounting Method.

OMB Number: 1545–2070.

Form Number: Form 3115.

Abstract: Internal Revenue Code (IRC) section 446(e) provides that a taxpaying entity that changes its method of accounting for computing taxable income must first secure the consent of the Secretary. The taxpayer uses Form 3115 to obtain this consent.

Current Actions: There are changes to the existing collection: (1) Four questions were added to Form 3115 to reflect changes in IRS guidance documents and regulations, and (2) citations were added and updated to reflect current IRC sections, regulations, and guidance documents.

Type of Review: Reinstatement of a previously approved collection.

Affected Public: Estates, trusts, and not-for-profit institutions.

Estimated Number of Responses: 630.

Estimated Time per Respondent: 99.99 hours.

Estimated Total Annual Burden Hours: 62,994.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–08950 Filed 4–26–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Application for Veterans Affairs Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–NEW.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Veterans Affairs Life Insurance (VALI) VA Form 29–10277.

OMB Control Number: 2900–NEW.

Type of Review: New Collection (Request for a New OMB Control Number).

Abstract: This form is used by authorized agents (POA, Guardian, or VA Fiduciary) to apply on behalf of incompetent Veterans for Veterans Affairs Life Insurance (VALI) and to designate a beneficiary. The information is required by law, 38 U.S.C. Section 1922.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 8637 on February 15, 2022, page 8637.

Affected Public: Individuals or Households.

Estimated Annual Burden: 8,333.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–08921 Filed 4–26–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 81 April 27, 2022

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 400, 406, 407, et al.
Medicare Program; Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 400, 406, 407, 408, 410, 423, 431, and 435

[CMS–4199–P]

RIN 0938–AU85

Medicare Program; Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement certain provisions of the Consolidated Appropriations Act, 2021 (CAA). Additionally, CMS is proposing to delete references to specific Medicare forms from the text of existing regulations at §§ 406.7 and 407.11 in order to provide greater administrative flexibility. Finally, this proposed rule would update the various federal regulations that affect a state's payment of Medicare Part A and B premiums for beneficiaries enrolled in the Medicare Savings Programs and other Medicaid eligibility groups.

DATES: To be assured consideration, comments must be received at one of the addresses provided, no later than 5 p.m. on June 27, 2022.

ADDRESSES: In commenting, refer to file code CMS–4199–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4199–P, P.O. Box 8013, Baltimore, MD 21244–4199.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4199–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850. [*Note:* This zip code is for express mail or courier delivery only. This zip code specifies the agency's physical location.]

You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Major Bullock, (410) 786–8974, or Steve Manning (410) 786–1961—General questions.

Steve Manning, (410) 786–1961, or Carla Patterson (410) 786–8911—For inquiries related to section 120 of the CAA.

Gail Sexton, (410) 786–4583, or Major Bullock, (410) 786–8974—For inquiries related to section 402 of the CAA.

Melissa Heitt, 410–786–4494—For inquiries related to section 402(f) (Medicare Savings Programs) of the CAA.

Carla Patterson, (410) 786–8911—For inquiries related to the Medicare enrollment form.

Kim Glaun, (410) 786–3849—For inquiries related to state payment of Medicare premiums.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Summary

A. Beneficiary Enrollment Simplification in Medicare Parts A and B—Overview

1. Background

Medicare is a Federal program to provide health insurance for people age 65 and older, and those under 65 with certain disabilities or ESRD. Medicare consists of four distinct parts, commonly referred to as Medicare Parts A, B, C and D. Medicare Part A, sometimes referred to as hospital insurance (HI), covers inpatient hospital services, skilled nursing care, hospice care, and some home health services. Individuals must meet certain conditions to be entitled to Part A. Medicare Part B, or supplementary medical insurance (SMI), is an optional benefit that helps cover medically necessary services and supplies like physicians' services, durable medical equipment, outpatient care, and other medical services that Part A does not cover, including many preventive services. Together, Medicare Parts A and B comprise ''original'' or ''traditional'' Medicare. Most beneficiaries are automatically enrolled in Part A and Part B by the Social Security Administration (SSA) or the Railroad Retirement Board when they turn 65. In addition, if an individual has been receiving Social Security or Railroad Retirement Disability benefits for 24 months, they will automatically be enrolled by SSA or the Railroad Retirement Board in Medicare Parts A and B.

The first opportunity individuals have to enroll in Part B is during their initial enrollment period (IEP). The IEP is a 7-month period that usually begins 3 months before the month in which an eligible individual turns 65 and ends 3 months after the first month of eligibility. The next opportunity for eligible individuals who do not enroll in Part B during their IEP to enroll in Part B, if they choose to do so, is in the general enrollment period (GEP) which runs from January 1st through March 31st each year. Currently, an individual's entitlement (coverage period effective date) under Part B depends on the enrollment period and the month in which the individual enrolls, according to the requirements in sections 1837 and 1838 of the Social Security Act (the Act).

For those who enroll in Medicare Part B during any of the first 3 months of their IEP, coverage is effective the first month they become eligible for Medicare (such as age 65 or the 25th month of entitlement to monthly Social Security or railroad retirement benefits based on disability). However, for those who enroll in any of the last 4 months of their IEP, their coverage becomes effective after their month of enrollment, with the effective date of coverage varying depending on the month in which they enroll.

For individuals subject to the current requirements at 42 CFR 407.10, and who enroll during the GEP, coverage is effective the July 1 following the month in which the individual enrolls.

Example. An individual's 65th birthday is April 10 and they first meet the eligibility requirements for

enrollment April 1. The individual's initial enrollment period would extend from January through July in the year they turn 65. The month in which the individual enrolls in Part B determines the month in which their period of entitlement would begin, as follows:

IEP enrollments during a month before January 1, 2023	Entitlement begins on—
January	April 1 (month eligibility requirements first met).
February	April 1.
March	April 1.
April	May 1 (month following month of enrollment).
May	July 1 (second month after month of enrollment).
June	September 1 (third month after month of enrollment).
July	October 1 (third month after month of enrollment).

For individuals subject to the current requirements at 42 CFR 407.10, and who enroll during the GEP, coverage is effective the July 1 following the month in which he or she enrolls.

2. Proposal Summary

Section 120 of the Consolidated Appropriations Act, 2021 (CAA), Public Law (Pub. L.) 116–260, Division CC, title I, section 120 (December 27, 2020), modified the requirements in section 1838 of the Act, pertaining to individuals enrolling in Part B after not being automatically enrolled, or who are re-enrolling in Part B after disenrollment. Specifically, the CAA revised sections 1838(a)(2)(C), 1838(a)(3)(A), and 1838(a)(2)(D) of the Act to provide that for individuals who become eligible for Medicare on or after January 1, 2023, and enroll in Part B during the last 3 months of their IEP, entitlement would begin the first day of the month following the month in which they enroll.

These changes enacted under section 120 of the CAA will result in coverage under Part B that becomes effective sooner after an individual enrolls during the IEP, deemed IEP, or GEP. We expect these changes will simplify the enrollment process and reduce gaps in health care coverage, and make it easier for affected beneficiaries to understand the effective date of their Medicare coverage. We are proposing conforming changes to our regulations at 42 CFR part 407 to implement these Part B changes. In addition, while the statutory provisions of section 120 of the CAA primarily affect individuals enrolling in Part B, those changes will also affect the requirements applicable to the limited number of individuals enrolling in Part A who are not entitled to premium-free Part A. We are proposing conforming modifications to our regulations at 42 CFR part 406 to reflect those Part A changes.

Additionally, section 120 of the CAA established new section 1837(m) of the Act, which provides authority for the Secretary of the Department of Health and Human Services (HHS) (the Secretary) to establish SEPs for individuals who are eligible to enroll in Medicare and meet such exceptional conditions as the Secretary may provide, effective January 1, 2023. Corresponding changes in sections 1838(g) and 1839(b) of the Act provide the Secretary the discretion to determine the effective date of entitlement for individuals who enroll under an SEP for exceptional conditions, and exempt individuals enrolling under such an SEP from being subject to a late enrollment penalty (LEP), respectively. We are proposing to establish several SEPs for exceptional conditions in this proposed rule, and would incorporate those SEPs in our regulations under 42 CFR parts 406 and 407.

B. Extended Coverage of Immunosuppressive Drugs for Certain Kidney Transplant Patients—Overview

1. Background

End-stage renal disease (ESRD) is a medical condition in which a person's kidneys cease functioning permanently, leading to the need for a regular course of long-term dialysis or a kidney transplant to maintain life. A kidney transplant is ultimately considered the best treatment for ESRD. Section 226A of the Act includes a provision that enables certain individuals diagnosed with ESRD to be entitled to Medicare, regardless of age. If an individual with ESRD applies for Medicare and is entitled to Medicare Part A and eligible for Part B benefits, Medicare provides coverage for all covered medical services, not only those related to the kidney failure condition. When an individual receives a successful kidney transplant, Medicare coverage extends for 36 months after the month in which the individual receives the transplant. Currently, after the 36th month, Medicare coverage ends unless the individual is eligible for Medicare on another basis, such as age or disability.

Medicare Part B covers medical and other health services including, as specified in section 1861(s)(2)(J) of the Act, prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which Medicare payment is made. Kidney transplant recipients must take immunosuppressive drugs to help prevent their immune systems from rejecting the transplanted kidney. If a transplanted kidney is rejected, the individual would revert to ESRD status and again need dialysis treatment or another transplant.

Under current law, Medicare Part B beneficiaries have coverage for such immunosuppressive drug therapy for as long as they remain eligible for and enrolled in Medicare Part B. However, section 226A(b)(2) of the Act currently requires that entitlement to Medicare Part A and eligibility to enroll under Part B for ESRD beneficiaries ends with the 36th month after the month in which the individual receives a successful kidney transplant (see also 42 CFR 406.13(f)(2)).

2. Proposal Summary

Section 402 of the CAA amended sections 226A(b)(2) (and made conforming changes to sections 1836, 1837, 1838, 1839, 1844, 1860D–1, 1902, and 1905 of the Act) to make certain individuals eligible for enrollment under Medicare Part B solely for purposes of coverage of immunosuppressive drugs described in section 1861(s)(2)(J) of the Act. Effective January 1, 2023, this provision would allow certain individuals whose Medicare entitlement based on ESRD would otherwise end after a successful kidney transplant to continue enrollment under Medicare Part B only for the coverage of immunosuppressive drugs described in section 1861(s)(2)(J) of the Act. These individuals would not receive Medicare coverage for any other items or services (under either Part A or Part B), and would only be eligible for immunosuppressive drug coverage under Part B if they are not enrolled in certain other types of coverage, as described in ''Eligibility for the Part B–ID Benefit'' (section II.B.2.b. this proposed rule). Section 402 of the CAA also amended the Medicare Savings Programs (MSPs) under sections 1905(p)(1)(A) and 1902(a)(10)(E) of the Act to pay the Part B premiums and in some cases the costs of the Part B deductible and coinsurance for immunosuppressive drug coverage for certain low-income individuals.

C. Simplifying Regulations Related to Medicare Enrollment Forms—Overview

1. Background

Individuals who receive monthly Social Security or railroad retirement benefits at age 65 or have been entitled to monthly Social Security or railroad retirement benefits based on disability benefits for more than 24 months, are automatically entitled to Part A and do

not have to file a separate application in order to enroll in premium-free Part A. These individuals are automatically enrolled (auto-enrolled) by the Social Security Administration or the Railroad Retirement Board into Part A when they reach age 65 or their 25th month of entitlement to Social Security or railroad retirement benefits based on disability. Individuals who become eligible for premium-free Medicare but who are not auto-enrolled, either because they have delayed receiving Social Security or railroad retirement benefits, or are not eligible for such benefits but are otherwise eligible to receive premium-free Medicare part A based on paying the Medicare payroll tax, must file a separate application to enroll in Medicare. Individuals who decide to collect Social Security benefits after they reach age 65, and thus did not get auto-enrolled in Medicare by virtue of receiving Social Security benefits, may use their application for Social Security benefits, as defined in 42 CFR 400.200, to apply for Medicare if they are eligible for Part A at that time. Individuals may also separately request enrollment in Part B by answering the Part B enrollment questions on an application for monthly Social Security retirement or spousal benefits. As an alternative, individuals may enroll in Part B by signing a simple statement of request, if they are eligible to enroll at that time.

Currently, there are a total of seven enrollment forms for traditional Medicare—two enrollment forms for Part A and five enrollment forms for Part B, in §§ 406.7 and 407.11, respectively. Medicare enrollment forms are available to individuals via mail from CMS or SSA, downloadable via the CMS and SSA websites, or in person at SSA field offices. CMS and SSA periodically review the enrollment forms to determine if updates are necessary to comply with statutory, regulatory, or operational changes. Our regulations currently identify each form by name and provide a brief description of its uses.

2. Proposal Summary

We are proposing to remove references to individual enrollment forms from our regulations, including their titles and brief descriptions, to provide greater administrative flexibility in updating, adding, or removing forms in the future. We are also proposing to make technical edits to the text to state that an individual who files an application for monthly Social Security cash benefits as defined in § 400.200 also applies for Medicare entitlement if he or she is eligible for hospital insurance at that time.

D. Modernizing State Payment of Medicare Premiums—Overview

1. Background

Since the implementation of the original Medicare program in 1966, section 1843 of the Act has provided states the option to enter into an ''agreement'' with the Federal government under which a state commits to enrolling certain Medicare-eligible Medicaid beneficiaries into Medicare Part B with the state paying the Part B premiums on their behalf. Section 1903(a)(1) and (b) of the Act authorize federal financial participation (FFP) for such state payment of Part B premiums for certain dually eligible individuals. We have historically referred to this process as ''state buy-in.'' All 50 states and the District of Columbia have buy-in agreements for Part B [1] with the Secretary.

States pay Medicare Part B premiums for approximately 10 million individuals and Part A premiums for approximately 700,000 individuals each year who are not entitled to Part A without a premium. For an individual who is eligible for but not yet enrolled in Medicare, state buy-in serves to both enroll the individual in Medicare and enable the Federal Government to bill the state for the new beneficiary's Medicare premiums. For an individual who is already enrolled in Medicare, state buy-ins enable the Federal Government to bill the state for the individual's Medicare premiums and stop collecting the premiums through deductions from the beneficiary's monthly Social Security (Old Age Insurance or Disability benefits or Supplemental Security Income), Railroad Retirement Board (RRB), or Office of Personnel Management (OPM) benefits, or through CMS direct billing.

The impact of state buy-in is significant for many beneficiaries. Low-income individuals who receive assistance with Medicare premiums save critical funds to use for other necessities, including food and housing. Upon state buy-in, individuals who were paying the Medicare premiums through deductions from their Social Security benefits see a notable increase in their monthly social security checks (the standard Part B premium is $170.10 per month in 2022), and individuals eligible but not enrolled in Medicare are able to enroll in the program and access Medicare services.

[1] Thirty-seven states (including the District of Columbia) also have buy-in agreements for Part A.

2. Proposal Summary

We are proposing changes to the state buy-in that would better align the regulations with federal statute, policy and operations that have evolved over time, including revising the regulations to provide that approved State plan provisions governing the buy-in process constitute a State's buy-in agreement and limiting retroactive Medicare Part B premium liability for states for full-benefit dually eligible beneficiaries. By clarifying and streamlining existing requirements, these proposals would improve the customer service experience of dually eligible beneficiaries pursuant to the *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government* and promote access to affordable health coverage and essential medical treatment and improve health equity for underserved populations consistent with the *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.*

Together, these proposals not only implement provisions of the CAA, but also support President Biden's *Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage, Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and *Executive Order On Strengthening Medicaid and the Affordable Care Act* by eliminating potentially confusing coverage waiting periods, allowing CMS and the Social Security Administration to remedy missed enrollment periods by allowing for SEPs for exceptional conditions and extending coverage of Medicare Savings Programs (MSPs) to include payment of premiums and cost-sharing for a new immunosuppressive drug coverage under Part B.

II. Provisions of the Proposed Rule

A. Proposals for Beneficiary Enrollment Simplification (§§ 406.21, 406.22, 406.27, 406.33, 406.34, 407.22, 407.25, and 408.24)

1. Effective Dates of Entitlement

While the majority of individuals are automatically enrolled in Medicare Parts A and B upon reaching age 65 or when they have been entitled to monthly Social Security or railroad retirement benefits based on disability for more than 24 months, certain

individuals are required to take active steps to enroll. Specifically, individuals who are eligible for, but not receiving, monthly Social Security benefits under section 202 of the Act or qualified RRB benefits when they turn 65, are not auto-enrolled because they have elected not to start receiving their Social Security or RRB benefits and have not filed an application for Social Security or RRB benefits and must take separate action to apply for Medicare. Certain individuals who are entitled to premium free Part A through government employment, but are not eligible for Social Security or RRB benefits also have to take action to apply for Medicare. Individuals may apply for Part A at any time, but can only apply for Part B during a specific enrollment period (IEP, GEP, or SEP). Further, under section 1818 of the Act, certain individuals who are not otherwise entitled to Part A but meet certain requirements, are eligible to enroll in Part A. These individuals are required to pay monthly premiums under section 1818(d) of the Act, and this benefit is frequently referred to as ''premium Part A.'' These individuals are required to take active steps to enroll in premium Part A and Part B.

As briefly described previously, the period during which these individuals are entitled to receive benefits under Medicare, also known as the coverage period, can vary depending on when the individual enrolls. The first opportunity individuals have to enroll in Part B is during their IEP. Section 1837(d) of the Act defines the IEP for most individuals who become eligible for Medicare on or after March 1, 1966. For these individuals, the IEP begins on the first day of the third month before the month the individual turns 65 and ends seven months later. Section 1837(d) of the Act also defines what is commonly referred to as the ''deemed IEP.'' When an individual fails to enroll during their IEP because of a belief, based on erroneous documentary evidence, that he or she had not yet attained age 65, section 1837(d) of the Act requires the Secretary to establish an IEP for such individual. Such individuals are considered ''deemed'' to have enrolled for purposes of section 1838(a)(3) of the Act, and these individuals are subject to entitlement periods consistent with those applied for individuals not subject to a deemed initial enrollment period under 42 CFR 407.14.

Eligible individuals who do not enroll in Part B during their IEP or deemed IEP, or who disenroll from Part B and wish to re-enroll, must generally do so during the GEP. The GEP is established under section 1837(e) of the Act, and is the period beginning on January 1 and ending on March 31 of each year. Section 1838(a) of the Act establishes the beginning of entitlement for Part B for individuals who enroll in their IEP or GEP. According to the current requirements established under sections 1838(a)(2)(A) and 1838(a)(3)(A) of the Act for individuals who become eligible to enroll in Medicare under section 1836(a) of the Act before January 1, 2023, and enroll during the first 3 months of their IEP or deemed IEP, their entitlement would begin on the first day of the month they turn 65. For such individuals who enroll during the month in which they become eligible, sections 1838(a)(2)(B)(i) and 1838(a)(3)(B)(i) of the Act currently specify that their entitlement begins with the first day of the month following the month in which they enroll. For such individuals who enroll in the month after the month in which they satisfy the requirements of section 1836(a) of the Act, their entitlement would begin with the first day of the second month after the month in which they enroll under sections 1838(a)(2)(B)(ii) and 1838(a)(3)(B)(i) of the Act. For such individuals who enroll in Medicare during the last 2 months of their IEP or deemed IEP, their entitlement under Medicare would be effective beginning with the first day of the third month after the month in which he or she enrolls according to sections 1838(a)(2)(B)(iii) and 1838(a)(3)(B)(i) of the Act. Finally, for such individuals who enroll in Medicare under the GEP in a month beginning before January 1, 2023, sections 1838(a)(2)(D)(1) and 1838(a)(3)(B)(i) provide that their entitlement would begin with the first of July following their enrollment.

Section 120(a)(1) of the CAA revised the entitlement periods for individuals who enroll in Medicare Part B in the last 3 months of their IEP, deemed IEP, or during the GEP, beginning January 1, 2023. Specifically, the CAA modified section 1838 of the Act such that revised section 1838(a)(2)(C) and (a)(3)(B)(ii) of the Act provide that for a Medicare eligible individual who satisfies the requirements of section 1836(a) of the Act in a month beginning on or after January 1, 2023, and who enrolls in the month in which they satisfy those requirements, or in any subsequent month of their IEP, the individual's entitlement would begin with the first day of the month following the month of enrollment. The CAA also revised sections 1838(a)(2)(D)(ii) and 1838(a)(3)(B)(ii) of the Act to provide that for individuals who enroll during the GEP in a month beginning on or after January 1, 2023, their entitlement would begin with the first day of the month following the month in which they enroll.

We expect that these changes to the entitlement for individuals who enroll during their IEP or GEP are likely to increase access to continuous coverage under Medicare Part B, both by expediting these individuals' entitlement dates and decreasing enrollees' confusion about when their coverage becomes effective. Therefore, we anticipate this change having a positive impact on Medicare beneficiaries, including those in communities who may be disproportionately impacted by lack of continuous health coverage.

Enrolls in IEP:	Prior to 1/1/23—Entitlement begins on:	On or after 1/1/23—Entitlement begins on:
January	April 1 (month eligibility requirements first met)	April 1 (month eligibility requirements first met).
February	April 1	April 1.
March	April 1	April 1.
April	May 1 (month following month of enrollment)	May 1.
May	July 1 (second month after month of enrollment)	June 1.
June	September 1 (third month after month of enrollment)	July 1.
July	October 1 (third month after month of enrollment)	August 1.

As shown in the chart, the changes made to section 1838(a) of the Act according to section 120 of the CAA directly affect the requirements for individuals enrolling in Part B. However, these changes will also impact certain individuals enrolling in Part A. Section 1818(c) of the Act specifically requires in part that the provisions of section 1838 of the Act apply to individuals enrolling in premium Part A for purposes of determining the period

of enrollment and other aspects of coverage. In light of this statute, the revised entitlement periods established in section 1838(a) of the Act will also apply to premium Part A enrollees.

Therefore, to implement the changes to 1838(a) of the Act, we are proposing to revise language in both 42 CFR part 406 (for premium Part A) and 42 CFR part 407 (for Part B). Specifically, we propose the following to reflect changes related to the start of entitlement for premium Part A IEP enrollments:

- Section 406.22(a) would be revised to apply the existing requirements governing the entitlement period for individuals who are age 65 or older before January 1, 2023 who enroll in premium Part A during their IEP.
- Existing § 406.22(b) would be redesignated as paragraph (c). New paragraph (b) would lay out the entitlement dates for individuals who attained age 65 on or after January 1, 2023, and who enroll during their IEP, including a deemed IEP. Subparagraph (b)(1) would provide that for such individuals who enroll during the first 3 months of their IEP, entitlement begins with the first month of eligibility. Subparagraph (b)(2) would specify that if such an individual enrolls during the last 4 months of their IEP, entitlement would begin with the month following the month in which they enrolled.
- Newly redesignated § 406.22(c) would be revised to apply the existing entitlement date requirements for individuals under age 65 who became eligible for Medicare prior to January 1, 2023. For individuals who enroll during the first 3 months of their IEP, entitlement would begin with the first month of eligibility. If an individual enrolls during the month in which they first become eligible, entitlement would begin with following month. If an individual enrolls in the month following the month of eligibility, entitlement would begin with the second month after the month of enrollment. If the individual enrolls more than one month after the month of eligibility, entitlement would begin with the third month after the month of enrollment.
- New § 406.22(d) would set out the start dates for entitlement for individuals under age 65 who enroll in premium Part A on or after January 1, 2023. For individuals enrolling during the first 3 months of their IEP, entitlement would begin with the first month of eligibility. If an individual enrolls during the last 4 months of their IEP, their entitlement would begin with the following month.

We propose the following to reflect changes related to the start of entitlement for individuals enrolling in Part B during their IEP:

- We would revise section 407.25(a)(1) to apply the existing entitlement date requirements to individuals who first satisfy the Part B eligibility requirements before January 1, 2023 and enroll during their IEP or deemed IEP.
- Section 407.25(a)(2) would apply to individuals who first satisfy the Part B eligibility requirements on or after January 1, 2023. Entitlement for such individuals would begin with the first month of eligibility for enrollments made during the first 3 months of the IEP. We are proposing that § 407.25(a)(2)(ii) would specify that if such an individual enrolls during the last 4 months of their IEP, entitlement would begin with the month following the month in which they enroll.

Section 120(a)(1)(A) of the CAA also modified section 1838(a)(2) of the Act, to address the beginning of the entitlement for individuals enrolling during their GEP according to 1837(e) of the Act. We are proposing the following changes to reflect those requirements for individuals enrolling in premium Part A:

- Section 406.21(c)(3) would be revised to reflect the revised entitlement periods for individuals who enroll or reenroll during a GEP. Specifically, § 406.21(c)(3)(i) would require that for individuals who enroll or reenroll during a GEP prior to January 1, 2023, entitlement would begin July 1st following their enrollment, consistent with section 1838(a)(2)(D)(i) of the Act and the existing entitlement date requirements. Section 406.21(c)(3)(ii) would require that for individuals who enroll or reenroll during a GEP on or after January 1, 2023, entitlement would begin on the first day of the month after the month of enrollment, consistent with section 1838(a)(2)(D)(ii) of the Act.
- Section 407.25(b)(1) would be revised to require that for individuals enrolling or reenrolling in Part B during a GEP before January 1, 2023, the current requirements governing the entitlement date would continue to apply. Specifically, revised § 407.25(b)(1) would state that for all such individuals enrolling or reenrolling during a GEP before April 1, 1981, or after September 30, 1981 and before January 1, 2023, entitlement would begin on July 1 of that calendar year.
- New § 407.25(b)(3) would require that for individuals who enroll or reenroll in Part B during a GEP on or after January 1, 2023, entitlement would begin the first day of the month following the month of enrollment.

We note that CMS would update all public facing materials to reflect date changes from any final rule. This would include updated information in CMS publications, on *Medicare.gov*, and in training materials.

2. Special Enrollment Periods for Exceptional Conditions

Under normal conditions, individuals who want to enroll in premium Part A, Part B, or both must submit a timely enrollment request during their IEP, the GEP, or an existing SEP for which they are eligible. Those who fail to enroll during their IEP may face a life-long penalty for late enrollment and a potential gap in coverage. Prior to the enactment of the CAA, CMS did not have broad authority to create SEPs based on exceptional conditions for enrollees in Medicare Parts A and B.[2] Section 120(a)(2)(A) of the CAA established section 1837(m) of the Act to provide the Secretary with authority to establish SEPs for individuals who satisfy the requirements in paragraph (1) or (2) of section 1836(a) of the Act, and meet such exceptional conditions as the Secretary may provide, beginning January 1, 2023. Section 120 of the CAA also created section 1838(g) of the Act to provide the Secretary the discretion to determine the entitlement period for individuals who enroll pursuant to an SEP established according to section 1837(m) of the Act, in a manner that protects the continuity of health benefit coverage to the extent practicable. The CAA also modified section 1839(b) of the Act to exempt individuals who enroll pursuant to an SEP for exceptional conditions established under section 1838(m) of the Act, from paying an LEP. Section 1818(c) of the Act provides that individuals enrolling under premium Part A are generally afforded the same enrollment opportunities as those available under Part B, so our proposals would apply to both premium Part A and Part B, except where noted.

Several SEPs currently exist that permit individuals to enroll in premium Part A or Part B outside of the IEP or GEP. The existing SEPs are briefly described as follows:

- Sections 1837(i)(1) through (3) of the Act provide an SEP for certain individuals who are enrolled in a qualified group health plan (GHP) or large GHP (LGHP) at the time they first become eligible for Medicare and elect not to enroll (or to be deemed enrolled) in Medicare during their IEP.

[2] CMS has separate authority for Medicare Parts C and D under sections 1851(e)(4)(d) and 1860D–1(b)(3)(C) of the Act, respectively.

• Section 1837(i)(4) of the Act establishes an SEP for certain workers who are eligible for disability benefits. Specifically, an SEP is available to covered individuals who are enrolled in a GHP (based on their own current or former employment or the current or former employment of a family member) at the time they first become eligible for Medicare, and who elect not to enroll (or be deemed enrolled) during their IEP, when their continuous enrollment in such GHP is involuntarily terminated, provided certain other requirements are met.

• The SEP for international volunteers, established under section 1837(k) of the Act, establishes an SEP for individuals serving as volunteers outside the United States at the time they first become eligible for Medicare, through a program covering at least a 12-month period, sponsored by a 501(c)(3) tax exempt organization, and who demonstrate health insurance coverage while serving in the program. These international volunteers are eligible for an SEP, if they elect not to enroll (or be deemed enrolled) under section 1837 of the Act during their IEP or terminate Medicare enrollment during a month in which they are serving in such program.

• Section 1837(l) of the Act establishes a 12-month SEP for certain individuals who are enrolled in TRICARE and become eligible to enroll in Part A on the basis of disability or ESRD status under sections 226(b) or 226A of the Act, respectively, but who elect not to enroll (or to be deemed enrolled) during their IEP.

We are proposing to establish new exceptional conditions SEPs under section 1837(m) of the Act in §§ 406.27 and 407.23 of the regulations for Medicare parts A and B, respectively. These SEPs would be available to individuals who have missed an enrollment period due to a covered exceptional condition. Specifically, individuals who miss an IEP, GEP, or another SEP, such as the GHP SEP, due to a covered exceptional condition, would be eligible to enroll in Medicare premium Part A or Part B using the new SEPs. We believe our proposals will create the flexibility needed for eligible individuals to enroll in the program while simultaneously establishing parameters to ensure appropriate use of the new exceptional conditions SEPs.

In determining what new exceptional conditions SEPs would be beneficial to the Medicare program and its beneficiaries and that should be established in regulations, CMS considered numerous factors including the following:

• Whether the conditions that caused the individual to miss an enrollment period are ''exceptional'' as required under the CAA, and whether they are likely to be a one-time event.

• The SEP should not create an incentive for individuals to delay timely enrollment into Medicare.

• The SEP should not create an incentive for individuals to not educate themselves about the importance of enrolling in Medicare timely and make informed decisions during other available enrollment periods.

• Whether an SEP would be the most appropriate resolution to the exceptional conditions in question and whether other remedies such as individualized equitable relief under section 1837(h) of the Act, would more appropriately apply.

• The SEP should be expected to apply to a significant number or broad category of individuals, which would justify the establishment of a specific SEP in regulation instead of relying on the Secretary's authority under section 1837(h) of the Act to evaluate individual conditions and approve SEPs on a case-by-case basis.

With these parameters in mind, we leveraged our previous program experience with Medicare enrollment in determining which SEPs to propose. We also considered the SEPs for exceptional conditions established under Medicare Parts C and D (section 1851(e)(4) of the Act), the Health Insurance Marketplace (29 U.S.C. 1163), and commercial health plans for insight into what SEPs are available in both public and private healthcare settings. Finally, we also considered whether the proposed new SEPs and the associated entitlement would protect access to continuous coverage for individuals eligible for Medicare Part A and Part B, such as through expediting individuals' entitlement date or by creating opportunities for individuals to enroll in coverage sooner.

Based on these considerations, CMS is proposing to establish five SEPs under Medicare Parts A and B based on the Secretary's authority in section 1837(m) of the Act. Four of the proposed SEPs address specific exceptional conditions. One SEP would permit CMS or SSA to evaluate individuals' particular conditions and grant SEPs on a case-by-case basis due to unanticipated conditions that may arise in the future. We anticipate these proposed changes would have a positive impact on Medicare beneficiaries, including those in communities impacted by lack of continuous health coverage.

To accommodate these changes, we propose to establish a new § 406.27, entitled ''Special enrollment periods for exceptional conditions'' to provide SEPs for individuals who missed enrolling in premium Part A during an enrollment period due to exceptional conditions. Similarly, we propose to establish a new § 407.23, also entitled ''Special enrollment periods for exceptional conditions'' to provide SEPs for individuals who missed enrolling in Part B during an enrollment period due to exceptional conditions. Both proposed §§ 406.27(a) and 407.23(a) would provide in part that the SEPs for exceptional conditions would be available beginning January 1, 2023. Specifically, the proposed SEPs for exceptional conditions would be applicable for exceptional conditions that took place on or after January 1, 2023 with the exception of the SEP to Coordinate with Termination of Medicaid Coverage discussed in section II.2.d. of this proposed rule.

Each of these SEPs would provide an opportunity for individuals to enroll without having to wait for the GEP. Individuals who enroll in Medicare Part A or Part B using an SEP for exceptional conditions and subsequently disenroll would have to wait until the next GEP or another SEP to reenroll and may potentially be subjected to a LEP.

Late Enrollment Penalties Associated With Special Enrollment Periods for Exceptional Conditions

Section 120(a)(2)(C)(ii) of the CAA modified section 1839(b) of the Act to provide that individuals who enroll during an SEP established under the Secretary's authority under new section 1837(m) of the Act are not subject to the LEP. Specifically, section 1839(b) of the Act, as amended, provides that an individual who enrolls in Medicare ''after his initial enrollment period [. . .] and not pursuant to a special enrollment period under subsection (i)(4), (l), or (m) of section 1837 [. . .] shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled.'' Therefore, we propose that should an individual who missed an enrollment period due to an exceptional condition, enroll in premium Part A or Part B using one of the following SEPs, they would not be subject to a LEP. Specifically, we are proposing at § 406.33(c)(2) that for enrollments on or after January 1, 2023 under one of the SEPs established pursuant to the Secretary's authority in section 1837(m) of the Act and established in § 406.27, any months of non-coverage would be excluded from the calculation of the

LEP. Similarly, we are proposing at § 408.24(b)(2) that for enrollments on or after January 1, 2023 under one of the SEPs established pursuant to the Secretary's authority in section 1837(m) of the Act and established in § 407.23, any months of non-coverage would be excluded from the calculation of the LEP.

We are also proposing changes to our regulations to reflect that certain individuals who reenroll in premium Part A or Part B would also be exempted from paying an LEP. Specifically, we are proposing under §§ 406.34(a) and 408.24(c) that, for individuals who reenroll prior to January 1, 2023, the requirements currently in place for determining the months taken into account for purposes of calculating the LEP would continue to apply. In addition, we are proposing in §§ 406.34(e) and 408.24(d)(2)(ii) that for reenrollments on or after January 1, 2023, pursuant to one of the SEPs for exceptional conditions established under the Secretary's authority in section 1837(m) of the Act and promulgated in §§ 406.27 or 407.23, respectively, any months of non-coverage would be excluded from the calculation of the LEP. However, if the individual fails to enroll or reenroll during the available exceptional condition SEP, any months of non-coverage, including the months during the exceptional condition SEP, would be taken into consideration for calculating the LEP in accordance with §§ 406.33, 406.34, and 408.22.

In the following sections, we discuss each of the proposed SEPs for exceptional conditions.

a. SEP for Individuals Impacted by an Emergency or Disaster

The severity and duration of extreme weather-related events and other emergencies can be difficult to accurately predict, but may strip individuals of their ability to carry out day-to-day activities. In many cases, impacted individuals need additional time after the end of an emergency to return to their normal routine. We know from program experience that these events can result in disruptions in mail delivery, SSA office closings, and operational delays at Social Security field offices, any of which can prevent individuals from submitting their enrollment applications in a timely manner.

For Medicare Parts A and B, we have the authority under section 1837(h) of the Act to provide relief to individuals whose enrollment or non-enrollment in Part A or Part B was unintentional or erroneous and resulted from an error, misrepresentation or inaction by the federal government. Disrupted mail delivery and Social Security office closures due to disasters might justify relief under 1837(h) in some cases. For example, during the COVID–19 pandemic, we utilized this equitable relief authority to provide assistance to individuals who missed their opportunity to enroll in Medicare during their IEP, GEP, or SEP. However, disasters or emergencies may interfere with individuals' ability to enroll in Medicare without any error or inaction by the Federal government. As a result, these conditions would not meet the requirements for equitable relief under section 1837(h) of the Act.

To address such exceptional conditions, we are proposing an SEP for individuals impacted by an emergency or disaster under the Secretary's authority to establish SEPs beginning January 1, 2023, under section 1837(m) of the Act. Establishing such an SEP would permit the agency to provide immediate relief to individuals impacted by certain emergencies and disasters without being subject to the requirements applicable under our existing equitable relief authority. Providing an SEP for individuals who missed enrolling in Medicare during an enrollment period because they were impacted by an emergency or disaster will permit Medicare beneficiaries to maintain healthcare coverage and access healthcare services in times of disruption when healthcare may be most critical. We believe these effects would be most significant, and the proposed SEP for individuals impacted by and emergency or disaster would be most beneficial, for communities where social risk factors such as food, housing, or financial insecurity are prevalent.

CMS is proposing, at new §§ 406.27(b) and 407.23(b), to create an SEP for individuals prevented from submitting a timely Medicare enrollment request by an emergency or disaster declared by either a Federal, state, or local government. These SEPs would apply for individuals enrolling in premium Part A or Part B and would eliminate potential gaps in coverage and otherwise applicable LEPs resulting from eligible individuals' inability to submit a timely enrollment request as a result of emergency or disaster.

At new §§ 406.27(b)(1) and 407.23(b)(1), we propose this SEP would be available to those who were not able to enroll in premium Part A or Part B or both if they reside (or resided) in an area for which a Federal, state or local government entity newly declared a disaster or other emergency. The individual must demonstrate that they reside (or resided) in the area during the period covered by that declaration. We understand that not every emergency declaration would impact an individual's ability to enroll in a timely manner. Therefore, we are specifically soliciting comments regarding this proposal, including whether CMS should limit the time frame of the SEP based on the type of emergency, or specify that the type of emergency must explicitly restrict an individual's ability to enroll.

At §§ 406.27(b)(2) and 407.23(b)(2), we propose that the SEP would begin on the date an emergency or disaster is declared, or if different, the start date identified in the declaration, whichever is earlier, so long as the date is on or after January 1, 2023. The SEP ends 2 months after the end date identified in the disaster or emergency declaration or, if applicable, the end date of any extensions or the date when the declaration has been determined to have ended or has been revoked. The intention of having the SEP end 2 months after the end of the declaration is to provide individuals enough time to recover from the emergency before needing to enroll in Medicare.

We are proposing in §§ 406.27(b)(3) and 407.23(b)(3), according to the Secretary's authority under section 1838(g) of the Act to specify the coverage period for individuals enrolling during SEPs established under section 1837(m) of the Act, that the coverage period for individuals who enroll under this SEP would begin the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

b. SEP for Health Plan or Employer Misrepresentation or Providing Incorrect Information

As codified in § 406.6(c) of our regulations, some individuals are not auto-enrolled into Medicare, and thus must apply in order to enroll. Often, the primary source of information about Medicare for working aged individuals is their employer or the carrier of their GHP. CMS is aware of multiple instances in which individuals received erroneous information from their employer that resulted in the individual not enrolling in Part B timely and consequently they were assessed an LEP. CMS's ability to offer assistance to individuals who are misinformed about Medicare enrollment periods by their employer or GHP is very limited. As a result, these individuals have historically faced gaps in coverage or been required to pay significant LEPs for the rest of their lives after failing to enroll in Part B based on

misrepresentation by an employer, GHP or a representative of such an entity.

In order to provide relief to individuals who missed an enrollment period because of misrepresentation by or incorrect information from their employer or GHP, we are proposing to create a new SEP at § 406.27(c) and at § 407.23(c) based on exceptional conditions. This SEP would apply for individuals whose non-enrollment in premium Part A or Part B is unintentional, inadvertent, or erroneous and results from material misrepresentation or reliance on incorrect information provided by the individual's employer or GHP, or any person authorized to act on behalf of the employer or GHP. We are proposing at §§ 406.27(c)(1) and 407.23(c)(1) that an individual is eligible for such an SEP if they can demonstrate that he or she did not enroll in premium Part A or Part B during an enrollment period in which they were eligible based on information received from an employer or GHP, or any person authorized to act on such organization's behalf, and an employer, GHP or their representative materially misrepresented information or provided incorrect information relating to enrollment in premium Part A or Part B, so long as the misrepresentation or error occurred on or after January 1, 2023.

To demonstrate material misrepresentation, an individual would be required to provide documentation of the relevant misrepresentation to SSA. The documentation must show that the information was provided on or after January 1, 2023, was directly from an employer, GHP or their representative prior to an enrollment period, and that the inaccuracy caused the individual not to enroll timely. Examples of such evidence could be a letter from the employer or GHP that materially misrepresents the Medicare enrollment process or a letter from the employer or GHP acknowledging that they provided misinformation in a previous communication. An omission by the employer or GHP or the representative of such organization would not be considered a misrepresentation for purposes of this proposed SEP, as employers and GHPs do not have an affirmative responsibility to educate employees about Medicare.

We are proposing at § 406.27(c)(2) and § 407.23(c)(2) that this SEP would begin the day the individual notifies SSA of the employer or GHP misrepresentation or incorrect information provided, so long as the misrepresentation or error occurred on or after January 1, 2023, and would end 2 months later. Individuals would be required to provide SSA or CMS evidence that shows what misinformation was initially provided by the employer, GHP, or their representative. We are soliciting comments on whether we should require additional evidence, for example, evidence of what new information was received that caused discovery of the misinformation and evidence of when the discovery was made. Finally, at §§ 406.27(c)(3) and 407.23(c)(3), we propose that the coverage period would begin the first day of the month following enrollment.

c. SEP for Formerly Incarcerated Individuals

Section 1862(a)(2) and (3) of the Act generally prohibits Medicare payment for covered services while the recipient is incarcerated, as the incarcerated individual is provided healthcare through their penal institution. Further, section 202(x)(1)(A) of the Act prohibits the payment of Old-age, Survivors, and Disability Insurance (OASDI) benefits to individuals who are incarcerated. Therefore, if an individual turns 65 and qualifies for Medicare while incarcerated (meaning the individual is in custody of penal authorities as described in 42 CFR 411.4(b)) and is not yet receiving OASDI benefits, that individual is not automatically enrolled in Medicare Part A. Moreover, current law does not provide any special enrollment opportunities for formerly incarcerated individuals who miss a Medicare enrollment period while incarcerated. If these individuals do not enroll into Medicare because they are incarcerated, they may go months without health coverage upon their release. For example, upon their release such individuals would only be able to enroll in Medicare during the GEP which could result in a significant delay in coverage. Further, delaying enrollment means that they may incur an LEP for premium Part A and/or Part B for the rest of their lives. Regardless of whether they are newly eligible for Medicare coverage or not, individuals who are incarcerated are required to begin and maintain their monthly premium payments for premium Part A and/or Part B to avoid termination of Medicare coverage.

To address the exceptional conditions that an individual faces while incarcerated as described previously, and to ensure that formerly incarcerated individuals have access to health coverage under Medicare, we are proposing at §§ 406.27(d) and 407.23(d) an SEP for individuals who are released from incarceration on or after January 1, 2023. This SEP would allow formerly incarcerated individuals to avoid potential gaps in coverage and late enrollment penalties. We propose at §§ 406.27(d)(1) and 407.23(d)(1) that an individual would be eligible for this SEP if they demonstrate that they are eligible for Medicare and failed to enroll or reenroll in Medicare premium Part A or Part B during another enrollment period in which they were eligible to enroll while they were incarcerated. Further, there must be a record of release either through discharge documents or data available to SSA.

We propose at §§ 406.27(d)(2) and 407.23(d)(2) that this SEP would start the day of the individual's release from incarceration and end the last day of the sixth month after the month in which the individual is released from incarceration. We propose this duration because (1) it takes approximately 3 months for OASDI payments to be reinstated upon an individual's release from incarceration; and (2) data demonstrate that individuals with arrest or conviction records face barriers in obtaining employment. Such lack of income from employment or OASDI might dissuade formerly incarcerated individuals from enrolling in Medicare upon their release because of concerns about their ability to pay Medicare premiums and cost sharing. Formerly incarcerated individuals may experience social risk factors including financial, housing or food insecurity, social isolation, and other factors that can increase the likelihood of chronic physical or mental health conditions that require healthcare services. Lack of institutional support may impair the ability of formerly incarcerated persons from obtaining employment, housing, and other stabilizing supports necessary for successful reentry. Therefore, by providing this extended SEP duration, we ensure this at-risk population has adequate opportunity to enroll in Medicare. Further, we anticipate this change having a positive impact on formerly incarcerated Medicare beneficiaries, including those in communities who may be disproportionally impacted by a lack of continuous health coverage.

Finally, at new §§ 406.27(d)(3) and 407.23(d)(3), we propose that entitlement would begin the first day of the month after the month of enrollment, so long as it is after January 1, 2023.

d. SEP To Coordinate With Termination of Medicaid Coverage

Many beneficiaries are enrolled in Medicaid when they initially qualify for Medicare at age 65, or if they are under age 65, after receiving 24 months of Social Security Disability Insurance (SSDI). While some of these individuals

retain Medicaid coverage after becoming eligible for Medicare, others lose Medicaid benefits or eligibility entirely. For example, when an individual enrolled in the adult group under § 435.119 becomes eligible for Medicare, they become ineligible for the Medicaid adult group. (Individuals enrolled in the adult group have an annual income below 138 percent of the Federal Poverty Level ($20,398 for an individual in 2022)).[3] Unless such individuals are eligible for Medicaid on another basis, they will no longer be eligible for Medicaid. Many such individuals qualify for another Medicaid eligibility group, such as a Medicare Savings Programs (MSP) group, but others lose Medicaid coverage entirely because they do not qualify for another Medicaid eligibility group.

Low-income Medicare beneficiaries experience poorer health outcomes than their higher-income counterparts.[4] Based on program experience and reports from stakeholders, we are aware that some individuals who lose all Medicaid coverage after newly qualifying for Medicare may experience confusion and administrative barriers that undermine a seamless transition from Medicaid to Medicare coverage, risking a period of time without health insurance and a possible LEP for these at-risk individuals.

Before terminating or reducing the scope of Medicaid coverage for individuals who become eligible for Medicare, the state Medicaid agency must conduct a redetermination of eligibility, including a determination of whether the individual is eligible for Medicaid upon another basis (42 CFR 435.916(d) and 435.916(f)(1)). The state must continue the same level of Medicaid coverage until the state completes the eligibility redetermination and provides at least 10 days advance notice and fair hearing rights in accordance with § 435.917 and 42 CFR part 431 Subpart E. If during the redetermination process, an individual is found to no longer be eligible for the eligibility group under which they had been most recently receiving coverage, the state would then: (1) Move the individual to a different eligibility group, which could include an MSP eligibility group, for which the person is eligible; or (2) determine the individual's potential eligibility for other insurance affordability programs, in accordance with § 435.916(f)(2), and terminate the individual's Medicaid coverage.

Despite these requirements, there are multiple scenarios that can prevent a seamless transition to Medicare coverage. States sometimes fail to complete redeterminations timely. Additionally, individuals sometimes lose coverage for procedural reasons (for example, failure to submit required paperwork in time) even though they likely remain eligible for Medicaid.[5] In the first situation, while § 435.916(d) requires that states ''promptly'' conduct redeterminations based on changes in circumstances, including new eligibility for Medicare, we believe that some states do not complete redeterminations until months after the individual first becomes eligible for Medicare even though Medicare eligibility is generally predictable.[6] If a state does not complete a redetermination when the beneficiary attains Medicare eligibility, an individual may retain Medicaid even though the individual no longer technically meets the Medicaid eligibility criteria. State Health Insurance Assistance Programs and beneficiary advocacy groups report that these individuals may then miss their IEP because they continue to be covered by Medicaid and may think they do not need or cannot afford Medicare coverage at that time, especially when individuals expect to be liable for Medicare premiums. While some states cover the Part B premiums for individuals remaining in the adult group pending a redetermination under their buy-in agreement,[7] others do not.[8] States cannot include the payment of the Part A premium for adult group beneficiaries in their buy-in agreement.[9]

During the ongoing Public Health Emergency in response to the Coronavirus Disease 2019 outbreak (COVID–19 PHE), as a condition of receiving the federal medical assistance percentage (FMAP) increase authorized by the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127), states have been required to maintain Medicaid enrollment for nearly all individuals enrolled in Medicaid as of March 18, 2020, through the end of the month in which the PHE ends. This condition, known as the continuous enrollment requirement, applies to, among others, individuals who qualified during this time period in the adult group and subsequently became eligible for Medicare. In the preamble to the interim final rule with comment period published in the November 6, 2020 **Federal Register** (85 FR 71142), CMS explained that states would be in compliance with the continuous enrollment requirement if they were to transition an adult group beneficiary who becomes eligible for Medicare to an MSP group for which such an individual is eligible (but that such an individual could not be transitioned to an MSP group if the individual did not meet the eligibility requirements for any MSP group). CMS articulated this policy after initially directing states that they had to retain such individuals in both the adult group and MSP groups in order to comply

[3] The adult group under § 435.119 (b) has an income limit of 133 percent of the FPL, but a basic standard deduction of 5 percent of the FPL is applicable as described in section 6012(a)(1) of the Internal Revenue Services Code. (See 42 CFR 434.603(e).)

[4] For information about the health outcomes of low-income Medicare beneficiaries, see HHS Office of the Assistant Secretary for Planning and Evaluation (2016, December). *Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//171041/ASPESESRTCfull.pdf.*

[5] See HHS Office of the Assistant Secretary for Planning and Evaluation. (2019, May 8). *Loss of Medicare-Medicaid Dual Eligible Status: Frequency, Contributing Factors and Implications. https://aspe.hhs.gov/reports/loss-medicare-medicaid-dual-eligible-status-frequency-contributing-factors-implications,* page 38.

[6] Recent HHS Office of Inspector General reports and state audits have cited cases in which states continued to provide coverage for many months after a change impacting eligibility was identified that should have prompted a redetermination. See for example: Louisiana Legislative Auditor. (2018, November 8). *Medicaid Eligibility: Wage Verification Process of the Expansion Population. https://www.lla.la.gov/PublicReports.nsf/1CDD30D9C8286082862583400065E5F6/$FILE/0001ABC3.pdf;* HHS Office of the Inspector General. (2019a, August). *Colorado Did Not Correctly Determine Medicaid Eligibility for Some Newly Enrolled Beneficiaries. https://oig.hhs.gov/oas/reports/region7/71604228.pdf;* HHS Office of the Inspector General. (2019b, August). *Illinois Medicaid Managed Care Organizations Received Capitation Payments After Beneficiaries' Deaths. https://oig.hhs.gov/oas/reports/region5/51800026.pdf;* HHS Office of the Inspector General. (2019c, May). *California Medicaid Managed Care Organizations Received Capitation Payments After Beneficiaries' Deaths. https://oig.hhs.gov/oas/reports/region4/41806220.pdf;* HHS Office of the Inspector General. (2018d, October). *Ohio Medicaid Managed Care Organizations Received Capitation Payments After Beneficiaries' Deaths. https://oig.hhs.gov/oas/reports/region5/51700008.pdf.*

[7] Under their buy-in agreements with CMS, some states are required to enroll all Medicaid beneficiaries in Medicare Part B and to pay the premiums on their behalf (known as ''Part B buy-in''). If such a state has not completed the eligibility redetermination for an individual enrolled in the adult group before the first month they qualify for Medicare, the state must enroll the individual in Part B buy-in for all months in which the individual is enrolled in the adult group. CMS Manual for the State Payment of Medicare Premiums, chapter 1, section 1.4, *https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf.*

[8] See section II.D.3.e. of this proposed rule for a discussion of buy-in coverage groups available for Part B.

[9] As described in section II.D.1. of this proposed rule, states can only pay the Part A premiums for individuals who enrolled in the Qualified Medicare Beneficiary (QMB) group.

with the continuous enrollment requirement.[10]

Since the start of the COVID–19 PHE, beneficiary advocacy groups and State Health Insurance Assistance Programs have reported to us that a substantial number of beneficiaries who became eligible for Medicare while enrolled in the adult group may have interpreted states' notifications that their Medicaid coverage would remain throughout the COVID–19 PHE (and the ensuing months of continuous coverage after they qualified for Medicare) to mean they did not need to take any action during the COVID–19 PHE to secure health coverage, including enrolling in Medicare. As mentioned previously, some beneficiaries who stay in the adult group are ineligible for coverage of their Part B premiums under state buy-in. Further, certain beneficiaries should have been enrolled in Medicare on the basis of their state's buy-in agreement but were not because, although their state includes all Medicaid beneficiaries in their buy-in agreement for Part B premiums, the state may have been unclear this includes individuals whom states kept in the adult group on the basis of the continuous enrollment requirement. Consequently, some beneficiaries who maintained adult group eligibility are likely to have missed their IEPs as a result of confusion based on the COVID–19 PHE. Based on these reports, we are concerned that when the COVID–19 PHE ends and states resume routine eligibility and enrollment operations for Medicaid, including taking action on pending applications, renewals, and redeterminations necessitated by changes in beneficiary circumstances, such individuals may end up being terminated from Medicaid and will experience a gap in coverage and lose access to critical health care as a result. Further, once they do enroll in Medicare, they may incur late enrollment penalties.

As an existing requirement under the Medicaid program designed to maximize continuity of coverage for beneficiaries whom states have determined ineligible for Medicaid, states must determine or assess their potential eligibility for other Insurance Affordability Programs, such as the Children's Health Insurance Program (CHIP) and health insurance coverage available on the Marketplace with financial assistance and transfer their accounts to such programs as appropriate under §§ 435.916(f)(2) and 435.1200(e). Although Insurance Affordability Programs have not been defined to include Medicare, we believe promoting a seamless transition from Medicaid to Medicare coverage is also very important. The ability to enroll in Medicare can be vital in preventing gaps in health coverage, especially if individuals lack access to other health insurance and may be subject to an LEP when they do enroll in Medicare.

To remove barriers that present an exceptional condition that could prevent individuals from transitioning from coverage under the Medicaid program to coverage under the Medicare program, we are proposing an SEP at §§ 406.27(e) and 407.23(e) for individuals who lose Medicaid eligibility entirely after the COVID–19 PHE ends or on or after January 1, 2023 (whichever is earlier) and have missed a Medicare enrollment period. We anticipate our proposals will advance health equity by improving low-income individuals' access to continuous, affordable health coverage and use of needed health care consistent with the *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and the *Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage.*

We are proposing at §§ 406.27(e)(1) and 407.23(e)(1) that to be eligible for this SEP, an individual must demonstrate they are eligible for Medicare and their Medicaid eligibility is terminated on or after January 1, 2023, or is terminated after the last day of the COVID–19 PHE as determined by the Secretary, whichever is earlier. At §§ 406.27(e)(2)(i) and 407.23(e)(2)(i), we propose that if the termination of Medicaid eligibility occurs after the last day of the COVID–19 PHE and before January 1, 2023, the SEP starts on January 1, 2023 and ends on June 30, 2023. At §§ 406.27(e)(2)(ii) and 407.23(e)(2)(ii), we propose that if the termination of Medicaid eligibility occurs on or after January 1, 2023, the SEP starts when the beneficiary receives notice of an upcoming termination of Medicaid eligibility and ends 6 months after the termination of eligibility. We believe this extended duration would allow this at-risk population sufficient opportunity to enroll in Medicare.

We note that unlike the other proposed SEPs for exceptional conditions, this SEP could apply to a circumstance that occurs before January 1, 2023 (that is, if the end of the PHE and the individual's Medicaid termination occur before such time). We believe that such a deviation is warranted in this limited circumstance given the novel COVID–19 outbreak and unprecedented federal, state and local efforts to combat it. As mentioned earlier, to comply with the continuous enrollment requirement under section 6008 of FFRCA, states have kept substantial numbers of beneficiaries in the adult group for several months after they qualified for Medicare (more than 2 years in some cases). As described previously, state notices regarding extended Medicaid eligibility and the provision of continuous enrollment may have contributed to confusion, causing many individuals to miss their IEP during the PHE. To minimize beneficiary burden and help reduce gaps in coverage from Medicaid-only to Medicare-only once states restore routine eligibility and enrollment operations, it is critical to provide this SEP to individuals who lose coverage after the PHE if that occurs before January 1, 2023. In short, the PHE presents a unique convergence of circumstances that will affect a defined group of individuals currently known to CMS.

We propose at §§ 406.27(e)(3) and 407.23(e)(3) that entitlement would begin the first day of the month following the month of enrollment, so long as it is effective after the end of the PHE or January 1, 2023, whichever is earlier. We note that individuals whose Medicaid eligibility is terminated after the end of the COVD–19 PHE, but before January 1, 2023 (if applicable), have the option of requesting that entitlement begin back to the first of the month following termination of Medicaid eligibility provided the individual pays the monthly premiums for the period of coverage.

Lastly, we propose at §§ 406.27(e)(4) and § 407.23(e)(4) that individuals who otherwise would be eligible for this SEP, but enrolled during the COVID–19 PHE prior to January 1, 2023, if applicable, are eligible to have LEPs collected under §§ 406.32(d) or 408.22 reimbursed and ongoing penalties removed. Given the unique nature of this specific SEP, and the fact that we are proposing that individuals could be eligible for the SEP if the COVID–19 PHE ends before January 1, 2023, we believe it is appropriate and fair that these individuals not be subject to an LEP that would not have been collected had they known about this remedy at the time of enrollment.

This proposed SEP would allow an individual who loses Medicaid eligibility entirely once the PHE ends or on or after January 1, 2023, if earlier,

[10] See CMS. *COVID–19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies.* Last updated January 6, 2021, available at *https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf.*

and who has missed a Medicare enrollment period, to enroll in Medicare without a gap in coverage or an LEP. We anticipate that the SEP would most frequently apply to individuals who do not sign up for Medicare while they still have Medicaid, including those eligible in the adult group. At least initially, we suspect that the individuals who are most likely to need and use this proposed SEP are those who were in the Medicaid adult group under § 435.119, especially those individuals who remained in the adult group during the COVID–19 PHE and while pending an eligibility determination once normal operations resume because, for example, they believe they do not need additional coverage or cannot afford to pay the Medicare premiums. This SEP would apply to individuals who lose Medicaid coverage altogether, regardless of whether the Medicaid termination results from their new eligibility for Medicare, other changes in circumstances, or procedural reasons. As noted previously, an individual would need to have missed a Medicare enrollment period and if eligible, the SEP would be available once the individual is notified of their Medicaid termination. Further, individuals who are determined to no longer meet the eligibility requirements for one Medicaid eligibility group but are determined eligible for a separate Medicaid eligibility group that is included in their state's buy-in agreement would not use this SEP because they do not need it as the state can already enroll them in Medicare without regard to Medicare enrollment periods and LEPs.

We seek comment on the parameters of this proposed SEP, particularly whether the SEP's duration (that is, the trigger, which is after the loss of Medicaid eligibility, rather than while the individual is still enrolled in Medicaid, as well as the end date for the SEP) and Medicare entitlement date (that is, earliest date Medicare benefits can start) prevent gaps in coverage and promote continuity of care for low-income beneficiaries who lose Medicaid coverage after qualifying for Medicare.

e. SEP for Other Exceptional Conditions

CMS is proposing to retain the ability to provide SEPs on a case-by-case basis for other unanticipated situations that involve exceptional conditions and warrant an SEP. This SEP would allow us to grant SEPs on a case-by-case basis for circumstances we do not have enough experience to consider or anticipate that could create a barrier to enrollment. We acknowledge that there is no way to predict the full range of circumstances that would warrant an SEP—they are ''exceptional''—so we need this SEP for exceptional conditions to be timely in our response to beneficiaries with unique cases, given the time it takes to establish a more targeted SEP via rulemaking. There is a similar SEP under Medicare Part C and Part D, and we are leveraging our experience from those programs to afford beneficiaries who have unique exceptional conditions beyond their control that prevent them from enrolling in Medicare, an SEP. In addition, some of the SEPs that are now codified under Part C and Part D started out as case-by-case SEPs. We were able to use the information and experience gained as a basis for establishing a new SEP, through rulemaking, for a broad category of people corresponding to a more specific set of circumstances.

Specifically, we are proposing to create an SEP for other exceptional conditions to provide individuals an opportunity to enroll in premium Part A, Part B or both. This SEP would provide an enrollment opportunity for individuals where conditions beyond their control caused them to miss an enrollment period and prevented them from timely enrolling in premium Part A or Part B or both during the IEP, GEP or other prescribed SEPs. This SEP would apply to individuals whose unique conditions do not qualify for one of the other proposed SEPs and would be proposed at new §§ 406.27(f) and 407.23(f). We are proposing at §§ 406.27(f)(1) and 407.23(f)(1) that such SEPs would be granted on or after January 1, 2023, if two conditions are met. First, an individual must demonstrate that conditions outside of their control caused them to miss an enrollment period. Second, the condition must be determined exceptional in nature.

Due to the numerous reasons an individual might request an SEP for other exceptional conditions, individuals may reasonably need different amounts of time to enroll in Medicare in the event an SEP is granted. Setting forth a specific duration for this SEP could disadvantage enrollees whose condition may require additional time. In light of these facts, at §§ 406.27(f)(2) and 407.23(f)(2), we propose that the SEP duration would be determined on a case-by-case basis. CMS believes that this SEP will be infrequently used and that it will only be granted in conditions that are truly exceptional in nature. This SEP will not be used to grant individuals enrollment due to forgetfulness or lack of knowledge. For example, an individual who turns 65 and fails to enroll because they simply forgot to enroll during their IEP would not qualify for this proposed SEP as they do not have evidence that their situation that prevented them from enrolling timely was beyond their control nor was it exceptional in nature. Finally, consistent with the other SEPs we are proposing under section 1837(m) of the Act at §§ 406.27(f)(3) and 407.23(f)(3) that entitlement would begin the first day of the month following the month of enrollment, and only for exceptional conditions that arise on or after January 1, 2023.

f. Alternatives Considered

As discussed previously, we considered several factors in determining which SEPs to propose under the new authority established by section 120 of the CAA. With these principles in mind, and to provide relief for individuals in truly exceptional conditions as directed by section 120 of the CAA, there were a number of SEPs that we considered but did not believe warranted establishing a separate SEP for exceptional conditions. For example, we considered an SEP for individuals who previously decided not to enroll in Medicare but now want to enroll outside of the GEP or other enrollment periods because they are experiencing a health event and want Medicare coverage. We decided not to propose an SEP for individuals in such conditions because there was not an exceptional condition that prevented the individual from enrolling during an earlier enrollment period; allowing enrollment outside of the GEP could provide an incentive for other individuals to delay enrollment in Medicare, which we believe is inconsistent with the statutory framework that imposes penalties for late enrollment. We also considered an SEP for individuals who lost Medicare coverage due to non-payment of premiums who are not eligible for another SEP or equitable relief and now want to re-enroll outside of the GEP. We opted not to propose this SEP because we did not want to create an environment where there could be cycles of an individual losing and reenrolling in Medicare based on whether they have paid their premiums. If a beneficiary is experiencing financial constraints, there are mechanisms in place (including state buy-in, MSP and premium payment plans) that would more appropriately provide support for affected individuals while ensuring continuity in their health care coverage.

In order to be eligible for any of the SEPs other than the new exceptional condition SEPs, individuals must have had separate health insurance coverage when they first become eligible for

Medicare and have elected not to enroll (or to be deemed enrolled) during their IEP. To be consistent with the existing Medicare SEPs and to ensure appropriate use of the exceptional condition SEPs, we considered proposing a requirement that new SEPs would only be available to individuals who have missed their IEP due to an exceptional condition. However, because of the potential need to use the exceptional condition SEPs outside of the IEP and because section 1837(m) of the Act allows for additional flexibility to establish these SEPs we have not included this limitation.

We welcome comments on our proposed changes to the coverage period dates and on our proposed SEPs for exceptional conditions. We note that we may establish additional SEPs for exceptional conditions through rulemaking in the future if experience demonstrates that additional SEPs would be necessary or beneficial. We also welcome recommendations for additional SEPs based on exceptional conditions. We request that any suggestions for additional SEPs for exceptional conditions include a robust discussion of why commenters believe the potential SEPs would be consistent with the policy considerations and guiding parameters discussed previously.

3. Technical Correction to the Calculation of the Late Enrollment Penalty for Individuals Enrolling on or After January 1, 2023

Currently, section 1839(b) of the Act specifies that the LEP is based on the number of months that have elapsed between the close of the individual's IEP and the close of the enrollment period during which they enroll, plus certain additional months for individuals who reenroll. However, section 120(a)(3) of the CAA amended section 1839(b) of the Act to specify that, for enrollments on or after January 1, 2023, the months that will be taken into account for purposes of determining any LEP include months which elapse between the close of the individual's IEP and the close of the month in which they enroll, plus, for individuals who reenroll, the months that elapse between the date of termination of previous coverage and the close of the month in which the individual enrolls. We expect that these changes will decrease the number of months individuals are subject to the LEP. To implement these changes, we propose the following changes to our regulations:

- At § 406.33, we propose to revise paragraph (a) to reflect the requirement that, for individuals enrolling for the first time, the existing Part A LEP calculation requirements continue to apply to enrollments before January 1, 2023.
- We also propose to redesignate paragraph (c) of § 406.33 as paragraph (d) and add new paragraph (c) to address the calculation of the LEP for individuals enrolling for the first time on or after January 1, 2023. Specifically, the introductory text of § 406.33(c) would require that the months to be counted for calculating the Part A LEP begin with the end of the individual's IEP, and extend through the end of the month in which the individual enrolls. In proposed § 406.33(c)(1), we would continue to exclude certain months from the calculation of the LEP, based on the requirements currently in effect under § 406.33(a)(1) through (6). We are proposing to exclude additional months from the calculation of the LEP for enrollments on or after January 1, 2023 at § 406.33(c)(2), however those changes are unrelated to the technical correction implemented under section 120(a)(3) of the CAA, and are discussed in greater detail in section II.A.2. of this proposed rule.
- At § 408.24, we propose to revise paragraph (a) to apply the existing Part B LEP calculation months and exceptions to individuals who satisfy the requirements of § 408.24 before January 1, 2023.
- At § 408.24, we also propose to redesignate paragraph (b) as paragraph (c) and add new paragraph (b) to address the calculation of the LEP for enrollments on or after January 1, 2023. Specifically, the paragraph at § 408.24(b) would require that for individuals who satisfy the requirements of § 408.24 after January 1, 2023, the months to be counted for calculating the Part B LEP begin with the end of the individual's IEP, and extends through the end of the month in which the individual enrolls. In proposed § 408.24(b)(1), we would continue to exclude certain months from the calculation of the LEP, consistent with the requirements currently in effect under § 408.24 (a)(1) through (10). We are proposing to exclude additional months from the calculation of the LEP for enrollments on or after January 1, 2023 at § 408.24(b)(2), however those changes are unrelated to the technical correction implemented under section 120(a)(3) of the CAA, and are discussed in greater detail in section II.A.2. of this proposed rule.
- At § 406.34, we propose to revise paragraph (a) to reflect the requirement that, for individuals reenrolling in Premium Part A, the existing Part A LEP calculation requirements continue to apply to enrollments before January 1, 2023.
- At 406.34, we propose to redesignate paragraph (e) as paragraph (f) and add new paragraph (e) to address the calculation of the LEP for individuals reenrolling on or after January 1, 2023. Specifically, new § 406.34(e)(1) would require that the months to be counted for calculating the Part A LEP begin with the end of the individual's IEP and extend through the end of the month in which the individual reenrolls, and we would continue to include the months currently specified in paragraphs (b) and (d) of this section, as applicable, and the months from the end of the first period of entitlement through the end of the month during the GEP in which the individual reenrolled. In proposed § 406.34(e)(2), we would exclude the months of non-coverage in accordance with an individual's use of an exceptional condition SEP under § 406.27. Those months are not counted for premium increases, provided the individual enrolls within the duration of the SEP.
- We are also proposing coordinating changes related to the LEP for reenrollments at § 408.24. Specifically, we propose to amend § 408.24, to revise newly redesignated paragraph (c) to apply the existing Part B LEP calculation months and exceptions for reenrollments to individuals who satisfy the requirements of § 408.24 before January 1, 2023. New § 408.24(d) would require that for individuals who satisfy the requirements of § 408.24 after January 1, 2023, the months to be counted for calculating the Part B LEP include the number of months elapsed between the close of the individual's IEP and the close of the month in which he or she first enrolled and the number of months elapsed between the individual's initial period of coverage and the close of the month in which he or she reenrolled (as well as the number of months elapsed between each subsequent period of coverage and the close of the month in which he or she reenrolled). In proposed § 408.24(d)(2)(i), we would continue to exclude certain months from the calculation of the LEP, consistent with the requirements currently in effect under § 408.24 (a)(1) through (10) and also excluding months before April 1981 during which the individual was precluded from reenrolling by the two-enrollment limitation in effect before that date. Further, as discussed previously, an individual who missed an enrollment period due to an

exceptional condition, and who enrolls in Part B using an exceptional condition SEP, would not be subject to a LEP. Therefore, we propose in § 408.24(d)(2)(ii) that if an individual uses an exceptional condition SEP under § 407.23 any months of non-coverage would not be counted towards the calculation of the SEP, provided the individual enrolls within the duration of the SEP.

B. Proposals for Extended Coverage of Immunosuppressive Drugs for Certain Kidney Transplant Patients (§§ 407.1, 407.55, 407.57, 407.59, 407.62, 408.20, and 423.30)

1. History and Definition of Benefit

In 1972, Congress enacted section 299I of the Social Security Amendments of 1972 (Pub. L. 92–603), which amended section 226 of the Act to allow qualified individuals with ESRD [11] under the age of 65, to enroll in the federal Medicare health care program, beginning in 1973. These requirements are now codified in section 226A of the Act and implemented in our regulations at 42 CFR 406.13. As mentioned earlier, section 226A(a) of the Act provides that certain individuals who are medically determined to have ESRD and apply for Medicare coverage are entitled to benefits under Medicare Part A and eligible to enroll in Part B. However, section 226A(b)(2) of the Act currently requires that an individual's entitlement under Part A and eligibility under Part B based on ESRD status ends with the 36th month after the month in which the individual receives a kidney transplant.

The termination of Medicare entitlement has led to some beneficiaries losing coverage of immunosuppressive drugs that transplant patients would still need. Per the 2018 US Renal Data System (USRDS) Annual Report, 32 percent of kidney transplant recipients ages 45–64 years old have no known or other creditable prescription drug coverage.[12] Section 402(a) of the CAA established an exception that permits certain beneficiaries who were successful kidney transplant patients to receive a limited Part B benefit effective January 1, 2023—covering only those immunosuppressive drugs described in section 1861(s)(2)(J) of the Act. Section 402(b) of the CAA also amended section 1836(b) of the Act to support limited eligibility under Part B for beneficiaries whose entitlement to insurance benefits under Part A ends by reason of section 226A(b)(2). These individuals are eligible to enroll (or to be deemed enrolled) for the new Part B immunosuppressive drug benefit (herein referred to as the Part B–ID benefit).

Not all Medicare kidney transplant patients who lose entitlement to Part A coverage based on section 226A(b)(2), however, are eligible to enroll in the new Part B–ID benefit. The CAA provided that certain individuals are not eligible to enroll in the new program. In general, if the individuals are enrolled in certain specific forms of health insurance or other programs that cover immunosuppressive drugs, the individuals would not be eligible to enroll in the Part B–ID benefit. We will discuss the excepted individuals and the specific forms of insurance and programs in greater detail in section II.B.2.b of this proposed rule entitled ''Determination of Eligibility'' and in our proposed rule at § 407.55(b). Individuals that are seeking entitlement under the new Part B–ID benefit would also need to meet additional statutory criteria, as discussed in section II.B.2.b. of this proposed rule, and in the proposed rule at § 407.57. Individuals enrolled in the new Part B–ID benefit would not receive Medicare coverage for any other items or services, other than coverage of immunosuppressive drugs.

Section 402 of the CAA made conforming amendments to sections 1836, 1837, 1838, 1839, 1844, 1860D–1, 1902, and 1905 of the Act. We discuss each of those changes elsewhere in this document, along with the corresponding proposals to modify our regulations in order to implement these changes. We are proposing to revise §§ 407.1, 408.20, 410.30, 423.30 and establish a new Subpart D (§§ 407.55 through 407.65) in 42 CFR part 407, entitled *Part B Immunosuppressive Drug Benefit* to implement the new Part B–ID benefit.

Sections 226A, 1836(b) and 1837(n) of the Act provide the statutory authority for this new, limited Medicare entitlement program, and we are proposing to add a description of this basis for the Part B–ID benefit at § 407.1(a)(6). We specifically propose in § 407.1(a)(6) that, sections 1836(b) and 1837(n) of the Act will provide for coverage of immunosuppressive drugs as described in section 1861(s)(2)(J) of the Act under Part B beginning on or after January 1, 2023. Coverage of immunosuppressive drugs would be for eligible individuals whose benefits under Medicare Part A and eligibility to enroll in Part B on the basis of ESRD would otherwise end with the 36th month after the month in which the individual receives a kidney transplant by reason of section 226A(b)(2) of the Act.

We are also proposing to revise § 407.1(b) and establish a new paragraph (2) to incorporate the eligibility, enrollment, and entitlement requirements for the Part B–ID benefit within the scope of part 407. We specifically propose to revise § 407.1(b) to retain the language that states that part 407 sets forth the eligibility, enrollment, and entitlement requirements and procedures for supplementary medical insurance at § 407.1(b)(1), including the reference to the rules governing premiums in part 408 of this chapter. At new § 407.1(b)(2), we propose to add language stating that this part also sets forth the eligibility, enrollment, and entitlement requirements and procedures for the immunosuppressive drug benefit provided for under sections 1836(b) and 1837(n) of the Act, including the short title for the Part B-immunosuppressive drug benefit (Part B–ID).

The Part B–ID benefit is unique because it is available to a defined subset of Medicare beneficiaries and provides coverage only for immunosuppressive drugs. Since immunosuppressive drug therapy is a Part B benefit under section 1861(s)(2)(J) of the Act, certain rules and requirements applicable to Part B apply to the Part B–ID benefit. Where there are specific differences, we address them in this rulemaking.

2. Part B–ID Benefit Eligibility, Enrollment, Entitlement, and Termination

a. Eligibility for the Part B–ID Benefit

Section 402(a)(2) of the CAA adds section 1836(b) of the Act, which establishes specific eligibility criteria for the Part B–ID benefit. Subject to exceptions, new section 1836(b)(1) of the Act provides that individuals whose entitlement to insurance benefits under Part A ends (whether before, on, or after January 1, 2023) by reason of section 226A(b)(2), and who meet certain additional requirements, would be eligible to enroll (or to be deemed enrolled) in Part B solely for purposes of coverage of immunosuppressive drugs in accordance with section 1837(n) of the Act. The principal limitations on eligibility for the Part B–ID benefit are set out in new section

[11] Under 42 CFR 406.13(b), ESRD means that stage of kidney impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

[12] United States Renal Data System: *2018 USRDS Annual Data Report: Epidemiology of Kidney Disease in the United States,* Bethesda, MD, National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, 2018, from *https://cjasn.asnjournals.org/content/14/3/327.*

1836(b)(2) of the Act. Under section 1836(b)(2)(A) of the Act, individuals enrolled in certain other types of health coverage would not be eligible for the Part B–ID benefit. As discussed in greater detail in this section, we are proposing to specify that an individual who has such other health coverage would not be eligible for the Part B–ID benefit in § 407.55(b).

b. Determination of Eligibility

Section 1836(b)(2)(B)(i) of the Act requires the Secretary, in coordination with the Commissioner of Social Security (Commissioner), to establish a process for determining whether an individual who is to be enrolled, or deemed to be enrolled, in the Part B–ID benefit meets the requirements for such enrollment, including the requirement that the individual not be enrolled in other health coverage that would make them ineligible for the Part B–ID benefit under 1836(b)(2)(A) of the Act.

In order for an individual to be enrolled in the Part B–ID benefit, section 1836(b)(2)(B)(ii)(I) of the Act requires that an individual provide to the Commissioner an attestation that they are not enrolled and do not expect to enroll in the excepted coverage, as described in section II.B.2.a. of this proposed rule (''Eligibility for the Part B–ID Benefit''), that would make the individual ineligible for the Part B–ID benefit under section 1836(b)(2)(A) of the Act. Section 1836(b)(2)(B)(ii)(II) of the Act requires that the individual notify SSA within 60 days of enrollment in such excepted coverage. Based on these requirements, we are proposing at § 407.59(a) and (b), that all prospective enrollees in the Part B–ID benefit must provide to the Commissioner, in the form and manner specified by CMS and SSA in the final rule, an attestation that the individual is not enrolled and does not expect to enroll in other health coverage that would make the individual ineligible for the Part B–ID benefit, and that the individual agrees to notify the Commissioner within 60 days of enrollment in such other coverage as described in § 407.55(b).

Individuals who currently have Medicare entitlement based on ESRD, and whose coverage would be terminated 36 months after the month of a successful transplant, are notified in advance of the 36-month termination by SSA. We refer to such notices as ''pre-termination notices.'' We plan to include information about the Part B–ID benefit in this pre-termination notice and include instructions for individuals to enroll in the Part B–ID benefit, including how to provide the required attestation.

We are proposing that beneficiaries will be able to primarily use a verbal (telephonic) attestation as part of enrolling in the Part B–ID benefit. Generally, for the verbal attestation, an individual would contact SSA, and an SSA representative, using a standard script, will convey the requirements to the individual that are in the CMS–10798 attestation form, described in § 407.59 of this proposed rule. The individual will then attest that the individual does not have coverage under any of the specified health programs or insurance. The individual will also affirm that the statement provided was true and correct and that the individual acknowledged that there may be criminal penalties for making a false statement for purposes of obtaining these Medicare benefits. After the individual provides the oral attestation, the SSA representative will document the content of the call, and the document will be retained as required under SSA processes.

Having interested beneficiaries call SSA to attest and enroll is the simplest and most efficient method, and would avoid potential delays in an individual mailing a signed written statement that could potentially result in a delay in the individual continuing to receive this vital coverage of these necessary drugs.

Using a verbal attestation and enrollment process also aligns with the President's December 13, 2021 Executive Order, titled *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,* which, among other things, directs Federal agencies to improve the public's experience of interacting with agency services. Of particular relevance, the executive order directs the Commissioner of SSA to provide a report that identifies potential opportunities for policy reforms that can support modernized customer experiences while ensuring original or physical documentation requirements remain where there is a statutory or strong policy rationale. The executive order further directs the Commissioner to, consistent with applicable law and to the extent practicable, remove requirements that members of the public provide physical signatures.

We are also proposing that individuals would be permitted to provide the attestation in writing with a pen-and-ink signature, if they choose to do so. Under our proposal, individuals could download a PDF-fillable version of an attestation form from SSA or CMS websites to print, sign, and mail to SSA, or to call SSA to request the form in hard copy. We are further soliciting public comment on whether SSA should only accept attestations in writing with a pen-and-ink signature, and not allow an individual to attest verbally to their eligibility to enroll in the Part B–ID benefit. We are soliciting public comment on all of these proposed methods of attestation, and other potential methods such as electronic submission, submission by fax, or a signed document.

We are proposing to rely on enrollee attestations to ensure eligibility for the Part B–ID benefit, and we will monitor developments in the Part B–ID benefit program and take appropriate action to address any potential areas of concern, including with respect to inaccurate attestations or other conditions involving ineligible individuals enrolling or remaining enrolled in the Part B–ID benefit. We will continue to evaluate opportunities to enhance our oversight to ensure compliance with the eligibility requirements on an ongoing basis. We specifically request public comments on whether additional procedures would be helpful or necessary to ensure the integrity of this program. Upon receipt of public comment, CMS will consider if proposals received would need to be set out in future notice-and-comment rulemaking prior to implementation.

As mentioned previously, we are proposing to establish the eligibility criteria for the Part B–ID benefit in new § 407.55, entitled ''Eligibility to enroll.'' Specifically, in § 407.55(a), we propose that an individual would be eligible to enroll in, be deemed enrolled, or re-enroll in the Part B–ID benefit if their Part A entitlement ends at the end of the 36th month after the month in which the individual received a successful kidney transplant, as set out under revised § 406.13(f)(2), and discussed in section II.B.5 of this proposed rule.

The types of coverage that would make an individual ineligible for the Part B–ID benefit are specified in section 1836(b)(2)(A)(i) through (v) of the Act. Specifically, the Act requires that individuals shall not be eligible for enrollment in the Part B–ID benefit during any period the individual is:

- Enrolled in a group health plan or group or individual health insurance coverage, as such terms are defined in section 2791 of the Public Health Service Act;
- Enrolled for coverage under the TRICARE for Life program under section 1086(d) of title 10, United States Code;
- Enrolled under a state plan (or waiver of such plan) under title XIX of the Act and is eligible to receive benefits for immunosuppressive drugs described

in section 1836(b) of the Act under such plan (or such waiver);

• Enrolled under a state child health plan (or waiver of such plan) under title XXI of the Act and is eligible to receive benefits for such drugs under such plan (or such waiver); or

• Enrolled in the patient enrollment system of the Department of Veterans Affairs established and operated under section 1705 of title 38, United States Code and is either of the following:

++ Is not required to enroll under section 1705 of such title to receive immunosuppressive drugs described in section 1836(b) of the Act; or

++ Is otherwise eligible under a provision of title 38 of the United States Code (other than section 1710), to receive immunosuppressive drugs described in section 1836(b) of the Act.

We are proposing regulation text at § 407.55(b) that would mirror those requirements, as set out in sections 1836(b)(2)(A)(i) through (v) of the Act. Section 1836(b)(2) of the Act contains specific exceptions that prevent individuals from enrolling in the Part B–ID benefit. For some of those provisions, section 402 of the CAA includes an additional limitation that the coverage must include coverage of immunosuppressive drugs. For other coverage, the statute does not include this limitation. When specific restrictions are included in one section of a statute but not in another, we presume that the language of the statute is intentional and deliberate with respect to adding the limitations. This is sometimes called the negative implication canon or *expessio unius est exclusion alterius.*

Other than coverage under Medicaid, child health plan coverage, or in regard to immunosuppressive drugs, an individual is eligible to receive from the Department of Veterans Affairs with or without enrolling in the system established and operated under section 1705 of Title 38, the statute does not address the level of coverage, or the benefits that must be provided under an individual's other coverage, that would make an individual ineligible for the Part B–ID benefit. Therefore, we interpret section 1836(b)(2)(A) of the Act to require that, except in the case of an individual who receives title XIX or XXI benefits under a state plan or waiver, or immunosuppressive drugs individuals are eligible to receive through the Department of Veterans Affairs with or without enrolling in the system established and operated under section 1705 of Title 38, an individual's enrollment in any other coverage specified under 1836(b)(2)(A), regardless of the scope of benefits offered to the individual under that coverage, would make the individual ineligible for the Part B–ID benefit.

As indicated previously, section 1836(b)(2)(B)(ii)(I) of the Act requires that an individual provide to the Commissioner an attestation that they are not enrolled and do not expect to enroll in such other coverage as described in section II.B.2.b. of this proposed rule, in order for SSA to determine if they are eligible for the Part B–ID benefit. Section 1836(b)(2)(B)(ii)(II) of the Act requires that individuals must also notify SSA within 60 days of enrollment in such other coverage as that would then make them no longer eligible for immunosuppressive drug coverage under the Part B–ID benefit. We propose to establish corresponding requirements in regulation at new § 407.59. Specifically, we are proposing at § 407.59(a) that, in order to be eligible for immunosuppressive drug coverage, the individual must attest in either a verbal attestation or signed paper form provided by SSA, that they are not enrolled, and do not expect to enroll in, coverage as described in § 407.55(b). Similarly, at § 407.59(b) we are proposing that individuals must notify SSA within 60 days of enrollment in such coverage.

c. Enrollment in the Part B–ID Benefit

Section 1837(n)(1) of the Act states that any individual who is eligible for coverage of immunosuppressive drugs under section 1836(b) of the Act, that is, whose entitlement for hospital insurance benefits under part A ends by reason of section 226A(b)(2), may enroll or be deemed to have enrolled in the Part B–ID benefit as established in regulations and during an enrollment period. We are proposing in § 407.57(d) that, to enroll in the Part B–ID benefit, an individual must submit the required attestation as described in § 407.59. We will have historical information about individuals who will be eligible to enroll in the Part B–ID benefit based on their Medicare entitlement at the time of their transplant. In light of this fact, we believe that submission of an attestation and confirmation of an individual's eligibility as described previously will be sufficient for SSA to enroll individuals in the Part B–ID benefit. We are proposing in § 407.55(c) that, if SSA denies an individual's enrollment in the Part B–ID benefit, the individual will be afforded an initial determination entitlement appeal as described in § 405.904(a)(1). This will ensure that the beneficiary's statutory and due process rights will be adequately protected.

Section 1837(n)(2) of the Act provides that an individual whose entitlement for hospital insurance benefits under part A ends by reason of section 226A(b)(2) prior to January 1, 2023, may enroll in the Part B–ID benefit beginning on October 1, 2022, or the day on which the individual first satisfies section 1836(b) of the Act, whichever is later. Section 1837(n)(3) of the Act specifies that an individual whose entitlement for hospital insurance benefits under part A ends by reason of section 226A(b)(2) on or after January 1, 2023, shall be deemed to have enrolled in the medical insurance program established by this part for purposes of coverage of immunosuppressive drugs.

We propose to establish the provisions relating to enrollment and the entitlement to the Part B–ID benefit in new § 407.57, titled ''Part B–ID benefit enrollment.'' Specifically, we are proposing at § 407.57(a) that an individual whose Part A entitlement ends at the end of the 36th month after the month in which the individual received a successful kidney transplant, on or after January 1, 2023, is deemed to have enrolled into the Part B–ID benefit effective the first day of the month in which the individual first satisfies the eligibility requirements proposed at § 407.55, and provides the attestation required in proposed § 407.59, prior to the termination of their Part A benefits.

In accordance with new subsections 1837(n)(2) and (3) of the Act, certain individuals have an ongoing opportunity to enroll in the Part B–ID benefit regardless of whether their entitlement under Part A ended before or after January 1, 2023. Therefore, we are proposing at § 407.57(b) that an individual whose Part A entitlement ends in accordance with revised § 406.13(f)(2) (as discussed in section II.B.5. of this proposed rule), and who meets the proposed Part B–ID benefit eligibility requirements proposed at § 407.55 and provides the attestation required in proposed § 407.59, may enroll in the Part B–ID benefit as follows:

• An individual whose entitlement ended prior to January 1, 2023, may enroll in the Part B–ID benefit beginning on October 1, 2022 or later.

• An individual whose entitlement ends on or after January 1, 2023 can enroll at any time after such entitlement ends.

We are further proposing at § 407.57(c) that an individual who had previously enrolled in the Part B–ID benefit but whose participation in the benefit was terminated may re-enroll in the Part B–ID benefit at any time if they meet the eligibility requirements proposed at § 407.55 and provides the

attestation required in proposed § 407.59. For instance, if an individual lost Part B–ID benefits because the individual had health coverage under a health program or insurance plan described in § 407.55(b), but then later lost that other coverage, the individual can re-enroll in the Part B–ID benefit. There are no late enrollment penalties assessed, regardless of when an individual enrolls or disenrolls from the benefit.

d. Effective Date of Entitlement

Provided the individual meets the eligibility requirements described at § 407.55 and provides the attestation as required under § 407.59, we are proposing the following entitlement dates in § 407.57(e):

- For individuals whose Medicare Part A entitlement based on ESRD status ends on or after January 1, 2023, and who submit the attestation required under § 407.59 before the end of the 36th month after the month in which they receive a successful kidney transplant, their entitlement begins with the month their Part A benefits under section 226A of the Act would end.
- For individuals who do not provide an attestation as part of the enrollment process for the Part B–ID benefit before their Part A entitlement under section 226A of the Act ends, but later provides an attestation, their entitlement begins with the month following the month in which the individual provides the attestation required in § 407.59.
- For individuals whose entitlement ended prior to January 1, 2023 and who submit an attestation as part of the enrollment process from October 1, 2022 through December 31, 2022, their entitlement begins January 1, 2023.

e. Termination of the Part B–ID Benefit

Under sections 1838(b) and (h)(4) of the Act, individuals are not required to enroll or remain enrolled in the Part B–ID benefit. Individuals enrolled in the Part B–ID benefit can terminate their enrollment in the Part B–ID benefit by notifying SSA that they no longer wish to participate in the Part B–ID benefit. SSA would also terminate the Part B–ID benefit under certain conditions. Consistent with these requirements, we are proposing in new § 407.62, ''Termination of coverage,'' that the effective date of the termination of an individual's entitlement under the Part B–ID benefit will depend upon the conditions of his or her termination, as described in this section.

As discussed in section II.B.2.b. of this proposed rule, section 1836(b)(2)(A) of the Act requires that an individual is not eligible for the Part B–ID benefit if they are enrolled in certain other health coverage. Under proposed § 407.62(a)(1), when an individual enrolls in such other health coverage that would make them ineligible for the Part B–ID benefit as set out in § 407.55(b) and notifies the Commissioner of this health coverage consistent with § 407.59(b), their Part B–ID benefit would be terminated effective the first day of the month after the month of notification.

We are proposing at § 407.62(a)(1) that an individual may request a different, prospective termination date for the Part B–ID benefit to align with the coverage period under the other insurance plan or government program. While section 402 of the CAA does not explicitly authorize CMS to permit individuals to request a future termination date, it also does not prohibit a beneficiary from requesting a future termination date. In these cases, if an individual chooses their Part B–ID benefit termination date, they will be able to retain the benefit up to the effective date of their new coverage, which will alleviate potential gaps or overlaps in coverage. For example, if an individual enrolls in employer coverage during an employer's open enrollment period in October, for a January 1st effective date, the individual can submit their request for termination of the Part B–ID benefit in October or November, and not lose their Part B–ID benefit prior to the January 1st effective date. If we only permitted an individual to use a default termination date (for example, termination on the first of the month after the month of notification), an individual submitting a termination notice in October or November would lose their Part B–ID benefit prior to the effective date of their new coverage. However, CMS would not permit individuals to request a future termination date that is after the effective date of enrollment in other health insurance coverage, as described in § 407.55(b), that would make them ineligible for the Part B–ID benefit. The law provides that individuals will lose their Part B–ID benefit eligibility when the individual is enrolled in certain other health coverage, and they notify the Commissioner of this other coverage within 60 days of their enrollment in such coverage. Individuals may wish to terminate Part B–ID benefits as soon as coverage is provided by another program so that they are not required to pay duplicative premiums for the same coverage. We believe this proposal will be helpful for beneficiaries as it would facilitate the coordination of benefit coverage and avoid duplicative costs for beneficiaries.

The rules for terminating Part B coverage based on a voluntary request for termination, set out in section 1838(b) of the Act, require that Part B coverage ends effective the close of the month following the month in which the notice is filed, except for an individual who loses coverage under a state buy-in agreement as described in § 407.50(b)(2)(i). For example, if an individual submits a voluntary notice to terminate Part B April 1st, the individual's last day of Part B coverage would be May 31st. In contrast, we are proposing a shorter timeframe for effectuating termination of the Part B–ID benefit in § 407.62(a)(1), specifically that when an individual enrolls in other coverage and provides notification consistent with § 407.59(b), their enrollment in the Part B–ID benefit would end effective the first day of the month after the month they provide the required notification. For example, if an individual notified SSA on April 1st to end their Part B–ID benefit, their Part B–ID benefit will be terminated effective the first day of the month after the month of notification, May 1st. We are proposing this shorter period between notification and the end of individuals' Part B–ID coverage in order to minimize periods of overlapping coverage that could result in unnecessary and overlapping premium liability.

Although the statute requires that an individual's eligibility for the Part B–ID benefit ends at the time they enroll in prohibited coverage, SSA would need additional time upon the individual's notification of such other coverage, to effectuate the termination of the Part B–ID benefit. Therefore, the individual's eligibility would end as of the first day of the month after the month they provide the required notification. Further, although 1836(b)(2)(B)(ii) provides up to 60 days for Part B–ID beneficiaries to notify the Commissioner that the individual has enrolled in other health coverage, some individuals will want to notify the Commissioner sooner to reduce the financial responsibility for Part B–ID benefit premiums. We believe this approach would implement the requirements of section 1838(h) of the Act, which requires that the entitlement for Part B–ID beneficiaries ends when an individual enrolls in other health coverage that makes them ineligible for the Part B–ID benefit.

As discussed previously in this rule, we will continue to evaluate opportunities to enhance our oversight to ensure compliance with the Part B–ID benefit's eligibility requirements. Therefore, we are proposing in § 407.62(a)(2) that if an individual who is enrolled in the Part B–ID benefit fails

to provide the notice of other excepted health coverage, and it is determined that an individual has such other health coverage, the individual would be ineligible for the Part B–ID benefit as described in proposed § 407.55(b), and their enrollment in the Part B–ID benefit would be terminated on a prospective basis. If it is determined, through investigation, that an individual has such other coverage, and SSA terminates the individual's Part B–ID benefit, the individual will be provided notification and appeal rights, as currently established for Medicare Part B. Specifically, we are proposing at § 407.62(a)(2) that the enrollment for an individual who enrolls in the Part B–ID benefit, but who subsequently enrolls in other health coverage as described in § 407.55(b) but does not notify SSA within 60 days consistent with § 407.59(b), the individual's Part B–ID enrollment would be terminated effective the first day of the month after the month in which SSA determines the individual is enrolled in health coverage described in § 407.55(b). We are proposing this shorter period (as typically would occur with termination of Part B coverage), between SSA making a determination that an individual has certain other health coverage as set out in proposed § 407.55(b), and termination of the Part B–ID benefit, in order to minimize periods of overlapping coverage that could result in unnecessary and overlapping premium liability. We believe this approach would implement the requirements of section 1838(h) of the Act which requires that the entitlement for the Part B–ID benefit ends when an individual enrolls in other health coverage that makes them ineligible for the Part B–ID benefit.

However, we are proposing in § 407.62(f) that, if an individual is involuntarily disenrolled from the Part B–ID benefit based on § 407.62(a)(2), (b) or (c), they will be permitted an initial determination appeal as outlined in § 405.904(a)(1), which is consistent with existing requirements applicable to Part B coverage. This ensures that the beneficiary's statutory and due process rights will be adequately protected. Consistent with appeals filed by individuals whose Medicare entitlement based on disability is denied or terminated, the individual would be entitled to the Medicare Part B–ID benefit while the appeal is in adjudication. CMS believes that this position lessens burden on beneficiaries by ensuring that there is no lapse in coverage for these necessary drugs.

Consistent with existing requirements applicable to Part B benefits at § 407.27(a), which state that entitlement to Part B benefits ends on the last day of the month in which an individual dies, we are proposing that entitlement to the Part B–ID benefit would end on the last day of the month in which the individual dies under new proposed § 407.62(b). Based on our experience administering the Part B program, we believe this approach is easy to understand, familiar to members of the public, fair, and administratively straightforward. Based on these facts we are proposing to apply this policy to the Part B–ID benefit as well.

In order to maintain consistency with existing Part B premium payment rules, and as established under section 1838(b)(2) of the Act and revised under section 402 of the CAA, we are proposing at § 407.62(c) that termination of the Part B–ID benefit for individuals who fail to pay their Part B–ID benefit premiums would end as set forth in 42 CFR part 408. This would include provisions governing a grace period by which premiums must be paid in order to avoid termination. Based on our experience administering the Part B program, we believe an approach that would apply the existing Part B requirements to the Part B–ID benefit would be easy to understand, familiar to members of the public, fair, and administratively straightforward.

Consistent with existing requirements applicable to Part B coverage under section 1838(b)(1) of the Act, we are proposing that an individual may request voluntary termination of the Part B–ID benefit. To voluntarily terminate their Part B–ID benefit, an individual will provide notification to SSA. Primarily, we are proposing that an individual would contact SSA to request termination, either telephonically, or by visiting an SSA field office. We are also proposing that individuals could notify SSA in writing, by completing a CMS–1763 termination form, indicating that the individual no longer wishes to participate in the Part B–ID benefit (even if the individual does not have other health insurance coverage). Individuals could obtain a termination form (CMS–1763) from the SSA or CMS website to print, sign, and mail to SSA, or they can call SSA to request the form in hard copy. Providing options for beneficiaries to terminate their Part B–ID benefit aligns with the President's December 13, 2021 *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,* which directs Federal agencies to improve the public's experience of interacting with agency services. We are soliciting public comment on these proposed methods of attestation, and other potential methods such as electronic submission, or submission by fax. Once an individual contacts SSA to inform them that they want to disenroll from the Part B–ID benefit, their benefit would be terminated effective the first day of the month following the month in which they submit their request. Accordingly, we are proposing at new § 407.62(d) that an individual may request disenrollment at any time by contacting SSA to inform them that they no longer want to be enrolled in the Part B–ID benefit. Such individuals' enrollment would end with the last day of the month in which the individual provides the disenrollment request. Similar to the rationale for our proposals for § 407.62(b), based on our experience administering the Part B program we believe this approach would be easy to understand, familiar to members of the public, fair, and administratively straightforward. Based on these facts we are proposing to apply this policy to the Part B–ID benefit as well.

Under section 1838(h)(4) of the Act, individuals' entitlement to the Part B–ID benefit ends when an individual becomes entitled to Medicare based on age, disability, or ESRD status (see §§ 406.5, 406.12 and 406.13). Consistent with these statutory requirements, we are proposing that in such conditions individuals' entitlement to the Part B–ID benefit will terminate effective the last day of the month prior to the month in which the individual becomes entitled to Medicare based on either age, disability, or ESRD under new proposed § 407.62(e).

3. Ensuring Coverage Under the Medicare Savings Programs

The MSPs includes three primary [13] Medicaid eligibility groups that cover the Medicare Part A and/or B premiums and sometimes cost-sharing for over 10 million low income individuals and are defined at sections 1905(p)(1) and 1902(a)(10)(E) of the Act. One MSP eligibility group is the Qualified Medicare Beneficiary (QMB) group, which provides medical assistance through coverage of Medicare Part A and B premiums and cost-sharing for certain individuals that meet specific requirements. In general, the individual

[13] There is a fourth and much smaller MSP eligibility group that is the Qualified Disabled Working Individuals (QDWI) group, which provides medical assistance of coverage of Part A premiums for individuals who are entitled to Part A under section 1818A of the Act, and with income that does not exceed 200 percent of the FPL and whose resources do not exceed twice the maximum amount permitted under the SSI program. Section 402 of the CAA does not apply to QDWIs.

must have income that does not exceed 100 percent of the federal poverty line (FPL) and resources that do not exceed three times the limit for SSI with adjustments for inflation as described in section 1905(p)(1) of the Act. A second MSP eligibility group is the Specified Low-Income Beneficiary (SLMB) group, which provides medical assistance through coverage of Part B premiums for individuals who would otherwise be eligible in the QMB eligibility group, except that their income exceeds 100 percent of the FPL and is below 120 percent of the FPL as defined at section 1902(a)(10)(E)(iii) of the Act. A third MSP eligibility group is the Qualifying Individuals (QI) group, which provides medical assistance of coverage of Part B premiums for individuals who would otherwise be eligible in the QMB group, except that their income exceeds 120 percent of the FPL and is below 135 percent of the FPL as defined at section 1902(a)(10)(E)(iv) of the Act. Federal statute does not allow states to implement MSP eligibility criteria (that is, income and resource limits and methodologies) that are more restrictive than those federal baselines. However, through authority granted by section 1902(r)(2) of the Act, states may choose to implement income and/or resource methodologies that are more generous than the federal baselines for QMB, SLMB and QI.

As a result of changes made under section 402(f) of the CAA, low income individuals who are entitled to Medicare based on enrollment in the Part B–ID benefit may also be eligible for enrollment in QMB, SLMB, or QI MSPs for payment of some or all of their Part B–ID benefit premiums and cost-sharing.

Section 402(f) of the CAA revised section 1905(p)(1)(A) of the Act to change the definition of QMB to allow for individuals enrolled in the Part B–ID benefit to be eligible for medical assistance through Medicare cost-sharing as QMBs if they otherwise meet the income and resource limits established at 1905(p)(1)(B) and (C) of the Act. The CAA also made similar changes under section 1902(a)(10)(E)(iii) and (iv) of the Act to make medical assistance available for Medicare cost-sharing for Part B–ID benefit enrollees who qualify for the SLMB and QI eligibility groups. These changes would allow individuals enrolled in the Part B–ID benefit to attain eligibility for these MSPs for payment of their Part B–ID benefit premium and cost-sharing for QMBs, and for payment of their Part B–ID benefit premium as SLMBs and QIs, if such beneficiaries also meet the relevant income and resource criteria. We propose to codify this expansion of MSPs to apply to the Part B–ID benefit at new § 435.123 described in section II.D.3.h. of this proposed rule.

Under section 1905(p)(1) and 1902(a)(10)(E) of the Act, as modified by section 402(f) of the CAA, individuals eligible for the Part B–ID benefit could become enrolled in MSPs for payment of the Part B–ID benefit (MSP Part B–ID) through two paths on or after January 1, 2023. First, individuals could enroll in the Part B–ID benefit and newly apply for Medicaid and be determined eligible for the QMB, SLMB, or QI eligibility groups by their state. Second, individuals who are enrolled in an MSP eligibility group and whose Medicare eligibility is based on ESRD, can transition to an MSP based on Part B–ID (MSP Part B–ID) the month after 36 months after transplant if they enroll in the Part B–ID benefit under certain conditions. In order to transition to MSP Part B–ID under this latter condition, the individual must (a) return the attestation to be deemed to enroll in the Part B–ID benefit by the end of the 36th month after the month in which they receive a kidney transplant in accordance with the attestation requirements in section 1836(b)(2)(B) of the Act and (b) continue to meet the other eligibility criteria for an MSP eligibility group described in section 1905(p)(1), 1902(a)(10)(E)(iii), or (iv) of the Act. We anticipate the second situation will help ensure continuity of coverage for beneficiaries, but note that continuity of coverage depends on many factors, including the timing of when an individual attests to not having other disqualifying insurance coverage under § 407.59 as well as coordination among multiple entities including states, CMS and SSA. Given its greater complexity, the second situation is the primary focus of our discussion here.

The simplest way to maintain continuity of coverage for individuals enrolled in an MSP who are losing Medicare entitlement based on ESRD status is through the Medicaid redetermination process. For full- and partial-benefit (that is, individuals enrolled only in an MSP and receiving coverage of only Medicare premiums and sometimes cost sharing) Medicaid beneficiaries who have Medicare entitlement based on ESRD status and lose full Medicare coverage 36 months after the month in which they received a kidney transplant, this loss of full Medicare coverage would constitute a change in circumstance under § 435.916(d) even if they might obtain coverage under Medicare through enrollment in the Part B–ID benefit. Under § 435.916(d)(1), state Medicaid agencies are required to promptly redetermine an individual's eligibility for Medicaid whenever it receives information about a change in a beneficiary's circumstances that may affect their eligibility. We are providing an overview of how the Medicaid redetermination process will operate under the existing Medicaid regulations for both full- and partial-benefit Medicaid beneficiaries who have Medicare entitlement based on ESRD status and lose full Medicare coverage. However, for clarity, we want to highlight up front that individuals who remain or become full-benefit Medicaid beneficiaries after this redetermination process will not be eligible for the Part B–ID benefit, as explained in this section.

During this redetermination process, under §§ 435.916(b) and 435.911, individuals who are already eligible for a full-benefit Medicaid eligibility group, such as those receiving Supplemental Security Income (SSI) [14] would still retain their Medicaid eligibility as long as there are no other disqualifying changes to income or disability status. This is true of the redetermination process for all individuals who are eligible for more than one eligibility group in Medicaid. If the change in circumstance only ends the individual's eligibility for one eligibility group but not the other, the individual remains eligible for the eligibility group for which they still qualify. Even if the individual was not eligible previously for a full-benefit Medicaid eligibility group, if the individual nonetheless qualifies for a full-benefit Medicaid eligibility group (for example, the adult group) after the redetermination, the state must enroll the individual in that group per §§ 435.916(f) and 435.911.

We anticipate that individuals who are eligible for a full-benefit Medicaid eligibility group would not be eligible for the Part B–ID benefit, because all states currently opt to cover immunosuppressive drug coverage for all full-benefit Medicaid eligibility groups and by virtue of having such drug coverage under Medicaid they would be ineligible according to section 1836(b)(2)(A)(iii) of the Act.

On the other hand, if the individual is not eligible for Medicaid on any basis, the state is required to screen the individual for potential eligibility for other insurance affordability programs as defined in § 435.4 in accordance with § 435.1200(e), as required under § 435.916(f). This would include referring the individual to an Exchange

[14] In most states, receipt of SSI automatically qualifies an individual for Medicaid. See § 435.120.

to determine whether the individual is eligible for enrollment in a Qualified Health Plan with Advance Premium Tax Credit (APTC), cost sharing reductions (CSRs) or both as described in § 435.4. We also encourage states to inform the beneficiary of the Part B–ID benefit and coordinate with SSA, State Health Insurance Assistance Programs (SHIPs), and beneficiary groups, among others, to help individuals complete the telephonic Part B–ID benefit attestation, and provide other personalized assistance if the individual does not qualify for full-benefit Medicaid or the Exchange with either APTC or CSRs. We note that if the individual enrolls in an Exchange plan, it will make them ineligible for the Part B–ID benefit as set out in § 407.55(b). If the individual has already enrolled in the Part B–ID benefit prior to enrollment in the Exchange, they will need to notify SSA of this health care coverage in the Exchange consistent with § 407.59(b).

If the individual does not ultimately enroll in the Part B–ID benefit, the state would terminate MSP enrollment because individuals must have Part A entitlement or be enrolled in the Part B–ID benefit to be eligible for the MSPs under sections 1905(p)(1)(A) and 1902(a)(10)(E)(iii) and (iv) of the Act. Prior to termination, states must provide affected beneficiaries with advance notice and an opportunity for a fair hearing in accordance with § 435.917 and part 431, subpart E.

If, as a result of the redetermination process that must be completed prior to termination under § 435.916(f), the state identifies that the individual has completed the required attestation and would be enrolled in the Part B–ID benefit the month after Medicare entitlement based on ESRD ends (the end of the 36th month after the month in which the individual received a kidney transplant), the state must maintain the individual in the appropriate MSP eligibility group for payment of Part B–ID benefit premiums and, if eligible, cost-sharing, provided there are no other disqualifying changes in the income and resources of the individual under section § 435.911.

As noted previously, the changes to section 402(f) of the CAA expand the definition of QMB, SLMB, and QI to allow individuals to qualify for those MSPs based on their enrollment in the Part B–ID benefit and meeting the income and resource standards of MSPs. As such, as part of considering all bases of eligibility in the redetermination process under § 435.916(f)(1), states must consider the revised eligibility criteria in section 402(f) of the CAA and enroll individuals in MSP Part B–ID benefit who are enrolled in the Part B–ID benefit and meet the income and resource criteria for MSPs.

If an individual was enrolled in an MSP while entitled to Medicare on the basis of ESRD, their continued enrollment in MSPs for the Part B–ID benefit will ultimately depend on how quickly the state completes its redetermination, whether the individual has full Medicaid benefits (and whether the State plan would cover immunosuppressive drugs for the individual), and whether the individual enrolls in the Part B–ID benefit. If the state does not complete the redetermination process prior to the end of the 36th month after the month in which the individual received a kidney transplant, when an individual's Medicare entitlement based on ESRD status ends under section 226A(b)(2) of the Act, and the individual had full Medicaid plus an MSP prior to the point at which their Medicare entitlement ends according to section 226A(b)(2) of the Act, the individual would retain full Medicaid until the redetermination is complete per § 435.930(b), but would lose MSP coverage when Medicare entitlement based on ESRD Medicare coverage expires. While states are required to continue furnishing Medicaid until the state determines an individual ineligible for Medicaid under § 435.930(b), the only medical assistance provided for MSPs is payment of Medicare premiums and sometimes cost-sharing. As such, when Medicare entitlement ends, states stop providing MSP coverage because the individual no longer has a Medicare benefit for which they owe premiums, deductibles, coinsurance and copayments. Beneficiaries losing MSP coverage under these conditions may remain eligible for Medicaid on another basis, and states must furnish the Medicaid coverage for which they are eligible until they are found to be ineligible under § 435.930(b).

If the state does not complete the redetermination process by the end of the 36th month after the month in which the individual received a kidney transplant, when Medicare entitlement based on ESRD status would end, and the individual is enrolled only in an MSP and *does* complete the Part B–ID benefit attestation prior to losing Medicare based on ESRD status, then, under § 435.930(b), the individual would maintain enrollment in their current MSP until the redetermination is complete, and the MSP would cover the appropriate costs for the Part B–ID benefit. In this scenario, once CMS receives enrollment confirmation of the individual in the Part B–ID benefit from SSA, CMS systems will automatically switch the individual from state buy-in for Part B to the Part B–ID benefit buy-in and alert the state of the individual's new enrollment and billing status. The reason for the difference in the outcome when the individual returns the attestation is that under § 435.930(b), the state must continue furnishing MSP because there would be a Medicare benefit to wrap around through coverage of premiums, deductibles, coinsurance and copayments.

If the state does not complete the redetermination process by the end of the 36th month after the month in which the individual received a kidney transplant, when Medicare entitlement based on ESRD status would end, and the individual is enrolled only in an MSP and *does not* complete the Part B–ID benefit attestation prior to losing Medicare entitlement based on ESRD status, then the individual would not be entitled to coverage of immunosuppressive drugs therapy under section 1836(b)(2)(B) of the Act or state payment of the premiums for the Part B–ID benefit because enrollment in the Part B–ID benefit is a pre-requisite to state payment of premiums under section 402(f) of the CAA.

After a kidney transplant, individuals must diligently take immunosuppressive drug therapy in order to avoid the rejection of the kidney.[15] In order to prevent gaps in coverage of such medication when individuals transition off Medicare entitlement based on ESRD status, for partial-benefit Medicaid beneficiaries (beneficiaries enrolled in an MSP and not full-benefit Medicaid), states will need to complete redeterminations regarding Medicaid eligibility under § 435.916(d) before individuals' Medicare eligibility based on ESRD status ends. While we note that these individuals could continue coverage under the MSP Part B–ID benefit if they complete the attestation, many of these individuals will be eligible for full-benefit Medicaid under the adult group described at § 435.119 in all states that expanded Medicaid since the MSPs generally have an income limit up to 135 percent of the FPL and the adult group has an income limit up to 138 percent of the FPL. Enrolling individuals in adult group coverage at the outset instead of enrolling them retroactively is vastly preferable—both to provide immediate coverage of their health coverage needs and to reduce administrative burden. Additionally, if these individuals are ultimately

[15] *https://www.medicare.gov/Pubs/pdf/10128-medicare-coverage-esrd.pdf.*

enrolled retroactively in full-benefit Medicaid after enrolling in the Part B–ID benefit—and these Medicaid benefits continue to include coverage of immunosuppressive drugs for the individual, the individuals will need to inform SSA that they have other insurance coverage in order for SSA to terminate them from the Part B–ID benefit in accordance with § 407.62. These individuals will also need to ask their providers to submit all of their bills to Medicaid for payment beginning from the date Medicare entitlement based on ESRD status ended until the date of the new notice of determination of full Medicaid. For any immunosuppressive drugs received during that time, the individuals would need to ask their pharmacy to bill Medicaid for any Medicare copays paid by the individual because Medicaid would pay secondary to Medicare. As such, we are strongly recommending that states start an early advance redetermination process for those partial-benefit beneficiaries whose Medicare entitlement is based on ESRD status and who receive kidney transplants. As noted previously, during this redetermination process, we encourage states to reach out to individuals who are likely eligible for the MSP Part B–ID benefit to explain the Part B–ID benefit and if necessary, coordinate with SSA, SHIPs and beneficiary advocates to help them submit the attestation to enroll in the Part B–ID benefit, which will assist the state in enrolling them in the appropriate MSP. We are also exploring steps to conduct outreach and education for beneficiaries and multiple external partners, including those who regularly assist beneficiaries with health insurance counseling, regarding the most appropriate coverage options for MSP beneficiaries transitioning off Medicare entitlement based on ESRD. Additionally, CMS will be engaged and able to assist beneficiaries in assessing their health care options and enrolling in the Part B–ID benefit as needed. We welcome comments regarding steps CMS can take to assist beneficiaries and promote awareness of coverage choices upon loss of the ESRD Medicare benefit with the goal of minimizing gaps in coverage and ensuring enrollment in the most comprehensive benefit available to them.

Both the early redetermination process and the outreach effort to beneficiaries will help reduce the risk of gaps in coverage for immunosuppressive drugs for this vulnerable beneficiary population.

We anticipate this early redetermination process and outreach effort will improve the customer service experience of kidney transplant recipients, consistent with the *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.* We also believe it will have a positive health equity impact consistent with the *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.* Finally, by helping to avoid gaps in Medicaid and Marketplace coverage, it is consistent with the *Executive Order on Strengthening Medicaid and the Affordable Care Act.* In general, individuals with ESRD are more likely to be from racial or ethnic minority groups.[16] Additionally, individuals who are younger, poorer and less educated have more difficulty affording transplant medication, which has led to lower rates of graft survival among those populations.[17] Making immunosuppressive drugs more affordable to individuals through MSPs would improve lower income individuals' access to immunosuppressive drugs critical to prevent transplant failure.

As discussed previously, if an individual who had MSP coverage while entitled to Medicare based on ESRD status fails to enroll in the Part B–ID benefit after losing Medicare entitlement based on ESRD status, by the end of the 36th month after the month in which the individual received a kidney transplant the individual would also lose access to the MSPs after the state provides appropriate notice and fair hearing rights. However, an individual may re-apply for the MSPs if they later enroll in the Part B–ID benefit under section 402(f) of the CAA. Moreover, if an individual did not previously enroll in an MSP while entitled to Medicare based on ESRD status, once they enroll in the Part B–ID benefit they may apply for and enroll in an MSP provided they meet the applicable eligibility criteria.

We note that states will be required to enroll individuals in an MSP if they are enrolled in the Part B–ID benefit, apply for an MSP, and meet the income and resource requirements of an MSP. As explained previously, section 402(f) of the CAA modified the eligibility requirements for QMB, SLMB, and QI at 1905(p)(1) and 1902(a)(10)(E)(iii) and (iv) of the Act to make those MSPs available to individuals enrolled in the Part B–ID benefit. Thus, states must make an MSP eligibility determination for individuals who enroll in the Part B–ID benefit and apply for an MSP. If a state determines that individuals enrolled in the Part B–ID benefit meet the income and resource requirements for an MSP, the state must enroll those individuals in an MSP to pay for Part B–ID benefit premiums and cost-sharing, as applicable.

Finally, we note that individuals enrolled in the Part B–ID benefit and an MSP would lose coverage under both programs in any of four conditions described in §§ 407.62(a),(b),(d), and (e). Specifically, an individual's enrollment in both the MSPs and the Part B–ID benefit would end in accordance with § 407.62 if the individual (1) enrolls in other health insurance that makes them ineligible for the Part B–ID benefit as described in § 407.55(b); (2) becomes eligible for Medicare Part A on the basis of age, disability or ESRD status; (3) voluntarily terminates coverage; or (4) dies. In order to be eligible for MSPs, individuals must be entitled either to Part A under section 1905(p)(1)(A) and 1902(a)(E)(10) or the Part B–ID benefit as described in section 402(f) of the CAA. When individuals lose their entitlement to Medicare, they are terminated from MSPs after notice and fair hearing rights have been provided in accordance with § 435.917 and part 431, subpart E. As such, when individuals who are enrolled in an MSP for payment of Part B–ID benefit lose their underlying basis for enrollment in the Part B–ID benefit, they would no longer qualify for an MSP under section 402(f) of the CAA. In the first instance, if the individual is enrolled in an MSP based on his or her enrollment in the Part B–ID benefit, and they obtain other coverage that would make the individual ineligible for the Part B–ID benefit under section 1836(b)(2) of the Act, they would also no longer qualify for the MSP. In the second condition, if the individual is enrolled in an MSP based on his or her enrollment in the Part B–ID benefit, and they become entitled to Medicare based on age, disability or ESRD status, the Part B–ID benefit ends under section 1838(h)(4) of the Act; they would no longer be eligible for the MSP Part B–ID benefit. However, assuming there were no other disqualifying conditions, the individual would continue to be eligible for an

[16] See *https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease* discussing that ESRD prevalence is about 3.7 times greater in African Americans, 1.4 times greater in Native Americans, and 1.5 times greater in Asian Americans.

[17] Gordon, Elisa J., Prohaska, Thomas R., and Sehgal, Ashwin R. *The Financial Impact of Immunosuppressant Expenses on New Kidney Transplant Recipients Clin Transplant* 2008: 22, 736. Available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2592494/.*

MSP, which would then pay the Medicare Part B premiums and, if applicable, Part A premiums and cost-sharing on behalf of the individual, rather than the Part B–ID benefit premium. In the third condition, if the individual is enrolled in an MSP based on enrollment in the Part B–ID benefit and the individual voluntarily disenrolls from the Part B–ID benefit in accordance with section 1838(b)(1) of the Act, the individual would also become ineligible for the MSP Part B–ID benefit. Finally, if the individual is enrolled in an MSP based on his or her enrollment in the Part B–ID benefit and the individual dies, he or she is ineligible for the Part B–ID benefit under § 407.27(a), and would no longer be eligible for an MSP.

4. Part B–ID Benefit Premiums

The Secretary of the Department of Health and Human Services (HHS) is required by section 1839 of the Act to announce the Part B monthly actuarial rates for aged and disabled beneficiaries. These amounts, according to actuarial estimates, will equal, respectively, one half of the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one half of the expected average monthly cost of Part B for each disabled enrollee (under age 65). The standard monthly Part B premium represents roughly 25 percent of estimated program costs for aged enrollees and is calculated to be 50 percent of this aged actuarial rate, plus the $3.00 repayment amount required under current law. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that the two groups pay the same premium amount.) Premiums may be further adjusted based on an individual's conditions, such as based on late enrollment or reenrollment (§ 408.22), the income-related monthly adjustment amount (§ 408.28), or for beneficiaries subject to non-standard premiums (§ 408.20).

We are proposing to create a new paragraph § 408.20(f) to implement the requirements established under section 1839(j) of the Act and propose to modify other existing requirements for Part B premiums found in 42 CFR part 408 as required by statute for the Part B–ID benefit. We are proposing in § 408.20(f)(1), that beginning in 2022, as required by new section 1839(j) of the Act, the Secretary would determine and promulgate a monthly premium rate in September of each year for the succeeding calendar year for individuals enrolled only in the Part B–ID benefit. Such premium would be equal to 15 percent of an actuarial rate that represents 100 percent of the estimated average monthly cost of Part B for each aged enrollee (age 65 or over). This amount is then rounded to the nearest $0.10.

The standard 20 percent coinsurance and annual Part B deductible would apply to the Part B–ID benefit. As required under new section 1839(j) of the Act and other conforming changes of the Act, we are proposing in § 408.20(f)(2)(i) that the Part B–ID benefit premium would be subject to adjustments specified in §§ 408.20(e) (Nonstandard premiums for certain cases), 408.27 (Rounding the monthly premium), and 408.28 (Increased premiums due to the income-related monthly adjustment amount (IRMAA)). In addition, under section 1839(j) of the Act, the Part B–ID benefit premiums are also not subject to the LEP. Accordingly, we are proposing to provide in section § 408.20(f)(2)(ii) that premiums for the Part B–ID benefit would not be subject to increased premiums for late enrollment or reenrollment under § 408.22.

Section 1840 of the Act requires that for individuals receiving monthly railroad retirement or Social Security benefits or a civil service annuity, payment for Part B premiums for those individuals must generally be deducted from those payments. In light of these requirements, we are proposing in § 408.20(f)(3) that the collection of premiums for the Part B–ID benefit would follow the existing requirements governing the collection of Part B premiums set out in § 408.6 and part 408, subpart C of title 42. Under those provisions, if a beneficiary is receiving a monthly Social Security or Railroad retirement benefit, or civil service annuity, their Part B premium must typically be deducted from that monthly benefit. In conditions where an individual does not receive benefits of the sort described previously, premiums must be paid by direct remittance; in such cases CMS bills the beneficiary directly.

5. Conforming Changes

Certain individuals are entitled to hospital insurance coverage under Medicare Part A on the basis of ESRD, as provided under section 226A of the Act. Section 406.13(f)(2) currently specifies that the period of entitlement to Medicare Part A for individuals whose Medicare entitlement is based on ESRD ends with the end of the 36th month after the month in which the individual has received a kidney transplant. We are proposing to revise § 406.13(f)(2) to provide that beginning January 1, 2023, individuals no longer entitled to Part A benefits due to their coverage ending at the end of the 36th month after the month in which the individual received a kidney transplant, may be eligible to enroll in Part B solely for purposes of coverage of immunosuppressive drugs as described in § 407.55.

Medicare Part B covers health services including prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which Medicare payment is made. Section 410.30(b) currently lays out the requirements governing eligibility for coverage of prescription drugs used in immunosuppressive therapy, stating that coverage is only available for prescription drugs used in immunosuppressive therapy, furnished to an individual who received an organ or tissue transplant for which Medicare payment is made, and provided the individual is eligible to receive Medicare Part B benefits. Chapter 15 of the Medicare Benefit Policy Manual, section 50.5.1,[18] lists some of the Food and Drug Administration (FDA)-approved, specifically labeled immunosuppressive drugs. They are: Sandimmune (cyclosporine), Imuran (azathioprine), Atgam (antithymocyte globulin), Orthoclone OKT3 (Muromonab-CD3), Prograf (tacrolimus), Celicept (mycophenolate mefetil, Daclizumab (Zenapax); Cyclophosphamide (Cytoxan); Prednisone; and Prednosolone. However, this is not intended to be an all-inclusive list and is subject to change. The manual guidance states that CMS ''*expects contractors to keep informed of FDA additions to the list of the immunosuppressive drugs.*'' This expectation would carry over to the Part B–ID benefit. Medicare Administrative Contractors have issued Local Coverage Determinations on this topic and, generally speaking (using Local Coverage Determination #L33824 as an example [19]), covered immunosuppressive drugs are oral tablets or capsules. However, certain immunosuppressive drugs may be intravenously infused or intramuscularly injected. The majority of the immunosuppressive drugs have generic equivalents; however, certain newer agents remain available as brand only.

A beneficiary will typically gain access to the drug through a pharmacy, where applicable supplying fees to

[18] *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf.*

[19] *https://www.cms.gov/medicare-coverage-database/search.aspx.*

pharmacies (as described in section 1842(o)(6) of the Act) are paid. However, where the conditions require an infused or injectable immunosuppressive therapy, these would be administered in the physician office or outpatient setting. In this case of Part B–ID, only the cost of the drug would be covered (not the service of administration). Immunosuppressive therapies covered under Part B are paid based on pricing methodology in 1847A of the SSA (typically, this is an ASP-based payment limit). Payment limits for many immunosuppressive therapies can be found on the ASP Drug Pricing File,[20] which is updated quarterly. Cost sharing is typically 20 percent.

We are proposing to revise § 410.30(b) to specify that beginning January 1, 2023, individuals who meet the requirements as specified in section § 407.55 are eligible to receive Medicare Part B benefits for purposes of § 410.30(b).

An individual is eligible for enrollment into a Part D plan if certain conditions are met, as set out in section 1860D–1(a) of the Act. Section 423.30(a)(1)(i) of the regulations establishes that an individual is eligible for Part D if they have Medicare benefits under Part A or are enrolled in Medicare Part B. Section 423.30(a)(1)(i) would be revised to specify that an individual is eligible for Part D if they are entitled to Medicare benefits under Part A or enrolled in Part B, but does not include an individual enrolled solely in Part B for coverage of immunosuppressive drugs under § 407.1(a)(6).

Section 402 of the CAA states that the Secretary may conduct public education activities to raise awareness of the availability of more comprehensive, individual health insurance coverage (as defined in section 2791 of the Public Health Service Act) for individuals eligible under section 1836(b) of the Act to enroll or to be deemed enrolled in the medical insurance program established under this part for purposes of coverage of immunosuppressive drugs.

As a part of implementation, CMS will conduct education and outreach across the broad span of partners (that is, beneficiary advocacy groups, providers, associations, etc.) to ensure awareness and understanding of this benefit. Also, we note that all appropriate beneficiary notices, such as the Medicare based on ESRD pre-termination notice, (discussed in this proposed rule), the notice that will be provided to individuals who were previously terminated from Medicare based on ESRD to inform of the Part B–ID benefit, as well as the annual notice to individuals that have the Part B–ID benefit, will include information on the availability of, and contact information for, other comprehensive coverage that an individual may want to explore, such as Marketplace or Medicaid coverage. Additionally, as discussed in section II.B.3, we are encouraging states to provide education and assistance to individuals as part of the Medicaid redetermination process. We are also exploring steps to conduct outreach and education for beneficiaries and multiple external partners, including those who regularly assist beneficiaries with health insurance counseling, regarding the most appropriate coverage options for MSP beneficiaries transitioning off Medicare entitlement based on ESRD.

We welcome comments on our proposals implementing the Part B–ID benefit for eligible individuals.

C. Proposal on Simplifying Regulations Related to Medicare Enrollment Forms (§ 406.7 and 407.11)

We propose to revise §§ 406.7 and 407.11 to remove references to specific forms that are used to enroll in Medicare Part A and Part B, respectively. This is an administrative change that would simplify existing regulations and would have no impact on current eligibility requirements or enrollment processes or the use or availability of these forms. We propose to continue to update our forms, including form numbers, and the conditions in which each form is used, through subregulatory guidance because these are procedural, and not substantive rules.

Identifying each form in regulation as we have historically done means that rulemaking is required to change the description of those forms or the numbers of the forms, which in turn makes it challenging for CMS and SSA to update forms or to adopt new forms or new applications of existing forms as necessary. For example, the CMS–18–F–5 is currently described in §§ 406.7 and 407.11 as an application for Part A and Part B for individuals who are not eligible for benefits through Social Security or under the Railroad Retirement Act. CMS and SSA decided that the form should be used for all Part A enrollments irrespective of individual enrollee's eligibility for retirement benefits. OMB approved the use of the form under this new scope. However, in order to carry out this change, it would be necessary to revise our regulations at §§ 406.7 and 407.11 to reflect the revised uses of the form. Similarly, listing the forms in regulation also means that rulemaking is necessary to update our regulations when forms are removed from use. Currently § 407.11 lists the forms 40–D and 40–F, which are obsolete.

We are proposing to change our regulations in §§ 406.7 and 407.11 to remove all references to specific enrollment forms that are used to apply for entitlement under Medicare Part A and enrollment under Medicare Part B. Specifically, we are revising § 406.7 to provide that forms used to apply for Medicare entitlement are available free of charge by mail from CMS or at any Social Security branch or district office or online at the CMS and SSA websites. We are also proposing to make technical edits to the text to state that an individual who files an application for monthly Social Security cash benefits as defined in § 400.200 to apply also applies for Medicare entitlement if he or she is eligible for hospital insurance at that time. Similarly, we are revising § 407.11 to provide that forms used to apply for enrollment under the supplementary medical insurance program are available free of charge by mail from CMS, or at any Social Security branch or district office and online at the CMS and SSA websites. These changes would allow both agencies to quickly adapt to the needs of beneficiaries by adding, removing, or updating forms as necessary. We believe that the form numbers and descriptions would be disseminated most appropriately through sub-regulatory guidance.

We are also proposing a technical change in the last paragraph of § 406.7 to refer to ''monthly Social Security benefits'' instead of ''monthly social benefits.''

D. Modernizing State Payment of Medicare Premiums (§§ 400.200, 406.21, 406.26, 407.40 Through 407.48, 431.625, 435.4, 435.123 Through 126)

CMS seeks to modernize the Medicare Savings Programs through which states cover Medicare premiums and cost-sharing. As part of these efforts, we are proposing to update the various federal regulations that affect a state's payment of Medicare Part A and B premiums for beneficiaries enrolled in the Medicare Savings Programs and other Medicaid eligibility groups. Specifically, CMS is proposing updates at (1) § 406.21, which was last revised in 1996; (2) §§ 406.26, and 407.40 through 48, which were last revised in 1991;[21] (3) § 431.625, which

[20] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice.*

[21] We note that CMS made a minor technical update to § 407.42 to remove the reference to the

Continued

was last revised in 1988; and (4) § 400.200, which was last revised in 1983. We also propose to add new §§ 435.123 through 435.126 and to revise § 435.4 to codify in CMS Medicaid regulations the Medicare Savings Programs under section 1902(a)(10)(E) of the Act.

Our proposed rulemaking includes policy proposals to modernize the state buy-in program and technical updates to reflect statutory changes over the last three-plus decades. We also propose to codify in the regulations certain administrative practices that have evolved over the years and seek comment on alternative policies we considered that might be adopted in a final rule based on comments received. The provisions described in this section of the rule would clarify minimum requirements for the state payment of Medicare premiums and options for states to streamline eligibility and enrollment in the Medicare Savings Programs and other Medicaid eligibility groups. We believe that our proposals would improve the customer service experience of dually eligible beneficiaries under *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.* We anticipate our proposals will also advance health equity by improving low income individuals' access to continuous, affordable health coverage and use of needed health care consistent with *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.*

1. State Plan Amendment as Agreement Between State and CMS (§ 407.40)

Section 1843 of the Act provides for ''agreements'' between a state Medicaid agency and the Secretary to facilitate the payment of Part B premiums for Medicare-eligible Medicaid beneficiaries (''buy-in agreements''). All states currently have elected to enter into such agreements, and process Part B premium payments as provided under section 1843 of the Act. Under section 1818(g) of the Act, starting January 1, 1990, states could expand their buy-in agreements to enroll Qualified Medicare Beneficiaries (QMBs) in Premium Part A, with the state paying the Part A premiums on their behalf. As of the date of this proposed rule, 36 states and the District of Columbia include the payment of Part A premiums for QMBs in their buy-in agreement (''Part A buy-in states''), but 14 states use the group payer arrangement to pay Part A on behalf of QMBs under § 406.32(g) (''group payer states'').[22]

To execute agreements under section 1843 of the Act, the Secretary and states initially signed free-standing, written agreements that defined the then-scope of a state's buy-in agreement for Part B and bind the states to follow federal regulations and guidance under section 1843 of the Act. However, none of these original signed agreements have been updated for decades, despite ensuing federal statutory requirements and agreed-upon changes to state or federal buy-in policy. In fact, there have been no amendments since 1992 to any of the free-standing written agreements currently in place. None of the freestanding written agreements were modified to include buy-in for premium Part A under section 1818(g) of the Act. For example, as stated in the preamble to final rule with comment period published in the August 12, 1991 **Federal Register** (56 FR 38074), entitled ''Medicare and Medicaid; Eligibility for Premium Hospital Insurance; State Buy-In Agreements,'' (hereinafter referred to as the August 1991 final rule), states were deemed by regulation to include Part B and premium Part A coverage for QMBs in their buy-in agreement unless they opted out for either or both Parts, even though the agreements themselves were not amended to reflect this. Likewise, the existing free-standing agreements do not expressly provide for Part B coverage for two other Medicare Savings Program groups—the Specified Low-Income Beneficiary (SLMB) and Qualifying Individual (QI) groups—although, as explained in section II.D.5. of this proposed rule, CMS subregulatory guidance and operational policy consider all agreements to incorporate these eligibility groups. In lieu of amending the decades-old free-standing written agreements, CMS and states have used Medicaid state plans and state plan amendments (SPAs) to document current state buy-in election choices and modifications. We believe that the vast majority of current Medicaid state plans accurately reflect the buy-in coverage groups and elections agreed upon by CMS and the states.[23] However, there are provisions in the free-standing buy-in agreements that are not reflected in these state plan provisions, and these non-current agreements have never officially been superseded. As such, for a complete picture of the full obligations a state has agreed to under section 1843 of the Act, it is necessary to review both the free-standing agreement and deemed amendments to this agreement done through the SPA process. This is not an efficient or effective way to reflect the state's obligations under its buy-in agreement with CMS.

Section 1902(a)(4) of the Act authorizes the Secretary to specify ''methods of administration'' states should adopt under their Medicaid state plans that are ''found by the Secretary to be necessary for proper and efficient administration'' of the state's Medicaid program. We propose to use this authority to amend the definition of a state buy-in agreement at § 407.40(b) by specifying that state plan provisions addressing what a state has agreed to under sections 1843 and 1818(g) constitute the state's buy-in agreement for purposes of those sections, including the scope of a state's buy-in practice, and that all aspects of a state's buy-in agreement with the Secretary, including what is set forth in the original buy-in agreements that is not currently in the state plan, should be set forth in the state's Medicaid state plan. The state's submission of a SPA addressing what it is agreeing to under sections 1843 and/or 1818(g), and CMS's approval, would under our proposal constitute the ''agreement'' between the two parties for purposes of sections 1843 and 1818(g). This proposal would codify CMS' long-standing practice of effectuating changes in buy-in policy through the Medicaid state plans, rather than through the free-standing written agreements originally executed with each state, and also consolidate all terms of the buy-in agreement authorized or modified under sections 1843 and 1818(g) in one ''agreement'' between the parties in the form of submission and approval of relevant SPAs.

If this proposal is finalized, the free-standing buy-in agreements would be superseded by provisions related to buy-in practices within a state Medicaid plan, and, to the extent that any states seek to update their state plans, we would work with states to modify their state plans as needed and reiterate that

obsolete regulatory provision, § 435.114 (Individuals Who Would Be Eligible for AFDC Except for Increased OASDI in the Income Under Pub. L. 92–336) in the November 30, 2016 **Federal Register** (81 FR 86382), entitled ''Medicaid and Children's Health Insurance Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP,'' (hereinafter referred to as the November 2016 final rule).

[22] The group payer arrangement allows certain parties (for example, states) to pay Part A premiums for a class of beneficiaries. See Program Operations Manual System (POMS) HI 01001.230 Group Collection-General at *http://policynet.ba.ssa.gov/poms.nsf/lnx/0601001230.*

[23] States generally include this information at section 3.2 of the state plan template, under ''Coordination of Medicaid with Medicare and Other Insurance of their state Medicaid Plan.''

they bind the state to follow Medicare regulations and guidance under sections 1843 and 1818(g) of the Act.

We believe our proposal would help remove ambiguity about the prevailing buy-in policies in each state and foresee no negative impacts or substantive changes for coverage policies or buy-in processes. We welcome comments on whether there are benefits to maintaining the free-standing buy-in agreements or other unintended effects of our proposal.

Because approved state plan provisions addressing what a state has agreed to under sections 1843 or 1818(g) or both would constitute the buy-in agreement referenced in those sections, and there are existing mechanisms for: (1) A state to modify or terminate this buy-in agreement through the State plan amendment process; and (2) CMS to enforce under section 1904 of the Act compliance with the state plan requirements that reflect a state's buy-in agreement, we are also proposing to delete § 407.45, which currently addresses a decision by a state to terminate its buy-in agreement, and CMS termination of a state's buy-in agreement for a state failure to comply with it.

2. Limiting State Liability for Retroactive Changes and Related Updates (§ 407.47)

Under section 1843 of the Act, states must pay Part B premiums for any individual starting the first month they are both a member of the state buy-in coverage group specified in the buy-in agreement and eligible for Part B.[24] In some instances, SSA determines Medicaid beneficiaries eligible for Medicare for a retroactive period. This generally occurs when an individual under age 65 who files a claim for disability benefits at SSA [25] receives a favorable social security disability insurance (SSDI) award multiple years after the initial application, and SSA determines the individual eligible for SSDI benefits at or up to 12 months prior to the point of application, even though they were not able to receive SSDI payments timely because eligibility had not yet been determined. Individuals entitled to SSDI become entitled to premium-free Medicare Part A after 24 months of entitlement to SSDI. As described in the examples that follow, on occasion, an individual's favorable determination of SSDI is retroactive more than 24 months, in which case the determination of SSDI eligibility for a retroactive period for the individual means that the individual's Part A entitlement is retroactive as well. The individual is also retroactively eligible to enroll in Part B over this period.[26] However, SSA does not enroll the individual in Part B for the past months unless the individual pays SSA a lump sum amount reflecting the total costs of Part B premiums the individual would have paid had they been enrolled in Part B during that time or the individual is a member of the state buy-in coverage group as explained in this section of this rule.

Retroactive Medicare Part A entitlement for a Medicaid-eligible individual can have multiple implications for state Medicaid agencies. First, states may, under their buy-in agreement, be liable for Medicare Part B premiums for the retroactive period. If a state learns that SSA established retroactive Medicare Part A entitlement for a member of a buy-in coverage group, the state must review the individual's eligibility for Part B buy-in over the retroactive period. Under section 1843(d)(2) of the Act and the current version of § 407.47(a), states must pay Medicare Part B premiums for individuals beginning with the start of the buy-in coverage period. The buy-in coverage period begins with the first month a Medicaid beneficiary is enrolled in Medicaid and qualifies for Medicare, with no limit on retroactivity.[27] Therefore, states are retroactively liable for Medicare premiums back to the first month such individuals are determined eligible for Medicare, even in instances involving lengthy delays in Medicare determinations that result in effective dates far in the past.

The following two examples illustrate how retroactive Part A Medicare entitlement for buy-in coverage group members currently affects state liability for retroactive Part B premiums.

Example 1—Individual is receiving SSI and is enrolled in Medicaid under § 435.120 (''Individuals receiving SSI'') or *meets the eligibility requirements under § 435.121* (''Individuals in states using more restrictive requirements for Medicaid than the SSI requirements'' [28]) and is retroactively entitled to Part A.

- A 55-year-old individual applies for disability-related benefits at SSA in January 2014. SSA determines that the individual is eligible for SSI effective February 2014, and the individual is enrolled in Medicaid and SSI in the same month. (As discussed further in section II.D.5. of this preamble, all states include SSI-related individuals in their buy-in coverage group.) As noted previously, SSA will concurrently determine SSI and SSDI eligibility for an individual who files a disability-related claim. While the disability evaluation is the same for both programs, other programmatic differences result on occasion in some individuals receiving favorable SSI determinations while their SSDI claims are pending.[29]
- In January 2019, SSA determines the individual to be entitled to SSDI, dating back to January 2013 (one year prior to the disability-related application). The individual's entitlement to Medicare Part A is therefore effective in January 2015. The individual would also be eligible to

[24] For individuals enrolled in Medicaid eligibility groups related to cash assistance and QMB, SLMB, and QI, § 407.47(b) and (c) specify that the buy-in coverage period begins the later of the *first month* the individual is a member of a buy-in coverage group (that is, the effective date of the individual's underlying coverage) and eligibility for Part B, or the effective date of the buy-in agreement or modification that includes the buy-in coverage group to which the individual belongs. However, for individuals enrolled in one of the other Medicaid eligibility groups, § 407.47(c) specifies that the buy-in coverage period starts the later of the *second month* the individual meets the requirements for both eligibility in the buy-in coverage group and Medicare Part B, or the effective date of the buy-in agreement or modification that includes the buy-in coverage group to which the individual belongs.

[25] When individuals file for disability benefits, SSA determines eligibility for both SSDI and supplemental security income (SSI). The same disability requirements apply to both programs, but other requirements differ. As a result, some individuals receive an SSI award while their SSDI claim or appeal is pending.

[26] Individuals who are entitled to premium-free Part A are also eligible to enroll in Medicare Part B under § 407.10(a)(1).

[27] For individuals enrolled in Medicaid eligibility groups related to cash assistance and QMB, SLMB and QI, § 407.47(b) and (c) specify that the buy-in coverage period begins the later of the *first month* the individual is a member of a buy-in coverage group (that is, the effective date of the individual's underlying coverage) and eligibility for Part B, or the effective date of the buy-in agreement or modification that includes the buy-in coverage group to which the individual belongs. However, for individuals enrolled in one of the other Medicaid eligibility groups, § 407.47(c) states that the buy-in coverage period starts the later of the *second month* the individual meets the requirements for both eligibility in the buy-in coverage group and Medicare Part B, or the effective date of the buy-in agreement or modification that includes the buy-in coverage group to which the individual belongs.

[28] States that have elected the authority provided under section 1902(f) of the Act to apply financial eligibility methodologies more restrictive than SSI's must provide Medicaid eligibility to certain low-income individuals who seek Medicaid eligibility on the basis of being 65 years of age or older or having blindness or disability.

[29] A notable difference in criteria between the two programs is that individuals can seek SSDI payments for up to 12 months before the date of application under § 404.622 of chapter 20, whereas individuals can obtain SSI payments no earlier than the first month after they applied for benefits under § 416.335 of chapter 20.

enroll in Medicare Part B in the same month.

• Because the individual was enrolled in a Medicaid eligibility group that was (and remains) included in the state's buy-in agreement at the point at which the individual became eligible for Part B, and the individual maintained enrollment in the eligibility group, the state Medicaid agency is liable for the individual's Part B premiums effective January 2015 (that is, 48 months of retroactive Part B premium liability).

Example 2—Individual who is enrolled in Medicaid under § 435.119 (''Coverage for individuals age 19 or older and under 65 at or below 133 percent of the federal poverty level (FPL),'' or the ''adult group'') is retroactively entitled to Part A.

• A 55-year-old individual applies for disability-related benefits at SSA in January 2014. The individual simultaneously applies for Medicaid. The state determines the individual eligible for the adult group and enrolls him/her in it effective February 2014. The individual's Medicaid eligibility group, the adult group, is included in the state buy-in agreement. (As discussed further in section II.D.5. of this preamble, some states include all Medicaid eligibility groups in their state buy-in coverage group, which means that all eligibility groups added to a state's plan, including ones the state adopted after the state's buy-in election, are included in the buy-in coverage group.)

• In January 2019, SSA determines that the individual is entitled to SSDI, dating back to January 2013 (1 year prior to the disability-related application). The individual's entitlement to Medicare Part A is therefore effective in January 2015. The individual would also be eligible to enroll in Medicare Part B in the same month.

• The state is liable for Part B premiums effective January 2015, the first month the individual is a member of buy-in coverage group and eligible for Part B (that is, 48 months of retroactive Part B premium liability).[30]

A second implication for states when Medicare enrollment is established retroactively for Medicaid beneficiaries is that the state must determine if it has already paid a Medicaid claim for the individual, because Medicare is the primary payer for dually eligible beneficiaries when services are covered by both programs. In this situation, under section 1902(a)(25)(B) of the Act and § 433.139(d), the state must seek to recoup Medicaid payments to providers for any Medicare-covered services during the period of retroactive Medicare coverage, unless the state determines it is not cost-effective to do so. If Medicaid recoups funds paid to a provider, the provider may bill Medicare, which may require the provider to obtain an exception to Medicare's 1-year timely filing requirement as described in CMS guidance published in Pub. 100–04, Medicare Claims Processing Manual, Chapter 1, Section 70.7.3.[31] However, the greater the length of time from the date of service, the more labor-intensive and administratively burdensome it is for the state to recoup Medicaid payments from providers, for the provider to submit a claim to Medicare, and for Medicare to process it.

Retroactive Medicare determinations have also resulted from operational and systems problems preventing the federal government from issuing timely SSDI awards to SSI beneficiaries. Over the past 20 years, SSA has initiated efforts to retroactively enroll SSI recipients in SSDI and Medicare (known as the Special Disability Workload (SDW))—dating as far back as the 1970s—to remedy operational and systems shortcomings that prevented SSA from originally screening individuals entitled to SSI for disability insurance benefits. SSI beneficiaries who qualify for Medicaid are buy-in coverage group members in all states.[32] Under section 1843(d)(2) of the Act, and the current version of § 407.47(g), states technically became liable for retroactive Part B premiums for such beneficiaries going many years back, starting the first month SSA retroactively established Part A entitlement, with no limit on this retroactivity.[33] In 2009, a federal district court ruled that it was not reasonable to require retroactive Part B premium payments by states for long past periods for which the state could not get the benefit of the retroactively determined Medicare eligibility that would be covered by these premium payments and the state had already incurred the costs of coverage under Medicaid (*NY State* v. *Sebelius* (N.D. NY, June 22, 2009)). In response to this ruling, CMS implemented a policy under which it does not impose an obligation on states to make retroactive Part B premium payments when SSA operational and systems errors cause lengthy delays in SSDI awards and Medicare eligibility determinations for full-benefit Medicaid beneficiaries and the state cannot obtain the benefit of the Medicare coverage associated with the Part B premium payments the state would otherwise be obligated to make. In addition, CMS currently allows states to request relief on a case-by-case basis from retroactive premiums for periods involving lengthy delays in Medicare determinations to the extent that such delays cover periods for which the state asserts it is too late to benefit from Medicare coverage. CMS considers the potential for beneficiary harm and the state's recoupment policy (that is, time limits on state actions to recoup Medicaid payments from providers) as factors in assessing these state requests. We believe rulemaking is warranted to ensure that the regulations reflect a clear and consistent policy, transparent to all states, on how CMS is addressing the equitable concerns addressed in the previously discussed court decision and subsequent CMS policy implementing it.

Based on our analysis discussed in this section of this rule of when a retroactive period would become so long that the burdens of retroactively processing claims outweigh the benefits of leveraging retroactive Medicare coverage, we propose to add a new paragraph (f)(1) at § 407.47 to establish a general rule under which state liability for retroactive Medicare Part B

[30] Individuals eligible for Medicare are not eligible for coverage under the adult group under § 435.119. A state must redetermine propsective eligibility for adult group beneficiaries under § 435.916(d) when they become eligible for Medicare. However, an adult group individual who is retroactively entitled to Part A would not in this example have his or her eligibility group retroactively adjusted, and, assuming the state includes all Medicaid eligibility groups in its buy-in agreement, the state would have to enroll this individual in Part B.

[31] Available on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c01.pdf.*

[32] In most states, individuals receiving or who are deemed to be receiving SSI are mandatorily eligible for Medicaid under various groups described in 42 CFR part 435, subpart B. A minority of states have elected the authority described in section 1902(f) of the Act to apply financial eligibility methodologies more restrictive than SSI's (''209(b)'' states, named after the section of the Social Security Act Amendments of 1972, Pub. L. 92–603, that authorized the more restrictive methodology). In 209(b) states, individuals receiving or who are deemed to be receiving SSI are not mandatorily eligible for Medicaid, but 209(b) states must afford them certain favorable treatment (for example, states disregard SSI benefits and incurred medical expenses in determining eligibility for SSI beneficiaries; see 42 CFR 435.121(f)).

[33] In states with 1634 agreements (''1634 states''), SSA automatically qualifies individuals entitled to SSI for Medicaid and, once they qualify for Medicare, CMS automatically enrolls those individuals in Part B buy-in. In such states, the retroactive disability and Medicare determinations for the SDW individuals resulted in CMS billing for retroactive Part B premiums going back several years. States without 1634 agreements also owed Part B premiums for the individuals enrolled in SSI and Medicaid during past period, but CMS only billed the state after the state requested buy-in for these individuals.

premiums for full-benefit [34] Medicaid beneficiaries under a buy-in agreement would be limited to a period no greater than 36 months prior to the date of the Medicare enrollment determination (that is, January 2016 in examples 1 and 2). We believe that this proposed revision conceptually aligns with the 2009 court decision limiting state liability for retroactive Medicare Part B premiums for full-benefit Medicaid beneficiaries.

Our proposal would reduce administrative burden on providers for beneficiaries with Medicare determinations more than 36 months in the past, by relieving providers of Medicaid recoupment activities states may find cost-effective to pursue and the need, therefore, to resubmit the claim to Medicare. We estimate that approximately 700 Medicaid beneficiaries per month become retroactively eligible for Medicare for a period of greater than 36 months. It would not create beneficiary liability since Medicaid would have covered any medical costs the beneficiary incurred, and absent state buy-in, the individual would not be enrolled in Part B and, therefore, would not owe any premiums for periods greater than 36 months in the past. We believe that adopting a defined time limit for retroactive Part B premium liability for full-benefit Medicaid beneficiaries reduces burden and promotes efficiencies, clarity and predictability for providers, states, and CMS and is therefore consistent with the authority under section 1902(a)(4) of the Act for the Secretary to find methods of administration ''necessary for proper and efficient administration'' of the Medicaid program. We note that our proposal does not negate the Secretary's continuing authority to grant relief in cases of federal government error under section 1837(h) of the Act.

We also propose a ''good cause'' exception in proposed paragraph (f)(2). This provision would allow an exception for retroactive periods of more or less than 36 months if a currently unforeseen situation arises in which application of the proposed paragraph (f)(1) would result in harm to a beneficiary. Proposed paragraph (f)(2) would also allow CMS to provide relief to states for periods of less than 36 months if we determine the state cannot benefit from Medicare and limiting state liability would not result in harm to the beneficiary. We seek comment on our proposal for a good cause exception.

Although, as previously noted, we believe that a 36-month retroactive limit strikes the right balance between payment accuracy and reducing administrative burden, we considered proposing limits on state premium liability for time periods longer or shorter than 36 months, including a range from 24 to 60 months. We propose a 36-month limit for two primary reasons. First, we believe Medicaid Management Information Systems (MMIS) would still have Medicaid claims data for dates of service going back at least 36 months. Although state data retention policies vary, state MMIS must maintain sufficient data for multiple purposes, including claims processing, third party recovery, and program integrity efforts to prevent and detect improper payments of claims submitted by providers. Second, the length of time in our proposal is consistent with section 1902(a)(25)(I)(iv) of the Act, under which states must require health insurers, including Parts C and D plans, to accept claims submitted by the state within a minimum of 3 years from the date of service. We invite comment on our proposed 36-month limit, including how it compares with state Medicaid recoupment time-limits, or on alternative options to balance accuracy and burden.

Our proposal to limit state liability for retroactive Part B premiums applies only when Medicaid beneficiaries receive retroactive SSDI and Medicare eligibility determinations from SSA. We are aware that Medicare entitlement delays can also stem solely from federal buy-in system errors, as opposed to retroactive SSDI and Medicare determinations. Such buy-in enrollment delays can occur if a state submits a valid buy-in request to federal systems, but the federal agencies do not process the buy-in enrollment (that is, enroll the individual in Medicare with the state paying the Part A or B premiums or both) and promptly remedy the error. Under section 1837(h) of the Act, the Secretary has discretion to grant relief to correct or eliminate the effects of such errors or inaction.

We do not propose to extend the 36-month retroactive limit or good cause exception to such enrollment delays which can affect all members of a state buy-in coverage group, including individuals enrolled in partial-benefit Medicaid. Such individuals may need Parts A or B or both for a past period to cover unpaid medical bills. The existing process for these cases allows the Secretary to consider the conditions of each case, and avoid harm to the beneficiaries.

We also propose modifying § 407.47 to clarify our current requirement that states consider all bases of membership in the buy-in coverage group to determine the start date of buy-in. Under section 1843(d)(2) of the Act and § 407.47(a), the beginning of an individual's buy-in coverage period depends on the type of medical assistance they receive under the Medicaid state plan. For individuals enrolled in Medicaid eligibility groups related to cash assistance, as defined in section II.D.4. of this preamble, and QMB, Specified Low-Income Medicare Beneficiary (SLMB) and Qualifying Individual (QI), § 407.47(b) and (c) require the buy-in coverage period to begin the later of the *first month* the individual is a member of a buy-in coverage group (that is, the effective date of the individual's underlying coverage) and eligible for Part B, or the effective date of the buy-in agreement or modification that includes the buy-in coverage group to which the individual belongs. For individuals enrolled in one of the other Medicaid groups, § 407.47(c) requires that the buy-in coverage period starts the later of the *second month* the individual meets the requirements for both eligibility in the buy-in coverage group and Medicare Part B, or the effective date of the buy-in agreement or modification that includes the buy-in coverage group to which the individual belongs.

However, many individuals who qualify as a QMB or a SLMB also qualify under separate Medicaid eligibility groups. While an individual's separate Medicaid eligibility or SLMB eligibility can be retroactive up to 3 months before the application under § 435.915, QMB eligibility is effective no earlier than the month following the month of the determination of such eligibility under sections 1902(e)(8) and 1905(a) of the Act. Thus, if a state determines that an individual is eligible for the QMB eligibility group and a separate Medicaid eligibility group, the individual may first become designated as a member of the buy-in coverage group corresponding to the non-QMB Medicaid eligibility group under which the individual is determined eligible, based on the effective date of such eligibility before they qualify for the buy-in coverage group corresponding to the QMB eligibility group. To determine the start date of the buy-in coverage period, our proposal clarifies at paragraph (a)(2) that the state must take into account the earlier of the buy-in effective dates for the applicable group.

[34] ''Full-benefit'' Medicaid coverage, in the context of individuals who are considered ''dually'' eligible, generally refers to the package of services, beyond coverage for Medicare premiums and cost-sharing, that certain individuals are entitled to under § 440.210 and § 440.330.

For example, if a Medicare-eligible individual—

- Applies for Medicaid on January 1 of a particular calendar year;
- Is determined in January to be eligible under the eligibility group described in section 1902(a)(10)(A)(ii)(X) of the Act (relating to individuals who have incomes up to the FPL and are either 65 years old or older or with disabilities, which we consider to be an ''other Medicaid eligibility group'' under our proposed § 407.42(b)(3)) retroactive to October 1 of the previous calendar year (under § 435.915(a));
- Is determined in January to meet all eligibility requirements for the QMB eligibility group; and
- The individual's state has elected to include all Medicaid beneficiaries eligible for Medicare in its buy-in agreement, then Part B buy-in starts on November 1 of the previous calendar year (that is, the buy-in start date for ''other Medicaid eligibility groups,'' which is the second month the individual is eligible for the Medicaid eligibility group and Medicare).

While the individual's QMB eligibility under the state plan will not become effective until February of the particular calendar year, Part B buy-in starts on November 1 of the previous calendar year, because the individual was eligible in a Medicaid eligibility group that was included in the state's buy-in coverage group effective in October of the previous calendar year (that is, the buy-in start date for ''other Medicaid eligibility groups,'' which is the second month the individual is eligible for a buy-in coverage group and Medicare).

We believe that our proposal on the effective date of buy-in coverage for individuals who qualify for the buy-in coverage group upon multiple bases will provide greater transparency and certainty to states and beneficiaries, and address confusion about existing requirements.

3. Technical Changes to Regulations on State Payment of Medicare Premiums

a. Revisions to General Definitions (§ 400.200)

Section 400.200 includes general definitions applicable to chapter IV of Title 42. In this section, we describe our proposed revisions and additions to the Medicare Savings Program definitions in § 400.200.

As explained in section II.D.3.h of this proposed rule, we propose to amend Medicaid regulations to add a new definition of the Medicare Savings Programs and to codify the Qualified Medicare Beneficiary, Specified Low Income Beneficiary, Qualifying Individuals, and Qualified Disabled Working Individual eligibility groups for the first time since their enactment. As such, we propose to replace the existing definitions of QMB and QDWI in § 400.200 with streamlined references to the proposed QMB definition in § 435.123 and the proposed QDWI definition in § 435.126, respectively. We also propose to add definitions for the Medicare Savings Programs, SLMB, and QI in § 400.200 that reference the corresponding proposals defining the Medicare Savings Programs in § 435.4 and the proposed codification of SLMB in § 435.124 and QI in § 435.125. These proposals in § 400.200—and related proposals in Part 435 would bring the regulations in conformance with existing statute and policy and promote consistency and clarity for states.

b. Revisions to Individual Enrollment (§ 406.21)

Paragraph (a) of § 406.21 describes basic limitations on the timing of enrollment in Medicare Part A, in which an individual eligible for Part A may only enroll during his or her IEP, a GEP, an SEP, or, for HMO/CMP enrollees, a transfer enrollment period, as set forth in paragraphs (b) through (f). We propose to modify paragraph (a) to specify that such timing limitations do not apply to individuals enrolling in Part A through a buy-in agreement, as defined in § 407.40. The proposal would codify long-standing policy that QMB-eligible individuals may enroll in Part A at any time of year, without regard to the enrollment periods currently specified in paragraph (a). We propose this change to improve the readability and technical accuracy of the regulation text. We do not believe our proposed update to the regulation text would create any meaningful change in existing CMS policy.

c. Revisions to Enrollment Under State Buy-In (§ 406.26)

Section 406.26 describes enrollment in Medicare Part A through the buy-in process. We propose to add a new paragraph (a)(3) to codify long-standing policy against discrimination in the enrollment process. Proposed paragraph (a)(3) would specify that states with a buy-in agreement in effect must enroll any applicant who meets the eligibility requirements for the QMB eligibility group, with the state paying the premiums on the individual's behalf. This proposal, consistent with current policy, prohibits states from applying a cost-effectiveness test to choose which individuals to enroll in QMB. For instance, states cannot restrict QMB eligibility to those individuals for whom paying the Medicare premium would cost less than covering them through Medicaid alone.

We also propose a revision to paragraph (b)(2) because the current language has proven to be a source of confusion in our interactions with states and other stakeholders. The current paragraph (b) establishes that coverage under buy-in begins with the latest of: (1) The third month following the month in which the agreement modification covering QMBs is affected, (2) the first month in which the individual is entitled to premium hospital insurance under § 406.20(b) and has QMB status, or (3) the date specified in the agreement modification. We propose amending paragraph (b)(2) to clarify that, under a buy-in agreement, as defined in § 407.40, QMB-eligible individuals can enroll in premium hospital insurance (that is, Premium Part A) at any time of the year, without regard to Medicare enrollment periods. This proposal would codify long-standing policy. (The ability to enroll without regard to Medicare enrollment periods was discussed in the rulemaking for § 406.26 in the August 1991 final rule.)

d. Revisions to Enrollment Under a State Buy-In Agreement (§ 407.40)

We propose a series of revisions to § 407.40 to reflect statutory updates and codify agency practices related to buy-in agreements.

Section 407.40(a) describes pertinent legislative history on the state buy-in agreements. We propose to add new paragraphs (a)(6) through (a)(9) to cover other statutory changes since § 407.40 was last updated in 1991.

- Proposed paragraph (a)(6) references the establishment of the SLMB eligibility group, as of January 1993, through the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).
- Proposed paragraph (a)(7) references the establishment of the QI eligibility group, effective January 1998 through the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33).
- Proposed paragraph (a)(8) references changes to the federal resource standard for QMB, SLMB, and QI to align with those under the Part D program in the Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275) effective January 2010. This law also required SSA to transfer information from a low-income subsidy (LIS) application to the state Medicaid agency, requiring the agency

to use the information to initiate an MSP application.

• Proposed paragraph (a)(9) references the permanent extension of the QI eligibility group through the Medicare Access and CHIP Reauthorization Act (Pub. L. 114–10) effective April 16, 2015.

• Proposed (a)(10) references the expansion of QMB, SLMB and QI under section 402 of CAA, 2021 (Pub. L. 116–260) to cover individuals who are enrolled in the Part B–ID benefit.

Paragraph (b) defines terms related to buy-in agreements. Currently, paragraph (b) states that the definitions apply as used in this section, unless context indicates otherwise. However, the terms defined are used throughout subpart C and not solely in § 407.40. Therefore, we propose to replace the term ''section'' with the term ''subpart C.''

We also propose the following changes to the definitions in paragraph (b):

• To revise the definition for aid to families with dependent children (AFDC). As further explained in section II.D.3.e. of this proposed rule, the AFDC program is a cash assistance program that is obsolete but still relevant to buy-in, because some Medicaid eligibility groups remain tied to AFDC, as that program existed as of July 16, 1996, prior to its elimination.

• To remove the definition of ''Qualified Medicare Beneficiary'' because the term is already defined in § 400.200 to prevent confusion stemming the term being defined in two different places in current regulations.

• To revise the definition of state buy-in agreement, as discussed in detail in section II.B. of this proposed rule.

• To add a definition of a ''1634 state'' to mean a state that has an agreement with SSA, in accordance with section 1634 of the Act, for SSA to determine Medicaid eligibility on behalf of the state for individuals residing in the state whom SSA has determined eligible for SSI. We are proposing to define this term to improve the readability of the regulation text and codify the term as used today.

• To add a definition of buy-in coverage group to mean a coverage group described in section 1843 of the Act that is identified by the state and is composed of multiple Medicaid eligibility groups specified in the buy-in agreement. We are proposing to define this term to improve the readability of the regulation text and codify the term as used today.

Paragraph (c) describes basic rules for enrollment under buy-in agreements. We propose to revise paragraph (c)(1) under § 407.40 to align with proposed new paragraph (a)(3) under § 406.26, which reflects the current prohibition against discrimination in enrollment and streamlined enrollment processes under buy-in. Specifically, proposed § 407.40(c)(1) would clarify that states with buy-in agreements in effect must enroll any individual who is eligible to enroll in Part B under § 407.10 and who is a member of the buy-in coverage group, with the state paying the premiums on the individual's behalf. States cannot apply a cost-effectiveness test to choose which individuals to enroll in Part B buy-in. For instance, states cannot withhold buy-in from those who are not separately eligible for full-benefit Medicaid coverage. Additionally, we propose new text to clarify that states initiate buy-in for eligible individuals who are enrolled in the buy-in coverage group at any time of the year, without regard to Medicare enrollment periods. If a member of a buy-in coverage group is already enrolled in either Medicare Part A or B, the state would directly enroll the individual in buy-in and refrain from referring the individual to SSA to apply for Medicare.

We also propose to add new paragraph (c)(4) to reflect that in a 1634 state, CMS will initiate, on behalf of the state, Part B buy-in for individuals receiving SSI. We are proposing to codify this policy to clarify that all states must ensure that buy-in is initiated, as this current policy has been inconsistently applied in some states.

We also propose to add new paragraph (c)(5) to codify a requirement that premiums paid under a buy-in agreement are not subject to increase because of late enrollment or reenrollment.

e. Revisions to Buy-In Coverage Groups Available for Part B (§ 407.42)

Section 407.42 describes the Part B-related buy-in coverage groups authorized under section 1843(b) through (g) of the Act for the 50 states, the District of Columbia, and the Northern Mariana Islands. Each buy-in coverage group in paragraph (a) includes multiple Medicaid eligibility groups that pertain to dually eligible beneficiaries. Current paragraph (a) identifies individuals who receive, or are deemed to receive, SSI or state supplemental program (SSP) benefits (or both), and are categorically eligible under the state's Medicaid plan. Every buy-in coverage group option described in paragraph (b) includes this population, making it a mandatory buy-in population. Paragraph (a) also affords states the option to target in their buy-in population individuals who are receiving or are treated as receiving AFDC as deemed recipients of cash assistance (in addition to individuals receiving or deemed to be receiving SSI or SSP).

Federal law eliminated the AFDC program in 1996 and, with it, the Medicaid eligibility link to receipt of AFDC.[35] Some Medicaid eligibility groups that covered individuals deemed eligible for AFDC are now obsolete, such as the group serving individuals who have lost AFDC due to increased earnings or hours from employment described at 42 CFR 435.112. However, states must treat beneficiaries in two Medicaid eligibility groups as if they are receiving AFDC for the purposes of Medicaid eligibility determinations under section 1902(a)(10)(A)(i) of the Act. First, under section 473(b) of the Act, states must consider individuals who are receiving adoption assistance, foster care, or guardianship care under title IV–E of the Act (''children eligible based on title IV–E'') as deemed recipients of AFDC. Second, section 1931(b)(1)(A) of the Act (relating to Medicaid eligibility for low-income families) requires that states treat individuals eligible under this provision as receiving AFDC.

All states except one have elected the option under current paragraph (a) to cover individuals who are deemed recipients of the former AFDC program as cash assistance recipients for buy-in. CMS guidance has recognized[36] children eligible based on Title IV–E as optional deemed cash assistance recipients for buy-in because they are deemed recipients of AFDC. Although we also consider individuals eligible under section 1931 of the Act to be deemed recipients of the former AFDC program, we have not previously identified such individuals as optional deemed cash recipients for the purposes of buy-in.[37] As a result, states opting to cover deemed AFDC recipients as cash assistance recipients for buy-in possibly

[35] See section 103(a)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193). The Temporary Assistance for Needy Families (TANF) program replaced AFDC. However, TANF is not linked to Medicaid coverage and is therefore not a Medicaid eligibility group in the buy-in coverage groups.

[36] See Pub. 100–24, State Buy-In Manual, Chapter 1, Section 130.H (November 1996) and December 17, 1987 **Federal Register** (56 FR 47929), entitled ''Medicaid Program; Relations With Other Agencies, Miscellaneous Medicaid Definitions, Third Party Liability Quality Control, and Limitations on Federal Funds for Abortions.''

[37] Prior to the repeal of title IV–A of the Act, most individuals now covered under section 1931 of the Act received Medicaid based on their receipt of AFDC and were thus optional cash assistance recipients for the purposes of buy-in.

may not be considering individuals eligible under section 1931 of the Act to be cash assistance recipients for buy-in. States generally only cover individuals covered under section 1931 of the Act if they have opted to cover all Medicaid eligibility groups, Group 3 described in this section of this rule.[38]

In this proposed rule, we clarify that individuals eligible under section 1931 of the Act are optional deemed recipients of cash assistances for the purposes of buy-in based on their classification as deemed recipients of AFDC. We propose to preserve the option in current paragraph (a), allowing states to designate all deemed recipients of AFDC (that is, both children eligible based on title IV–E and individuals covered under section 1931 of the Act) as cash assistance recipients with eligibility groups related to SSI/SSP, or to only cover individuals who receive or are deemed to receive SSI/SSP as cash assistance recipients for buy-in.

Further, under § 407.42, states can cover Part B premiums for Medicaid beneficiaries who are not receiving or being treated as receiving cash assistance (SSI/SSP). States that opt to cover more individuals have the option under paragraph (b)(1) to either select a buy-in coverage group that contains all Medicaid eligibility groups under the state plan (that is, all Medicaid beneficiaries), or SSI/SSP-related eligibility groups and other discrete eligibility populations. By selecting Group 2 in paragraph (b)(2), states agree to pay the Part B premiums for QMBs in addition to SSI/SSP-related eligibility groups, as permitted under section 1843(h) of the Act. As mentioned in section B of this preamble, CMS deemed all buy-in agreements to include the payment of Part B premiums for QMBs unless states opted out. No states opted out of including QMB in their buy-in agreements.[39]

However, § 407.42 does not reference SLMB and QI, two additional MSP groups enacted after the publication of the August 1991 final rule and treated like QMB under our current buy-in policy. Section 1843(h)(3) of the Act specifies that the reference to QMB also includes SLMB. While our subregulatory guidance published for states in 1996 treats SLMB like QMB, combining them under the same buy-in coverage group, we have not updated the regulation text at § 407.42 to mirror the statute or current practice.[40] Section 1843(h) of the Act does not specifically mention QI as a buy-in eligibility group. However, longstanding CMS operational policy on buy-in agreements (that is, the SPA pre-print pages describing coordination of Medicaid with Medicare and Other Insurance) treats QI like QMB and SLMB, linking the three eligibility groups under one buy-in coverage group.

Paragraph (b) describes seven buy-in coverage groups based on a combination of the underlying eligibility groups in paragraph (a). However, the groups are redundant. Streamlining AFDC-related eligibility groups and clarifying that the reference to QMB includes QMB, SLMB and QI, makes Groups 2, 4, and 6 identical (that is, each includes Medicaid eligibility groups related to SSI/SSP and QMB, SLMB and QI) and Groups 3, 5, and 7 identical (that is, each includes eligibility groups related to SSI/SSP).

Section 407.42 has been a source of confusion for states and other stakeholders. We believe that replacing it with a streamlined listing of the buy-in coverage groups, together with their underlying eligibility groups, is more readily understandable for all parties. Therefore, we propose replacing the current framework in § 407.42 with a more succinct framework. First, we propose replacing the existing regulation text in paragraph (a) with a general requirement that states must select one of the buy-in coverage groups listed in paragraph (b). We then propose modifying the remaining buy-in coverage groups in paragraph (b) together with the eligibility groups they contain.

The modified buy-in coverage groups we propose in paragraph (b) are as follows:

- *Group 1:* Individuals who are categorically eligible for Medicaid and:

++ Receive or are deemed to receive SSI or SSP, or both; and

++ At state option, individuals described in section 1931 of the Act and children with adoption assistance, foster care, or guardianship care under title IV–E.

- *Group 2:* All individuals described in Group 1 and three MSP eligibility groups (QMB, SLMB, and QI).
- *Group 3:* All Medicaid Eligibility Groups: This group includes all individuals eligible for Medicaid.

Our proposal reflects the three buy-in coverage groups that remain after updating and simplifying the eligibility groups. We propose listing them from narrowest to broadest and include headings to reflect the eligibility groups they contain.

Since no states have opted out of including the payment of Part B for QMBs through their buy-in agreements, all state buy-in agreements currently include the proposed groups 2 or 3. However, since states still retain the option to narrow their agreements to include only eligibility groups related to cash assistance in group 1, our proposal preserves that option. In addition, since nearly all states include in their buy-in agreement as cash assistance recipients individuals eligible under section 1931 of the Act and children eligible based on title IV–E under the deemed AFDC eligibility groups in the current § 407.42(a)(4) (that is, the remaining Medicaid eligibility groups covering individuals treated as recipients of the former AFDC program), we propose maintaining this discrete option. As described in section II.D.4. of this proposed rule, we seek comment on alternatives considered that might be adopted in a final rule based on comments received. The first alternative would consolidate proposed groups one and two, further reducing the number of buy-in coverage groups from three to two, to mirror the current landscape and simplify the regulation. The other alternative would require states to treat all deemed recipients of the former AFDC program (that is, children eligible based on Title IV–E and individuals covered under section 1931 of the Act) as deemed recipients of cash assistance for buy-in to further streamline the regulation.

f. Revisions to Termination of Coverage Under a State Buy-In Agreement (§ 407.48)

Section 407.48 describes the process for terminating an individual's coverage under a state buy-in agreement when he/she is determined ineligible by either CMS or the state. States must communicate all disenrollment information through an established data exchange process with CMS. Currently, paragraph (c)(1) indicates that CMS must determine ineligibility or receive a state ineligibility notice by the ''25th day . . .'' in order for the termination date to be calculated using that month. However, CMS no longer applies the uniform monthly deadline of the 25th day of the month for states to send CMS buy-in terminations. Instead, CMS has applied the Current Operating Month (COM) schedule, a schedule developed

[38] States that do not cover all Medicaid eligibility groups in their Part B buy-in coverage group do not generally pay the Part B premiums for individuals described in section 1931 of the Act unless they are simultaneously enrolled in another Medicaid eligibility group included in the buy-in coverage group (that is, they also qualify for an MSP eligibility group).

[39] The August 1991 final rule (56 FR 38076).

[40] Pub. 100–24, State Buy-In Manual, Chapter 1, Section 110 (November 1996).

by SSA with varying monthly processing deadlines, to determine CMS' deadline to receive state terminations in a given month. Each quarter, CMS prospectively conveys the upcoming quarterly COM schedule to states. To align the regulation with current agency practice, we propose amending paragraphs (c)(1) and (c)(2) by replacing the reference to the 25th day with a reference to a new paragraph (e). Our proposed new paragraph (e) would require CMS to prospectively convey to states, on a quarterly basis, a schedule of processing cut-off dates for each calendar month.

Delays in the receipt of buy-in terminations by CMS impacts state and beneficiary liability after individuals lose eligibility for Medicaid and the state buy-in coverage group.[41] As currently described in paragraph (c)(1), CMS must receive a state buy-in termination notice during the second month after the individual loses eligibility in order for CMS to stop charging the state for Part B premiums the first month the individual no longer qualifies. For example, if an individual loses eligibility for Medicaid and buy-in starting June (that is, is eligible through May), CMS must receive the state termination notice by the August COM deadline in order for state liability to end in June (that is, state premium liability continues through May).

However, if delays in data exchange cause the state to send the termination notification for an individual with an effective date that is earlier than the second month before the processing month, under paragraph (c)(2), CMS will adjust the buy-in termination to the second month prior to the month CMS receives the deletion request. For example, state termination requests received in the processing month of September can have an effective termination date of no earlier than July (that is, state premium liability continues through June). If the state requested an effective date prior to July (for example, April), CMS will automatically adjust the effective date of determination to July (that is, state premium liability continues through June). The state remains liable for premiums through the month of June.

When federal systems eventually process the buy-in termination, SSA begins charging the beneficiary for Part B premiums. Consistent with paragraph (c)(2), SSA can retroactively recoup up to 2 months of premiums from the individual's Social Security check. In practice, after buy-in termination, SSA deducts 3 months at a time to account for 2 months' retroactive premiums plus the current processing month.[42] We do not propose any changes to this provision in this regulation, but as we discussed in section II.D.4.d.(4). of this proposed rule, we seek comment on possible modifications to limit beneficiary liability.

g. Revisions to Coordination of Medicaid With Medicare Part B (§ 431.625)

Section 431.625(d)(2) describes the populations for which Federal financial participation (FFP) is available in expenditures for Part B premiums. Section 431.625(d)(1) identifies the basic rule, which is that FFP is generally unavailable to states for their coverage of Part B premiums, except where such coverage is provided to individuals receiving money payments under title I, IV–A, X, XIV, XVI, or state supplements under section 1616(a) of the Act (optional state supplements) or as required by section 212 of Public Law 93–66 (regarding mandatory state supplements). Section 431.625(d)(2) lists the exceptions to this basis rule; that is, it lists the Medicaid populations not receiving cash assistance on whose behalf states may both cover their Part B premiums and receive FFP for such coverage.

CMS last updated the current list in paragraphs (i) through (x) in the January 11, 1988 **Federal Register** (53 FR 657), entitled ''Medicaid Program; Relations With Other Agencies, Miscellaneous Medicaid Definitions, Third Party Liability Quality Control, and Limitations on Federal Funds for Abortions,'' (hereinafter referred to as the January 1988 final rule), and it does not reflect the adoption of several statutory provisions and regulations to implement them, since that time. Additionally, we have not modified (d)(1) to reflect the repeal of title IV–A of the Act. We thus propose updating § 431.625(d)(1) to eliminate the reference to title IV–A. We also propose updating the outdated list of groups in (d)(2) to remove obsolete groups, make technical changes to some remaining groups, and add two additional groups.

Three groups in the current § 431.625(d)(2) are obsolete, and we propose to remove them from the regulation:

- *Paragraph (i):* AFDC families eligible for continued Medicaid coverage despite increased income from employment. Although the implementing regulations at §§ 435.112 and 436.116 still exist, this group is obsolete in practice. The Medicare and CHIP Reauthorization Act of 2015 (Pub. L. 114–10) eliminated the sunset provision for Transitional Medical Assistance under section 1925 of the Act, which provides a more robust extension and supersedes this group. Therefore, this group should have no enrollees.
- *Paragraph (vi):* Deemed recipients of AFDC who are participants in a work supplementation program or denied AFDC because the payment would be less than $10. As noted in section II.D.3.e. of this proposed rule, the AFDC program was eliminated in 1996. Section 431.625(d)(2)(ii) cross-references these individuals to § 435.115. However, CMS eliminated the references to the AFDC benefit and section 414(g)-related work supplementation programs from § 435.115 for being obsolete in the November 2016 final rule. (CMS has not modified or eliminated the territory regulation cross-reference, at § 436.114, but it is also obsolete.)
- *Paragraph (x):* Individuals no longer eligible for the disregard of $30 or $30 plus one-third of the remainder, but who, in accordance with section 402(a)(37) of the Act, were deemed AFDC recipients for a period of 9 to 15 months. Section 103(a)(1) of PRWORA repealed paragraph (a)(37) of section 402, making this deemed status obsolete.

Due to the proposed deletion of obsolete groups, we propose to redesignate paragraphs (ii), (iii), (iv), and (v) as paragraphs (i), (ii), (iii), and (iv), respectively; and paragraphs (vii), (viii), and (ix) as paragraphs (v), (vi), and (vii), respectively. We propose to make the following technical changes to the redesignated paragraphs:

- *Redesignated paragraph (i):* Delete ''435.114'' which CMS removed from the regulations in the November 2016 final rule.
- *Redesignated paragraph (iii):* Add cross-references to §§ 435.145 and 436.114(e), which have both been revised since this list was last

[41] Under § 435.916(f), if an individual is determined by the state Medicaid agency to no longer meet the eligibility requirements for the eligibility group in which they are enrolled, the state Medicaid agency must determine whether the individual is eligible for Medicaid on a separate basis before proposing to terminate the individual's Medicaid eligibility. While the state is making that determination, the state must maintain Medicaid coverage, which means that, if the individual's eligibility group is included in the state's buy-in agreement, the state must continue pay for the individual's Part B premiums.

[42] Similarly, in cases where an individual opts to be direct billed for premiums, Medicare would bill the individual for up to 2 months' retroactive premiums plus the current month's premium.

updated,[43] and modify the description of the group to be consistent with the current description of children with adoption assistance, foster care or guardianship care under title IV–E of the Act.

• *Redesignated paragraph (iv):* Delete ''chapter'' and add in its place ''subchapter'', for specificity and for consistency with this list.

• *Redesignated paragraph (vi):* Delete the citation to section 1902(e)(3) of the Act and replace it with a cross-reference to § 435.225, the regulation which implemented section 1902(e)(3) of the Act in November 1990, consistent with other cross-references in this list.

• *Redesignated paragraph (vii):* Add cross-references to §§ 435.115 and 436.114(f) and (h), both of which CMS revised since last updating the list,[44] and modify the description of the Medicaid eligibility group to reflect the current description of families with extended Medicaid because of increased collection of spousal support under title IV–D of the Act.

While we propose to eliminate from § 431.625(d)(1) the reference to title IV–A, we believe we must account for the statutory directive that individuals described in section 1931(b) of the Act be treated for purposes of Title XIX of the Act as receiving title IV–A assistance. We therefore propose to add to the proposed redesignated paragraph (iii) individuals who are described in section 1931(b) of the Act.

The current § 431.625(d)(2) list of Medicaid eligibility groups also does not reflect the enactment of the MSPs for which the states receive FFP for coverage of premiums or cost sharing or both. Following the redesignated paragraph (d)(2)(vii), we propose adding a new paragraph (viii) to include the QMB, SLMB, and QI eligibility groups, as proposed to be defined in § 400.200, to the eligibility groups for which FFP is available. This proposed addition of paragraph (viii) would codify long-standing policy and bring the regulation in alignment with sections 1902(a)(10)(E) and 1905(p)(3) of the Act, which authorize FFP for the state payment of Medicare Part B premiums for the MSPs.

In addition, we propose a new paragraph (d)(2)(ix) to clarify that states receive FFP for Part B payments for adult children with disabilities described in section 1634(c) of the Act.

Finally, we are taking this opportunity to make a technical correction in § 431.625(d)(3) to update a cross-reference in the third sentence that is now inaccurate, changing ''435.914'' to ''435.915''.

The availability of FFP for state expenditures for dually eligible individuals may affect state decisions regarding the breadth of its Part B buy-in coverage group. Under our proposed § 407.42(b), states can select a buy-in coverage group that only includes Medicaid eligibility groups related to cash assistance but have the option to select a buy-in coverage group with additional populations (that is, states can choose to cover QMB, SLMB, and QI in addition to Medicaid eligibility groups related to cash assistance or can choose to cover all Medicaid eligibility groups). Including these three MSP eligibility groups in the buy-in coverage group makes it easier for states to meet their obligation to cover Part B premiums for these groups under sections 1902(a)(10)(E) and 1905 (p)(3)(A) of the Act. These sections of the Act and our proposed revisions to § 431.625 allow states to obtain FFP not only for Medicare Part B premiums for Medicaid eligibility groups related to cash assistance but for QMB, SLMB, and QI too.

Although states cannot obtain FFP for Part B premiums for other Medicaid eligibility groups, paying the premiums for these individuals under buy-in helps states maximize federal funding for health care services. First, under section 1905(a)(29)(B) of the Act and § 431.625(d)(3), states cannot obtain FFP for state Medicaid expenditures that could have been paid for under Medicare Part B if the person had been enrolled in Part B. This means, for example, that if a Medicare-eligible individual is enrolled in Medicaid and requires outpatient care, the state Medicaid agency will not receive FFP for Medicaid payments to the individual's outpatient care providers if the individual is not enrolled in Medicare. In addition, under CMS policy, states can require Medicaid applicants and beneficiaries to apply for Medicare as a condition of eligibility, provided that the state pays any Medicare cost-sharing or premiums the individual incurs. If the state does not pay the Part B premiums for a Medicaid beneficiary and he/she does not enroll in Part B, we do not consider Medicare Part B to be a liable third party under part 433 subpart D and, therefore, the state must cover the items and services in accordance with its state Medicaid plan. Thus, it usually is cost-effective for a state to choose to include additional eligibility groups in its Part B buy-in agreement and pay for the premium, even if no FFP is available for that premium payment, rather than forfeit Medicare coverage or FFP for all services covered that could have been paid for by Medicare Part B.

h. The Medicare Savings Programs (§§ 435.4, and 435.123 Through 435.126)

In accordance with section 1902(a)(10)(E) of the Act, states must provide medical assistance to certain low-income Medicare beneficiaries. The eligibility groups described in section 1902(a)(10)(E) of the Act comprise what are generally referred to as the ''Medicare Savings Programs.'' The four eligibility groups in the Medicare Savings Programs are:

• The Qualified Medicare Beneficiary (QMB) eligibility group, enacted by section 301(e)(1) of the Medicare Catastrophic Coverage Act of 1988 Public Law 100–360 and effective January 1989. As described in section 1905(p)(1) of the Act (as amended by section 402 of the CAA), eligibility in this group is available to individuals entitled to Medicare Part A or, on or after January 1, 2023, enrolled in the Part B–ID benefit, and whose income does not exceed 100 percent of the FPL and whose resources do not exceed the standard described in section 1860D–14(a)(3) of the Act, relating to the Medicare Part D full-benefit subsidy. The medical assistance available to the QMB eligibility group is coverage for Medicare Part A and B premiums and cost-sharing, as described in 1905(p)(3) of the Act, including deductibles, coinsurance and copayments.

• The Specified Low-Income Beneficiary (SLMB) eligibility group, enacted by section 4501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and effective January 1993. Under section 1902(a)(10)(E)(iii) of the Act (as amended by section 402 of the CAA), eligibility in this group is available to individuals who would otherwise be eligible in the QMB eligibility group except that their income exceeds 100 percent of the FPL and is below 120 percent of the FPL. The medical assistance for SLMBs is coverage for Part B premiums.

• The Qualifying Individuals (QI) eligibility group, enacted by section 4732 of the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33) and effective January 1998. Under section

[43] CMS last modified § 435.145 in the November 2016 final rule and last updated § 436.114(e) in the November 21, 1990 **Federal Register** (55 FR 48601), entitled ''Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes under OBRA '87, COBRA, and TEFRA,'' (hereinafter referred to as the November 1990 final rule).

[44] CMS last modified § 435.115 in the November 2016 final rule and last changed § 436.114(f) and (h) in the November 17, 1994 **Federal Register** (59 FR 59372), entitled ''Aid to Families with Dependent Children; Extension of Medicaid when Support Collection Results in Termination of Eligibility''.

1902(a)(10)(E)(iv) of the Act (as amended by section 402 of the CAA), eligibility in this group is available to individuals who would otherwise be eligible in the QMB eligibility group except that their income is at least 120 percent of the federal poverty level and below 135 percent of the federal poverty level. The medical assistance for QIs is coverage of Part B premiums.

- The Qualified Disabled Working Individuals (QDWI) eligibility group, enacted by section 6408 of the Omnibus Budget Reconciliation Act (OBRA) 1989 (Pub. L. 101–239) and effective July 1990. As described in section 1905(s) of the Act, eligibility in this group is available to individuals entitled to Medicare Part A under section 1818A of the Act, whose income does not exceed 200 percent of the federal poverty level, and whose resources do not exceed twice the maximum amount permitted under the SSI program. The medical assistance for QDWIs is coverage for Part A premiums.

The Medicare Savings Programs include four mandatory eligibility groups. Section 1905(p)(1) and 1902(a)(10)(E) of the Act (for the QMB, SLMB, and QI eligibility groups) and 1905(s)(2) and (3) of the Act (for the QDWI eligibility group) require that states use SSI income and resource methodologies to determine financial eligibility. CMS has not codified the Medicare Savings Programs in part 435 of this chapter. We propose to include the Medicare Saving Programs in the listing in subpart B of part 435 and to add a definition of the Medicare Savings Programs in § 435.4.

We believe that our proposals in part 435—together with our proposals in § 400.200—would ensure consistency and transparency in our regulations and avoid confusion for stakeholders. In addition, as described in sections I.B. and II.B. of this proposed rule, section 402 of the CAA amends the Medicare Savings Programs under sections 1905(a)(1)(A) and 1902(a)(10)(E) of the Act to pay some or all of the costs of the new immunosuppressive drug coverage for certain low-income individuals who are enrolled in such drug coverage. We believe that our proposals to codify the Medicare Savings Programs in the Medicaid regulations provide the necessary foundation upon which to codify the expansion of Medicare Savings Program eligibility in section 402 of the CAA.

First, we propose to add to § 435.4 a definition of the Medicare Savings Programs consistent with section 113 of MIPPA, which defines the term Medicare Savings Programs to include the QMB, SLMB, QI, and QDWI eligibility groups. Second, we propose to add new § 435.123 to codify the QMB eligibility group under sections 1902(a)(10)(E)(i) and 1905(p)(1) of the Act. Proposed § 435.123(b)(1) reflects that under section 1905(p)(1)(A) of the Act, QMBs must be either entitled to premium-free Part A coverage that is applicable to the vast majority of Medicare beneficiaries or entitled to Part A coverage for individuals age 65 and over who must pay a premium to enroll in Part A. QMB status is not available to individuals entitled to Part A solely based on eligibility to enroll as a Qualified Disabled and Working Individual (QDWI) as specified in section 1905(p)(1)(A) of the Act. In addition, proposed § 435.123(b)(1) incorporates the expansion of MSP eligibility under section 402 of the CAA to cover individuals who are enrolled in Medicare Part B for coverage of immunosuppressive drugs.

Proposed § 435.123 (b)(2) and (b)(3) describe the income and resource limits for the QMB eligibility group identified previously. Further, proposed § 435.123(b)(2) and (b)(3) reflect that under section 1902(r)(2) of the Act and § 435.601(d)(1)(i), states can choose to disregard certain types of income and resources in a manner that is less restrictive than SSI methodologies. According to the Medicaid and CHIP Payment and Access Commission (MACPAC), as of February 2020, 14 states and the District of Columbia had adopted income or resources standards or both that are more generous than SSI's for the QMB eligibility group as well as two other MSPs, the SLMB and QI eligibility groups.[45]

We are also proposing to include proposed (b)(2)(i) and (b)(2)(ii) to codify in regulation the statutory requirements pertaining to the treatment of a cost of living adjustment (COLA) for Social Security retirement, survivors, and disability benefits in determining eligibility for the QMB, SLMB, and QI eligibility groups. Under section 1905(p)(2)(D) of the Act, income attributable to a Social Security COLA is not countable as income for QMB, SLMB, or QI eligibility purposes during a ''transition month,'' which the statute defines as each month through the end of the month following the month the U.S. Department of Health and Human Services (HHS) publishes the revised official poverty level in the **Federal Register**. For example, in a year in which an individual receives a Social Security income-related COLA adjustment beginning in January, and HHS publishes the updated federal poverty levels in February, the COLA is not countable as income in determining eligibility for the QMB, SLMB and QI eligibility groups until April.

We are aware of states that have inappropriately moved to terminate eligibility during a transition month by continuing to apply the prior year's poverty levels and failing to disregard the COLA. Such actions are inconsistent with the statute and harmful to beneficiaries. We remind states that state agencies must not wait until CMS notifies them of the new official poverty levels before adjusting their eligibility standards. They must adjust their eligibility standards to reflect the updated poverty level as soon as the Secretary publishes the new poverty level figures in the **Federal Register**. We are proposing to codify these requirements in regulation.

Proposed § 435.123(c)(1) reflects that Medicaid covers the Medicare Parts A and B premiums and cost-sharing for individuals entitled to Part A for QMB, and proposed § 435.123(c)(1) (c)(2) reflects that Medicaid covers premiums and cost-sharing for QMBs enrolled in Part B for coverage of immunosuppressive drugs for QMB under section 402 of the CAA.

In addition to the proposed codification for the QMB eligibility group, we propose to add new § 435.124 for the SLMB eligibility group and new § 435.125 for the QI eligibility group described in section 1902(a)(10)(E)(ii) and (iv) of the Act, respectively. Paragraphs (b) and (c) of the proposed SLMB and QI provisions are consistent with the proposed § 435.123 for the QMB eligibility group, with the exception of the different income thresholds that apply to them as compared to the QMB eligibility group, as identified previously. We note that section 1902(a)(10)(E) of the Act sets forth the eligibility criteria for these MSP eligibility groups but does not assign the names SLMB and QI.

Lastly, we propose to add a new § 435.126 for the QDWI eligibility group. Paragraphs (a) through (c) of the proposed QDWI provision reflect that, in accordance with sections

[45] According to the Medicaid and CHIP Payment and Access Commission (MACPAC), Alabama, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Louisiana, Maine, Massachusetts, Mississippi, New York, Oregon and Vermont use less restrictive definitions of income and resources than SSI's in February 2020. See Chapter 3: Improving Participation in the Medicare Savings Programs, in MACPAC. (2020, June). Report to Congress on Medicaid and CHIP. *https://www.macpac.gov/wp-content/uploads/2020/06/June-2020-Report-to-Congress-on-Medicaid-and-CHIP.pdf,* (hereinafter referred to as ''Chapter 3 in MACPAC's June 2020 Report to Congress''). In addition, beginning January 1, 2021, New Mexico adopted less restrictive definitions than SSI for resources.

1902(a)(10)(E)(ii) and 1905(s) of the Act, QDWI pays the Part A premiums for individuals under age 65 who become entitled to Part A based on their receipt of SSDI, but who subsequently lose SSDI, and as a result, their Part A entitlement, on the basis of gainful employment. Section 1818(g) of the Act does not permit states to pay the Part A premium for QDWIs under a state buy-in agreement. States pay the Part A premium for QDWIs through the group payer process.

4. Alternative Proposals Considered on Modernizing State Payment of Medicare Premiums

We considered several alternatives to the proposed policies and technical changes as previously described in sections IV.D.1 through 3. of this proposed rule as part of this proposed rulemaking. We describe those alternatives in this section of this rule. In each case, we welcome comments to inform future rulemaking and operational improvements in this area.

a. Part B Buy-In Coverage Groups (§ 407.42(b))

In section II.D. of this preamble, we described our proposal to reduce the number of Part B buy-in coverage groups described at § 407.42(b). We also considered two alternatives that might be adopted in final regulation based on comments received. The first option would further reduce the number of Part B buy-in coverage groups from our proposed three groups to two groups, to reflect current practice among states and simplify the regulatory text. As background, the regulation currently provides states the option to pick from among different buy-in coverage groups. However, since no states have opted out of including the payment of Part B for QMBs, all state buy-in agreements currently include groups 2 or 3 described in proposed paragraphs (b)(2) and (3). Therefore, no states only cover Medicaid eligibility groups related to cash assistance in buy-in coverage group 1 described in proposed paragraph (b)(1). We seek comment on potentially narrowing the buy-in coverage group options to groups 2 and 3, and might adopt this alternative considered in the final rule based on comments received.

We considered a second set of alternatives on state payment of the Part B premiums for deemed AFDC eligibility groups. As noted previously, the AFDC program was repealed. However, states must still consider certain Medicaid beneficiaries as deemed recipients of AFDC (that is, individuals covered under section 1931 of the Act and children covered under title IV–E for the Act) for the purposes of Medicaid eligibility determinations. All states except one have opted to treat all deemed recipients of the former AFDC program as cash assistance recipients for buy-in. We considered proposing to require all states to include all deemed AFDC eligibility groups as deemed recipients of cash assistance. However, we chose not to propose such a change at this time to consider the broader implications for states and beneficiaries, but we request comments for consideration for the final rule on the operational, fiscal, and beneficiary impacts of such a proposal.

b. Buy-In Programs in the U.S. Territories (§ 407.43)

We considered updating § 407.43, which governs buy-in coverage groups for the four U.S. territories of Puerto Rico, American Samoa, U.S. Virgin Islands, and Guam,[46] similar to our proposal to streamline and clarify buy-in coverage groups in § 407.42, and might adopt this alternative considered in the final rule based on comments received. However, because there are special considerations in the territories, we chose not to propose changes at this time. For example, unlike the 50 states and DC, federal Medicaid funding is capped for the five U.S. territories (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), Puerto Rico, the U.S. Virgin Islands) under section 1108 of the Act. Additionally, Guam, Puerto Rico, and the U.S. Virgin Islands are not required to cover QMBs under 1905(p)(4)(A) of the Act. American Samoa and the CNMI likewise do not cover QMBs as permitted by waivers under section 1902(j) of the Act.

We seek comments for consideration in the final rule on whether updating the buy-in coverage groups in § 407.43 with a more succinct framework would aid Medicaid agencies in the U.S. territories in administering their buy-in programs and improve beneficiary experiences.

c. Months of Premiums for Which SSA May Bill Beneficiaries When Buy-In Ends (§ 407.48(c))

We considered proposing modifications to § 407.48(c) to further limit the number of month of premiums for which SSA may bill beneficiaries when buy-in ends. As background, due to delays in buy-in data exchange between states, CMS, and SSA, states often continue to pay Medicare Part B premiums for beneficiaries after they lose eligibility for Medicaid and buy-in. When federal systems eventually process the buy-in termination, SSA begins charging the beneficiary for Part B premiums, and CMS refunds the state for those same premiums. Since 1972, federal regulations have specified that, after buy-in ends, SSA can retroactively recoup up to 2 months of premiums from the individual's Social Security benefits (any premiums for months further in the past remain the responsibility of the state).[47] In practice, SSA deducts 3 months of premiums at a time to account for 2 months retroactive premiums plus the current processing month. This can jeopardize the individual's ability to pay for food and rent in the first month, increasing the risks of hunger or eviction. We did not formally propose a change at this time because we need more time to consider how to best structure a proposal that balances beneficiary protections with statutory compliance and fiscal considerations. We welcome comments to inform future rulemaking on this topic.

d. State Payment of Medicare Premiums When Medicare Benefits Are Not Available (§§ 406.26 and 407.40)

We considered revising § 406.26 and § 407.40 to remove premium liability for states in other situations in which Medicare benefits are not available. The 2009 decision in *NY* v. *Sebelius* enjoined CMS from billing New York during periods of retroactive Medicare eligibility in which the state would not benefit from Medicare (that is, it was too late for Medicare benefits to be provided). We believe that there may be similar situations in which Medicare eligibility can be established but Medicare benefits would not be provided. For example, individuals who are incarcerated or residing oversees may still retain entitlement to Medicare but be ineligible for payment for services because of their status. We request comment on the implications of limiting liability for states because Medicare is unavailable in these two examples or any others, and might adopt this alternative considered in the final rule based on comments received.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget

[46] The Northern Mariana Islands are governed by § 407.42.

[47] This policy is currently codified at § 407.48(c).

(OMB) for review and approval. For the purposes of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Through this rulemaking we are soliciting public comment on each of these issues for the proposed provisions that have collection of information implications.

A. Wage Estimates

To derive average costs for individuals, we used data from the U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates for our salary estimates (*www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 1 presents BLS' mean hourly wage, our estimated cost of fringe benefits and overhead, and our adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
All Occupations	00–0000	28.01	n/a	n/a

The mean wage under All Occupations applies to a group of respondents that varies widely from working and nonworking individuals and by respondent age, location, years of employment, educational attainment, and other factors. We are not adjusting this figure for fringe benefits and overhead since the individual's enrollment activities would occur outside the scope of their employment, should they be employed.

B. Proposed Information Collection Requirements (ICRs)

The following topics are listed in the order of their appearance in section II of this preamble.

1. ICRs Regarding Beneficiary Enrollment Simplification (§§ 406.27 and 407.23)

The following proposed changes will be submitted to OMB for review under control number 0938–TBD1 (CMS–10797). At this time the OMB control number has not been determined, but it will be assigned by OMB upon their clearance of our proposed collection of information request. The control number's expiration date will be issued by OMB upon their approval of our final rule's collection of information request.

As described in section II.A. of this rule, we are proposing to amend §§ 406.27 and 407.23 to provide special enrollment periods (SEPs) for individuals experiencing an exceptional condition to enroll in Medicare premium Part A and Part B. To utilize these new SEPs, an individual would have to submit an enrollment request via a new enrollment form. The form would be used by individuals who have missed an enrollment period due to an exceptional condition to enroll in Part A and/or Part B (see section II.A. of this preamble for a more detailed discussion).

As part of the PRA process, the proposed form (CMS–10797) will be made available for public review and comment (see section III.D. of this preamble for additional information).

We estimate that it would take an individual approximately 15 minutes (0.25 hr) to complete the form, pull together any required supporting documentation, and submit the completed form to CMS.

Due to the newness of the proposed SEPs, CMS does not have precise data to estimate the number of individuals that may enroll under the new exceptional condition SEPs. However, we believe that the closest equivalent is using the number of individuals enrolled during the GEP because the SEPs provide an opportunity to enroll outside of the GEP.

TABLE 2—GEP ENROLLMENTS FROM 2016–2020

Year	Individuals enrolling in premium Part A during the GEP	Individuals enrolling in Part B during the GEP	Total Part A and B GEP enrollments
2016	6,546	102,935	109,481
2017	2,021	99,728	101,749
2018	1,819	98,473	100,292
2019	2,223	104,808	107,031
2020	2,221	103,373	105,594
Total	14,830	509,317	524,147
5-Year Average	2,966	101,863	104,829

Based on these data, we estimate that the average number of GEP enrollments per year is 2,966 for premium Part A and 101,863 for Part B (totaling 104,829 annually). We also assume that only a portion of the enrollments would involve an SEP enrollment request since the new SEPs are applicable only for exceptional conditions. Assuming that 30 percent of individuals who normally would have had to wait until the GEP to enroll would now be eligible using an SEP would result in 31,449 (104,829 enrollments × 0.30) SEP requests annually. As such, we estimate an

annual ongoing burden of 7,862 hours (31,449 requests × 0.25 hr/request) at a cost of $220,214.62 (7,862 hr × $28.01/hr).

2. ICRs Regarding Extended Months of Coverage of Immunosuppressive Drugs for Kidney Transplant Patients (§§ 407.57, 407.59, 407.62, and 407.65)

With regard to our proposed Part B–ID benefit attestation requirements, the following proposed changes will be submitted to OMB for review under control number 0938–TBD2 (CMS–10798). At this time the OMB control number has not been determined, but it will be assigned by OMB upon their clearance of our proposed collection of information request. The control number's expiration date will be issued by OMB upon their approval of our final rule's collection of information request.

With regard to our proposed requirements for termination of the Part B–ID benefit, the following proposed changes will be submitted to OMB for review under control number 0938–0025 (CMS–1763).

Our proposed enrollment reporting requirement will be submitted to OMB for review under control numbers 0938–0958 (CMS–10143) and 0938–0345 (CMS–R–284).

a. Attestations (CMS–10798, OMB 0938–TBD2)

As described in section II.B of this rule, Congress enacted section 402 of the CAA, amending sections 226A, 1836, 1837, 1838, 1839, 1844, 1860D–1, 1902, and 1905 of the Act to provide immunosuppressive drug coverage for certain individuals whose Medicare entitlement based on ESRD would otherwise end 36 months after the month in which they received a successful kidney transplant. We propose as a condition of enrollment, in §§ 407.57 and 407.59 of this rule and as required in section 402 of the CAA, that an individual must attest that (a) they are not enrolled and do not expect to enroll in coverage described in proposed § 407.55, and (b) they will notify the Commissioner within 60 days of enrollment in such other coverage.

To facilitate deemed enrollment into the Part B–ID benefit, eligible beneficiaries whose coverage will be terminating 36 months after the month of a successful kidney transplant will be provided information about the Part B–ID benefit, and informed that they can enroll in this coverage by attesting that they do not have other excepted coverage. We plan to include information about the Part B–ID benefit in the pre-termination notice, as discussed in section II.B.2.b. ''Determination of Eligibility'' of this proposed rule, and include instructions for individuals to enroll in the Part B–ID benefit, including how to provide the required attestation. We, along with SSA believe that a verbal (telephonic) method would be the most efficient method for a beneficiary to provide the attestation required to enroll in the Part B–ID benefit. It is easily accessible and would avoid potential delays in an individual receiving this vital coverage, as it would not be interrupted or delayed by disruptions in mail or other unforeseen circumstances.

If the individual is not amenable to the verbal attestation, they can visit the website address provided to download a PDF-fillable version of the form to submit to SSA, or call SSA to request a paper form.

The attestation options would also be available for individuals who were previously terminated from Medicare based on ESRD after 36 months, or individuals who are reenrolling into the Part B–ID benefit for coverage of immunosuppressive drugs.

We expect that the population of individuals eligible for the Part B–ID benefit will use all available options (telephonic attestation, completion and submission of website-accessed PDF-fillable forms, and completion of paper forms requested from CMS or SSA) to provide the required attestation to SSA. We expect that each of the options for providing the required attestation will require approximately the same burden. We estimate that individuals attesting telephonically or via a paper or .pdf attestation form would have the same burden of 10 minutes (0.167 hr) per response.

CMS's Office of the Actuary (OACT) expects an average of 767 individuals, whose Medicare entitlement based on ESRD which ended 36-months after the month in which they received a successful kidney transplant, to request enrollment in the Part B–ID benefit from 2023 through 2025. This estimate was provided by CMS actuaries based on historical information provided by SSA on the number of individuals who had prior Medicare Part A coverage and a kidney transplant between 2001 and 2019, and then making downward adjustments to account for those individuals who are deceased or who are anticipated to have other comprehensive coverage and would not be eligible for the Part B–ID benefit. The overall results of applying these assumptions is that roughly 1,800 individuals would be enrolled in the Part B–ID benefit in 2023, with an estimated growth of 250 enrollees each year thereafter. This would equate to approximately 2,300 individuals enrolling in the Part B–ID benefit from 2023 through 2025, or an annual estimated enrollment of 767 individuals. The burden associated with the Part B–ID benefit is the time required to complete and submit an attestation. We estimate a total annual burden of 128 hours (767 Part B–ID enrollees * 0.167 hr/response) at a cost of $3,585 (128 hr * $28.01/hr).

As part of the PRA process, the proposed form and telephonic script (CMS–10798) will be made available for public review and comment (see section III.D. of this preamble for additional information).

b. Termination of the Part B–ID Benefit (CMS–1763, OMB 0938–0025)

As proposed in § 407.62 of this rule, individuals can voluntarily terminate their Part B–ID benefit at any time by notifying SSA. Primarily, we are proposing that an individual would contact SSA to request termination, either telephonically, or by visiting an SSA field office. We are also proposing that if an individual is not amenable to contacting SSA to terminate their Part B–ID benefit, they can access the CMS or SSA website and print, sign and mail the form to SSA, or call SSA to request a paper form to submit their request. We expect that all available options (SSA contact, completion and submission of website-accessed form, and completion of paper form requested from CMS or SSA) to request a termination from the Part B–ID benefit will be used by beneficiaries. We expect that each of the options for requesting a termination from the Part B–ID benefit will require approximately the same burden, namely 10 minutes (0.167 hr) per response.

Currently, individuals who are requesting termination of premium Hospital Insurance (Part A) or termination of Supplementary Medical Insurance (Part B) or both can complete the CMS–1763 form. While we are proposing to revise the form to include termination of the Part B–ID benefit, we are not proposing to change our currently approved per response time estimate of 10 minutes (0.167 hours) per response.

We have limited means of estimating how many individuals will opt to terminate their Part B–ID benefit as this immunosuppressive drug benefit is yet to be implemented—the statutory effective date is January 1, 2023. However, for estimation purposes, we assume an average of 10 percent of the individuals enrolled in the Part B–ID benefit will voluntarily disenroll. As discussed in section III.B.2.a. of this proposed rule, OACT estimates that

approximately 767 eligible individuals will enroll in the Part B–ID benefit annually from 2023–2025, we estimate that 77 of these individuals (767 eligible individuals × 0.10) will voluntarily terminate their Part B–ID benefit. This would not include individuals who are involuntarily terminated from the Part B–ID benefit because CMS or SSA determined that they had other coverage that made them ineligible for the Part B–ID benefit, or because they failed to pay the required premium. Also excluded from this number are individuals who will obtain Medicare coverage based on age, disability, or ESRD status, and therefore, will not remain enrolled in the Part B–ID benefit, and individuals who die. Our methodology was to estimate the total Part B terminations as a percent of total Part B enrollments annually from 2019–2021 (about 3 percent).[48] We then assumed that the Part B–ID benefit terminations would be more frequent, as we anticipate that individuals may explore options available for more comprehensive coverage, given an individual's other post-transplant associated expenses. Therefore, we increased that percentage to 10 percent. We then used OACT's growth estimate of 767 enrollments annually between 2023 and 2025 to estimate that 10 percent of those enrollments, or approximately 77 annually, would terminate their Part B–ID benefit voluntarily.

Based on voluntary terminations of the Part B–ID benefit only, by the methods described previously, we expect a total annual burden of 13 hours (77 requests to terminate the Part B–ID benefit × 0.167 hr) at a cost of $364 (13 hr × $28.01/hr) per year. Although, we have limited means to determine the actual number of individuals who will terminate their coverage; however, as we implement this benefit, we will have data to better adjust (if/when needed) our burden estimates in the future.

As part of the PRA process, the proposed revisions to form CMS–1763 will be made available for public review and comment (see section III.D. of this preamble for additional information).

c. Reporting of MSP Part B–ID Benefit Enrollment Information (CMS–10143, OMB 0938–0958) and (CMS–R–284, OMB 0938–0345)

As described in section II.B. of this rule, under section 402(f) of the CAA, we are proposing to modify three Medicare Savings Programs (MSP) eligibility groups (Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SMLB) and Qualifying Individual (QI)) to pay premiums and, if applicable, cost sharing for low-income beneficiaries enrolled in Part B–ID (MSP Part B–ID). Under the MSP Part B–ID benefit, states will pay the Part B–ID benefit premiums and cost sharing for QMBs, and Part B–ID benefit premiums for SLMBs and QIs.

Once states enroll individuals in a MSP Part B–ID benefit, states will need to report the enrollment information to CMS. We anticipate enrollment in a MSP Part B–ID benefit mainly occurring in the 12 states that, as of December 2021, have elected to not expand Medicaid eligibility to adults with income up to 138 percent of the FPL (''non-expansion states''). Those 12 states are Alabama, Florida, Georgia, Kansas, Mississippi, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Wisconsin and Wyoming.

Given that the income requirements for QMB, SLMB, and QI are all below 138 percent of the FPL, individuals losing MSP coverage in one of those eligibility groups due to loss of entitlement for ESRD Medicare in expansion states would be eligible for Medicaid in the adult group under § 435.119. Because the adult group is a full-benefit Medicaid eligibility group providing immunosuppressive drug coverage, individuals who enroll in the adult group would not be eligible for the Part B–ID benefit. Although some expansion states may use income disregards to boost MSP income limits above the income threshold for the adult group, these individuals would then be eligible for Advanced Payment of Tax Credits (APTCs) and Cost Sharing Reductions (CSRs) to purchase health insurance through a Qualified Health Provider (QHP) in the Exchange established by the Affordable Care Act and implemented at 45 CFR part 155. As a result, we do not believe these individuals would elect to enroll in a MSP Part B–ID benefit when they are able to enroll in more comprehensive coverage that is subsidized in the Exchange. Similarly, in non-expansion states, we do not expect anyone who can qualify for subsidized insurance in the Exchange to enroll in a MSP Part B–ID benefit.

As such, we believe individuals who fall into the coverage gap in the non-expansion states—that is individuals whose income prevents them from receiving Medicaid coverage, but is too low to qualify for APTC or CSR in the Exchange—will enroll in a MSP Part B–ID benefit. In the MSP eligibility groups, the only individuals who would fall into this category are QMBs. We reviewed internal data from 2021 to determine how many individuals were enrolled in MSPs, had Medicare entitlement based on ESRD, and were 36 months post-transplant. Applying this data to an annual timeframe would yield 276 individuals enrolled as QMB-only, all in non-expansion states. However, because not everyone will necessarily enroll, based on our actuaries' estimate, we anticipate only 250 individuals per year enrolling in the Part B–ID benefit, all of whom will enroll through the QMB Part B–ID benefit. Because we anticipate all of these individuals will initially be enrolled in MSPs and simply converting over to a MSP Part B–ID benefit when they lose Medicare entitlement based on ESRD and then enrolling in the Part B–ID benefit, we do anticipate that there will be any new or revised burden for these enrollees to apply for a MSP Part B–ID benefit other than the initial enrollment in the Part B–ID benefit. Rather, the burden for enrolling these individuals will fall on the state when it is performing a redetermination of Medicaid eligibility. As described in section II.B of this rule, when an individual loses Medicaid eligibility, a state must already perform a redetermination under all categories of eligibility per § 435.916(f)(1). As such, we do not anticipate any new or revised burden on states enrolling these individuals either.

We also believe there will not be any new or revised reporting burden on states for the MSP Part B–ID benefit individuals because they will receive coverage under existing MSP eligibility groups (that is, QMB, SLMB and QI). States already submit enrollment information for all current MSP enrollees through Medicare Modernization Act (MMA) under control number 0938–0958 (CMS–10143) and Transformed Medicaid Statistical Information System (T–MSIS) under control number 0938–0345 (CMS–R–284) files, and we do not believe including the new MSP Part B–ID benefit enrollees in the MMA and T–MSIS file submissions to CMS will result in any new burden. For the MMA file, we will inform states to report MSP Part B–ID benefit enrollees using the exact same code as for any other MSP enrollee, but that CMS will determine MSP Part B–ID benefit enrollment by examining both the MSP code and the Medicare enrollment reason code. For the T–MSIS file, we will inform states to report MSP Part B–ID benefit enrollees using the exact same code as for any other MSP enrollee, but to fill in a different value for another field. Because we expect no coding changes to

[48] Data source: ELMO, 12/3/2021.

either MMA or T–MSIS files, we do not anticipate that any system changes would be necessary for submitting these files to CMS.

Because we are not anticipating any new reporting requirements or burden as a result of these changes, we will not be making any changes to approved CMS–10143, OMB 0938–0958 or CMS–R–284, OMB 0938–0345.

3. ICRs Regarding Simplifying Regulations Related to Medicare Enrollment Forms (§§ 406.7 and 407.11)

As described in section II.C. of this rule, we are proposing to revise §§ 406.7 and 407.11 to remove all references to specific enrollment forms that are used to apply for entitlement under Medicare Part A and enrollment under Medicare Part B. This is an administrative change that would have no impact on the use or availability of these forms and would not impose or affect any information collection requirements or burden. CMS is proposing to remove references to the following four forms that are currently OMB approved and are still in use under the approved scope:

- Medicare Part A Enrollment Forms (§ 406.7)

++ CMS–18–F–5 (OMB 0938–0251)—Application for Hospital Insurance Entitlement

++ CMS–43 (OMB 0938–0080)—Application for Health Insurance Benefits under Medicare for Individuals with End Stage Renal Disease (ESRD)

- Medicare Part B Enrollment forms (§ 407.11)

++ CMS–18–F–5 (OMB 0938–0251)—Application for Hospital Insurance Entitlement

++ CMS–4040 (OMB 0938–0245)—Application for Enrollment in the Supplementary Medical Insurance Program

++ CMS–40–B (OMB 0938–1230)—Application for Enrollment in Medicare Part B (Medical Insurance)

++ CMS–40–D [49]—Application for Enrollment in the Supplementary Medical Insurance Program.

++ CMS–40–F [50]—Application for Medical Insurance

C. Summary of Annual Burden Estimates for Proposed Changes

TABLE 3—PROPOSED ANNUAL REQUIREMENTS AND BURDEN ESTIMATES

Regulation section(s) under Title 42 of the CFR	OMB control No. (CMS ID No.)	Respondents	Total responses	Burden per response (hours)	Total time (hours)	Labor cost ($/hr)	Total cost ($)
§§ 406.27 and 407.22.	0938–TBD1 (CMS–10797)	31,449	31,449	0.25	7,862	28.01	220,215
§ 407.59	0938–TBD2 (CMS–10798)	767	767	0.167	128	28.01	3,585
§ 407.62	0938–0025 (CMS–1763)	77	77	0.167	13	28.01	364
Total	.....	32,293	32,293	Varies	8,003	28.01	224,164

D. Submission of Comments

We have submitted a copy of this rule to OMB for its review of the rule's proposed information collection requirements and burden. The requirements would not be effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections previously discussed, please visit CMS's website at *https://www.cms.gov/Regulationsand Guidance/Legislation/Paperwork ReductionActof1995/PRAListing.html*, or call the Reports Clearance Office at (410) 786–1326.

We invite public comments on the proposed information collection requirements and burden. If you wish to comment, please submit your comments electronically as specified in the **DATES** and **ADDRESSES** sections of this proposed rule and identify the rule (CMS–4199–P) and where applicable the ICR's CFR citation, CMS ID number, and OMB control number.

IV. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would implement certain Medicare-related provisions of the CAA, as well as propose other enrollment-related changes. Section 120(a)(1) of the CAA revised the entitlement periods for individuals who enroll in Medicare Part B in the last 3 months of their IEP, deemed IEP, or during the GEP, beginning January 1, 2023. Under longstanding Medicare rules, the effective date of entitlement varies depending on whether the individual is enrolling during the IEP or GEP and when an enrollment is made during each specific enrollment period which could cause confusion. The proposed changes should help eliminate this potential confusion by establishing a straightforward and uniform policy regarding Part A and Part B entitlement start dates.

Section 120 of the CAA also gives the Secretary the authority to establish SEPs for exceptional conditions. Under current rules, individuals are only able to enroll outside of the IEP or GEP either through states enrolling them through the buy-in process under section 1843 of the Act or by using a limited number of SEPs and, outside of that, relief is only available in instances where an individual did not enroll due to a Federal Government error. Other than these very specific scenarios, no exceptions are legally permissible.

The proposed changes give the Secretary the flexibility to address other situations where a beneficiary missed an enrollment period and mirrors the authority that has long been available under the Medicare Part C and Part D programs. We believe this provision is likely to improve access to continuous coverage for individuals covered by Medicare Part A and Part B, either through expediting the effective date of coverage or by allowing for opportunities to enroll in coverage sooner. Therefore, we anticipate this proposal having a positive impact on communities who experience social risk factors impacted by lack of continuous health coverage. Our proposal fulfills the goals of the January 28, 2021 *Executive Order on Advancing Racial Equity and Support for Underserved Communities through The Federal Government,* which directs the Secretary of the Department of Health and Human Services, among other things, to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved,

[49] CMS–40–D was obsoleted 3/2022.

[50] CMS- 40–F was obsoleted in 2008.

marginalized, and adversely affected by persistent poverty and inequality.[51]

Further, section 402 of the CAA extends immunosuppressive drug coverage for individuals whose Medicare entitlement based on ESRD ends 36-months after the month in which they received a successful kidney transplant by providing immunosuppressive drug coverage under Medicare Part B for certain individuals. Under current rules, an individual loses Medicare coverage 36 months after a successful transplant (unless they are otherwise entitled to the coverage), but it does not negate the need for an individual to take immunosuppressive drugs long-term. Not having coverage for immunosuppressive drugs can cause individuals to reduce their usage in order to make their medication last longer or they may stop taking the medications entirely which can lead to organ rejection and transplant failure. The new Part B–ID benefit helps remedy this situation by ensuring that these individuals have access to immunosuppressive drug coverage for the rest of their life. Even with access to immunosuppressive drug benefits, low-income individuals may be unable to afford these immunosuppressive drugs due to their high cost. By extending certain MSP programs to this new Part B–ID benefit, states will cover the costs of the Part B–ID premiums and in some cases, cost-sharing as well. In particular, this MSP Part B–ID coverage would help individuals who lose Medicare coverage 36 months after a successful transplant and live in a non-expansion state with income too high to receive subsidies for purchasing a health plan in the Exchange. Without this MSP Part B–ID coverage, these individuals may be unable to pay Part B–ID premiums and cost-sharing and as such, at higher risk of transplant failure. As such, supporting continued Medicaid coverage is consistent with the *Executive Order on Strengthening Medicaid and the Affordable Care Act.*

In addition to implementing various sections of the CAA, we seek to modernize the Medicare Savings Programs through which states cover Medicare premiums and cost-sharing and update the various federal regulations that affect a state's payment of Medicare Part A and B premiums for beneficiaries enrolled in the Medicare Savings Programs and other Medicaid eligibility groups. We think it is important to update these policies now to reflect statutory changes over the last three-plus decades as well as to codify certain administrative practices that have evolved over the years. We anticipate our proposals will also advance health equity by improving low income individuals' access to continuous, affordable health coverage and use of needed health care consistent with the *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.* We also believe that our proposals would improve the customer service experience of dually eligible beneficiaries consistent with the goals of the *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.* Finally, we believe these are commonsense, good government proposals that will also reduce administrative burden on states and promote transparency and clarity regarding state payment of premiums or buy-in. For example, consolidating state buy-in policy in one document, the Medicaid state plan, will make it easier for states to update their buy-in policy and promote transparency for the public to better understand states' buy-in policy.

B. Overall Impact

We have examined the impacts of 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. 804(2)).

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

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million annually. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule's costs would predominantly fall on the Federal government and states, and the associated burden falls primarily on the Federal government and individuals.

The Unfunded Mandates Reform Act of 1995 (Section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule, if finalized, would not result in expenditures that meet or exceed this amount.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). These proposed regulations are not economically significant within the meaning of section 3(f)(1) of Executive Order 12866. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order. Therefore, OMB has reviewed these proposed regulations, and the

[51] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

Department has provided the following assessment of their impact. The following chart demonstrates the year by year amounts, broken out by cost for drugs and savings

C. Detailed Economic Analysis

1. Beneficiary Enrollment Simplification (§§ 406.22 and 407.22)

We are proposing revisions to implement section 120 of the CAA. These revisions make the effective date of coverage the first of the month following an individual's enrollment during their IEP or during the GEP. We are also proposing SEPs that would provide individuals who meet certain exceptional conditions an opportunity to enroll without having to wait for the GEP.

a. Benefits

The changes to the IEP and GEP coverage dates would provide Medicare beneficiaries access to coverage more quickly and may allow them faster access to needed medical care. The newly proposed SEPs for beneficiaries who have experienced an exceptional condition that caused them to delay enrollment in Medicare would also provide access to Medicare coverage earlier, reducing gaps in coverage, and beneficiaries may avoid LEPs by utilizing these SEPs.

b. Costs

Costs include increased months of coverage provided by the new SEPs and the earlier effective dates for the IEP and GEP and potential loss of LEP revenue. As detailed earlier, we estimate that approximately 31,449 individuals would be eligible to enroll earlier using the proposed exceptional condition SEPs.

In addition, CMS does not foresee an increase of costs to Medicare beneficiaries related to Part B premium increases. Specifically, we do not expect beneficiaries enrolling under these new provisions to have higher-than-average costs, so we assume this provision will not have an impact on the Part B premium.

c. Transfers

The CAA also modified section 1839(b) of the Act to exempt individuals who enroll pursuant to an SEP for exceptional conditions established under section 1838(m) of the Act, from paying an LEP. Therefore, beneficiaries who are able to utilize the newly established SEPs will benefit from an avoidance of an LEP. Based on the data described in section III B.1 of this proposed rule, we estimate approximately 31,449 premium Part A and Part B enrollments annually under the proposed SEPs. We anticipate that the loss of revenue associated with LEP and the additional months of coverage associated with individuals using the new SEPs will be a cost to the Medicare Trust Fund. Due to variables that CMS cannot predict, such as the timing of when beneficiaries will use an SEP to enroll in Medicare or what their LEP would have been had the SEP not been made available, CMS is not able to estimate an exact cost to the Trust Funds that will result from enrolling beneficiaries through these proposed SEPs. However, based on the small number of beneficiaries impacted, and because this rule proposes that individuals will have to miss an enrollment period in order to access these new SEPs, we expect the increased costs to the Medicare to be negligible. Further, we note the beneficiaries who are enrolled via these SEPs would be paying premiums to the Trust Fund, which would be revenue that might have otherwise gone uncollected.

2. Extended Months of Coverage of Immunosuppressive Drugs for Kidney Transplant Patients (§§ 407.1, 407.55, 407.57, 407.59, 407.62, 407.65, 408.20, and 423.30)

We are proposing regulations that would establish the new Part B–ID benefit. These regulations would establish the eligibility requirements (including the requirement that the individual attest that they do not have other disqualifying health coverage), the reasons and process for termination of coverage, and the basis for the premium for the benefit.

a. Benefits

The American Society of Nephrology and the HHS Assistant Secretary for Planning and Evaluation report that providing beneficiaries with extended access to immunosuppressive drugs may reduce any associated costs they face from kidney failure, including maintaining labor force participation and improved quality of life.[52]

b. Costs

Extending immunosuppressive drug coverage would pose an additional cost to Medicare to pay for the additional drugs, reduced by the savings associated with reduction in reversion to dialysis from graft failure. CMS actuaries estimate a net cost of $55 million to the Medicare program over the period 2022–2031. This estimate was provided by CMS actuaries, based on historical information from SSA. SSA's data shows that roughly 165,000 individuals had prior Medicare Part A coverage and had a kidney transplant between 2001 and 2019. Removing any individuals not currently alive or enrolled in Medicare Part A, within SSA's historical data approximately 52,000 individuals would remain potentially eligible to enroll in Part B–ID. In addition, CMS assumes approximately 1,000 individuals a month will be disenrolled from Medicare Part A 36 months after a successful transplant. After accounting for those individuals who are anticipated to have other comprehensive coverage, and thus would not be eligible for the Part B–ID benefit, we assume that of those who were terminated from Part A after a successful transplant between 2001 and 2019, roughly 1,050 individuals would initially be enrolled in the Part B–ID benefit. Using similar assumptions about other coverage and those that are newly eligible for the benefit (roughly 12,000 individuals in a year), we assume an estimated growth of 250 enrollees each year thereafter. Beneficiaries would also incur potential costs associated with the premium associated with the additional benefit. For beneficiaries enrolled in MSPs for coverage of premiums and cost sharing of the Part B–ID benefit, states will incur premium and cost sharing costs for the benefit as well as costs associated with systems and other changes needed for reporting enrollment in these MSPs as described in further detail elsewhere in this document.

[52] Kadatz, M., Gill, J.S., Gill, J., Formica, R.N., & Klarenbach, S. (2019). Economic Evaluation of Extending Medicare Immunosuppressive Drug Coverage for Kidney Transplant Recipients in the Current Era. Journal of the American Society of Nephrology, 31(1), 218–228. *https://doi.org/10.1681/asn.2019070646.*

See *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/189276/Savings_From_Extending_Coverage_For_Immunosuppressive_Drugs_Final.pdf* from ASPE discussing cost benefits of extending drug coverage.

PART B–ID BENEFIT COSTS AND SAVINGS ESTIMATE

[In millions]

FY	Cost due to drugs	Savings due to saved transplants	Total gross benefits	Part B premium offset	Net impact
2022	0	0	0	0	0
2023	0	0	0	0	0
2024	5	0	5	0	5
2025	5	0	5	0	5
2026	5	0	5	0	5
2027	5	0	5	0	5
2028	10	0	10	−5	5
2029	10	0	10	0	10
2030	10	0	10	0	10
2031	15	0	15	−5	10

c. Effects of Medicare Saving Programs Coverage for Immunosuppressive Drugs

As described previously, under section 402(f) of the CAA, we are proposing to modify three MSP eligibility groups (QMB, SMLB, and QI) to pay premiums and, if applicable, cost sharing for low-income beneficiaries enrolled in the Part B–ID benefit (MSP Part B–ID). Individuals currently enrolled as QMBs, SLMBs, and QIs must meet income and resource requirements in addition to having entitlement to Medicare Part A. With this proposed change, individuals may enroll in QMB, SLMB, and QI for the Part B–ID benefit if they are enrolled in the Part B–ID benefit and meet the underlying income and resource requirements for QMB, SLMB, or QI. While states pay Medicare Part A and B premiums and cost sharing for certain MSP eligibility groups, state payment for the MSP Part B–ID benefit is limited to Part B–ID benefit premiums and/or cost sharing.

As discussed in more detail in section III.B.2. of this proposed rule, due to the limited scope of Part B–ID benefit entitlement and the income and resource eligibility limits for the MSP population, we anticipate enrollment in the MSP Part B–ID benefit mainly occurring in the 12 non-expansion states among individuals who qualify as QMBs, with about 250 people a year enrolling and 1,000 people enrolling initially. We estimate the cost of paying for the Part B–ID benefit for these individuals across all states is −$657,000 (1,250 × (state portion of premium (Part B–ID benefit premium ($1,200) × states' average FMAP rate) (1–0.562)) + state portion of Part B–ID benefit cost sharing (20 percent of cost of CMS actuarial estimate of immunosuppressive drug therapy ($8,000 × 0.2) × states' average FMAP rate (1–0.562) − Medicaid drug rebate of 50 percent of cost of immunosuppressive drug therapy ($8,000 × 0.5) × states' average FMAP rate (1–0.562). In sum, the drug rebate will more than offset the state share of the Part B–ID benefit premium and cost sharing obligations, yielding a net savings for states.

In addition to the liability for the Part B–ID benefit premium and cost sharing, states will also need to perform the following tasks: (1) Modify their systems to report MSP Part B–ID benefit enrollment on the Third Party Systems (TPS) files; (2) modify their internal systems to receive and process new values in existing fields for Part B–ID benefit enrollment in the MMA file, TPS, Territories and States Beneficiary Query (TBQ), T–MSIS, as well as on SSA's state data exchanges; (3) process the change in the premium from the Part B standard premium to the Part B–ID benefit premium in TPS for billing; (4) modify their process to query SSA systems to confirm Part B–ID benefit enrollment prior to enrolling in the MSP Part B–ID benefit; (5) adjust Medicaid eligibility systems to include new MSP Part B–ID benefit enrollment codes; and (6) adjust Medicaid pharmacy claims to include this new Part B–ID benefit crossover claim. We anticipate all states will need to make systems changes and test these systems changes 4–6 months prior to implementation.

We estimate that it would take a maximum of 12 months of work (approximately 2,000 hours) by three computer programmers working at a BLS mean hourly rate of $94.52 per hour to make the necessary systems changes. Since we estimate that 50 states plus the District of Columbia (DC) [53] will need to make a plan for manual changes, we project an aggregate burden of $12,668,326.6 (51 (50 states and DC) * 2,000 hrs * $94.52/hr * 3 * states' average FMAP rate). The cost and time attributable to these systems change will be influenced by whether the state is implementing other systems changes at the same time and their current Medicaid Management Information System (MMIS) system functionality. Assuming the state implements this change in isolation, we estimate that this change could take 12 months. However, if a state makes this change as a part of a broader systems update, the work specific to the proposal could be less burdensome. In particular, we note that states need to make systems updates under the Interoperability and Patient Access final rule, 85 FR 25510 (May 1, 2020) to comply with 42 CFR 406.26 and 407.40 to make file transfers daily by April 1, 2022.

If states chose to integrate these system updates at the same time, they could save money. We note that states are likely eligible for 90/10 federal medical assistance percentage (FMAP) for the MMIS as set forth in 1903(a)(3)(A) of the Act.

3. Simplifying Regulations Related to Medicare Enrollment Forms

We are proposing to revise §§ 406.7 and 407.11 to remove references to specific enrollment forms that are used to apply for entitlement under Medicare Part A and enrollment under Medicare Part B. This is an administrative change that will not impact the use of the forms. We do not anticipate a change in burden or cost associated with each of the forms.

4. Modernizing State Payment of Medicare Premiums Benefits, Costs, and Transfers

To modernize state payment of Medicare premiums, we propose several changes to regulations at §§ 400.200, 406.21, 406.26, 407.40 through 48, 431.625. We also propose to add new §§ 435.123 through 435.126 and to

[53] We note that we did not estimate impacts for the territories because currently, they have not elected MSP coverage for their residents. As such, they would not need to make these changes.

revise § 435.4. Almost all of the proposed changes are to update the regulations to reflect statutory changes over the last 3-plus decades, and to codify certain administrative practices that have evolved over the years. Some of the most significant changes include replacing obsolete decades-old stand-alone buy-in agreements with treating buy-in provisions in the State plan as the State's buy-in agreement, and limiting retroactive Medicare Part B premium liability for states for full-benefit dually eligible beneficiaries. We are not projecting any impact for these provisions in this Regulatory Impact Analysis section because our proposals are consistent with current requirements and practice.

D. Regulatory Review Cost Estimation

We welcome any comments on the approach in estimating the number of entities which will review this proposed rule. Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $110.74 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed, we estimate that it would take approximately 0.5 hours for the staff to review half of this proposed rule. For each entity that reviews the rule, the estimated cost is $Y (0.5 hours × $110.74). Therefore, we estimate that the total cost of reviewing this regulation is $Z ($Y × N). [*N is the number of estimated reviewers*]

E. Alternatives Considered

As noted previously, there were a number of additional SEPs that were considered but were not pursued for various reasons (discussed in greater length in section II.A.2.f of the preamble). For example, we considered an SEP for individuals who previously decided not to enroll in Medicare but now want to enroll outside of the GEP or other enrollment period because they are experiencing a health event and want Medicare coverage. We also considered an SEP for individuals who lost Medicare coverage due to non-payment of premiums who are not eligible for another SEP or equitable relief and now want to re-enroll outside of the GEP. Further, several alternatives to the State Payment of Medicare premium policies and technical changes as were proposed and are described in sections II.D.1 through D.3 of this preamble. For example, we considered alternatives to further reduce the number of Part B buy-in groups from three to two and to limit buy-in liability for states in other situations in which Medicare benefits are not available, such as incarceration and beneficiaries who reside overseas.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on April 21, 2022.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO) Medicaid, Medicare Reporting, and recordkeeping requirements.

42 CFR Part 406

Health facilities, Diseases, and Medicare.

42 CFR Part 407

Medicare.

42 CFR Part 408

Medicare.

42 CFR Part 410

Diseases, Health facilities, Health professions, Laboratories, Medicare, Reporting and, recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Health professionals, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), and Wages.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

■ 1. The authority citation for part 400 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh and 44 U.S.C. Chapter 35.

■ 2. Section 400.200 is amended by—

■ a. Adding definitions of ''Medicare Savings Programs'' and ''Qualified Individual'', in alphabetical order;

■ b. Revising the definition of ''Qualified Medicare Beneficiary''; and

■ c. Adding the definition of ''Specified Low-Income Medicare Beneficiary'' in alphabetical order.

The additions and revision read as follows:

§ 400.200 General definitions.

* * * * *

Medicare Savings Programs (MSPs) has the same meaning described in § 435.4 of this chapter.

* * * * *

Qualifying Individual (QI) means an individual described in § 435.125 of this chapter.

Qualified Medicare Beneficiary (QMB) means an individual described in § 435.123 of this chapter.

* * * * *

Specified Low-Income Medicare Beneficiary (SLMB) means an individual described in § 435.124 of this chapter.

* * * * *

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

■ 3. The authority citation for part 406 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1395i–2, 1395i–2a, 1395p, 1395q and 1395hh.

■ 4. Section 406.7 is revised to read as follows:

§ 406.7 Forms to apply for entitlement under Medicare Part A.

Forms used to apply for Medicare entitlement are available free of charge by mail from CMS or at any Social Security branch or district office or online at the CMS and SSA websites. An individual who files an application for monthly social security cash benefits as defined in § 400.200 of this chapter also applies for Medicare entitlement if he or she is eligible for hospital insurance at that time.

■ 5. Section 406.13 is amended by revising paragraph (f)(2) to read as follows:

§ 406.13 Individual who has end-stage renal disease.

* * * * *

(f) * * *

(2) The end of the 36th month after the month in which the individual received a kidney transplant. Beginning January 1, 2023, an individual who is no longer entitled to Part A benefits due to this paragraph may be eligible to enroll in Part B solely for purposes of coverage of immunosuppressive drugs as described in § 407.55.

* * * * *

■ 6. Section 406.21 is amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 406.21 Individual enrollment.

(a) *Basic provision.* An individual who meets the requirements of § 406.20 (b) or (c), except as provided in § 406.27(b)(2), may enroll for premium hospital insurance only during his or her—

(1) Initial enrollment period as set forth in paragraph (b) of this section;

(2) A general enrollment period as set forth in paragraph (c) of this section;

(3) A special enrollment period as set forth in §§ 406.24, 406.25, and 406.27 of this part; or

(4) For HMO/CMP enrollees, a transfer enrollment period as set forth in paragraph (f) of this section.

* * * * *

(c) * * *

(3) If the individual enrolls or reenrolls during a general enrollment period—

(i) Before January 1, 2023, his or her entitlement begins on July 1 of the calendar year; or

(ii) On or after January 1, 2023, his or her entitlement begins on the first day of the month after the month of enrollment.

* * * * *

■ 7. Section 406.22 is amended by—

■ a. In paragraph (a):

■ i. In the paragraph heading, removng the phrase ''*or over.*'' and adding in its place ''*or over before January 1, 2023.*''

■ ii. In the introductory text removing the phrase ''age 65, the following rules apply:'' and adding in its place the phrase ''age 65, before January 1, 2023, the following rules apply:'';

■ b. Redesignating paragraph (b) as paragraph (c);

■ c. Adding a new paragraph (b);

■ d. Revising the paragraph heading and introductory text for newly redesignated paragraph (c); and

■ e. Adding paragraph (d).

The revisions and addition read as follows:

§ 406.22 Effect of month of enrollment on entitlement.

* * * * *

(b) *Individual age 65 or over on or after January 1, 2023.* For an individual who has attained age 65 on or after January 1, 2023, the following rules apply:

(1) If the individual enrolls during the first 3 months of their initial enrollment period, entitlement begins with the first month of eligibility.

(2) If an individual enrolls during the last 4 months of their initial enrollment period, entitlement begins with the month following the month of enrollment.

(c) *Individual under age 65 before January 1, 2023.* For an individual who has not attained age 65 and who satisfies the requirements of § 406.20(c) before January 1, 2023, the following rules apply:

* * * * *

(d) *Individual under age 65 on or after January 1, 2023.* For an individual who has not attained age 65 and who first satisfies the requirements of § 406.20(c) on or after January 1, 2023, the following rules apply:

(1) For individuals who enroll during the first 3 months of their IEP, entitlement begins with the first month of eligibility.

(2) If an individual enrolls during the month in which they first become eligible or any subsequent month of their IEP, entitlement begins with month following the month of enrollment

■ 8. Section 406.26 is amended by—

■ a. Adding paragraph (a)(3); and

■ b. Revising paragraph (b)(2).

The addition and revision read as follows:

§ 406.26 Enrollment under State buy-in.

(a) * * *

(3) *Enrollment without discrimination.* A State that has a buy-in agreement in effect must enroll in premium health insurance any applicant who meets the eligibility requirement for the QMB eligibility group, with the State paying the premiums on the individual's behalf.

(b) * * *

(2) The first month in which the individual is entitled to premium hospital insurance under § 406.20(b) and has QMB status. Under a State buy-in agreement, as defined in § 407.40, QMB-eligible individuals can enroll in premium hospital insurance at any time of the year, without regard to Medicare enrollment periods.

* * * * *

■ 8. Add § 406.27 to subpart C to reads as follows:

§ 406.27 Special enrollment periods for exceptional conditions.

(a) *General rule.* Beginning January 1, 2023, in accordance with the Secretary's authority in sections 1837(m) and 1838(g) of the Act, the following SEPs, as defined under § 406.24(a)(4) of this subchapter, are provided for individuals that missed a Medicare enrollment period, (as specified in §§ 406.21, 406.24, or 406.25), due to exceptional conditions as determined by the Secretary and established under paragraphs (b) through (f) of this section. SEPs are provided for exceptional conditions that took place on or after January 1, 2023 except as specified in paragraph (e).

(b) *Special enrollment period for individuals impacted by an emergency or disaster.* An SEP exists for individuals prevented from submitting a timely Medicare enrollment request by an emergency or disaster declared by a Federal, state, or local government entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they reside (or resided) in an area for which a Federal, State or local government entity newly declared a disaster or other emergency. The individual must demonstrate that they reside (or resided) in the area during the period covered by that declaration.

(2) *SEP duration.* The SEP begins on the earlier of the date an emergency or disaster is declared or, if different, the start date identified in such declaration. The SEP ends 2 months after the end date identified in the declaration, the end date of any extensions or the date when the declaration has been determined to have ended or has been revoked, if applicable.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(c) *Special enrollment period for individuals affected by a health plan or employer misrepresentation.* An SEP exists for individuals whose non-enrollment in premium Part A is unintentional, inadvertent, or erroneous and results from misrepresentation or reliance on incorrect information provided by the individual's employer or GHP, or any person authorized to act on behalf of such entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they can demonstrate both of the following:

(i) He or she did not enroll in premium Part A during another enrollment period in which they were eligible based on information received from an employer or GHP, or any person

authorized to act on such organization's behalf.

(ii) An employer, GHP or their representative materially misrepresented information or provided incorrect information relating to enrollment in premium Part A.

(2) *SEP duration.* This SEP begins the day the individual notifies SSA of the employer or GHP misrepresentation and ends 2 months later.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(d) *SEP for formerly incarcerated individuals.* An SEP exists for Medicare eligible individuals who are released from incarceration (as described in § 411.4(b)) on or after January 1, 2023.

(1) *SEP parameters.* An individual is eligible for this SEP if they demonstrate that they are eligible for Medicare and failed to enroll or reenroll in Medicare premium Part A due to their incarceration and there is a record of release either through discharge documents or data available to SSA.

(2) *SEP duration.* The SEP starts the day of the individual's release from incarceration and ends the last day of the sixth month after the month in which the individual is released from incarceration.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(e) *Special enrollment period for termination of Medicaid coverage.* An SEP exists for individuals whose Medicaid eligibility is terminated.

(1) *SEP parameters.* An individual is eligible for this SEP if they can demonstrate that—

(i) They are eligible for premium Part A under § 406.5(b); and

(ii) Their Medicaid eligibility is terminated on or after January 1, 2023, or is terminated after the last day of the Coronavirus Disease 2019 public health emergency (COVID–19 PHE) as determined by the Secretary, whichever is earlier.

(2) *SEP duration.* If the termination of Medicaid eligibility occurs—

(i) After the last day of the COVID–19 PHE and before January 1, 2023, the SEP starts on January 1, 2023 and ends on June 30, 2023.

(ii) On or after January 1, 2023, the SEP starts when the individual is notified of termination of Medicaid eligibility and ends 6 months after the termination of eligibility.

(3) *Entitlement.* (i) *General rule.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is after the last day of the COVID–19 PHE or on after January 1, 2023, whichever is earlier.

(ii) *Special rule.* An individual whose Medicaid eligibility is terminated after the end of the COVID–19 PHE, but before January 1, 2023 (if applicable), has the option of requesting that entitlement begin back to the first of the month following termination of Medicaid eligibility provided the individual pays the monthly premiums for the period of coverage (as required under § 406.31).

(4) *Effect on previously accrued late enrollment penalties.* Individuals who otherwise would be eligible for this SEP, but enrolled during the COVID–19 PHE prior to January 1, 2023, are eligible to have late enrollment penalties collected under § 406.32(d) reimbursed and ongoing penalties removed.

(f) *Special enrollment period for other exceptional conditions.* An SEP exists for other exceptional conditions as CMS may provide.

(1) *SEP parameters.* An individual is eligible for the SEP if both of the following apply:

(i) The individual demonstrates that they missed an enrollment period in which they were eligible because of an event or circumstance outside of the individual's control which prevented them from enrolling in premium Part A.

(ii) It is determined that the conditions were exceptional in nature.

(2) *SEP duration.* The SEP duration is determined on a case-by-case basis.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

■ 10. Section 406.33 is amended by—

■ a. Revising the introductory text for paragraph (a); and

■ b. Redesignating paragraph (c) as paragraph (d) and adding new paragraph (c).

The revision and addition read as follows:

§ 406.33 Determination of months to be counted for premium increase: Enrollment.

(a) *Enrollment before April 1, 1981 or after September 30, 1981 and before January 1, 2023.* The months to be counted for premium increase are the months from the end of the initial enrollment period through the end of the general enrollment period, the special enrollment period, or the transfer enrollment period in which the individual enrolls, excluding the following:

* * * * *

(c) *Enrollment on or after January 1, 2023.* The months to be counted for premium increase are the months from the end of the initial enrollment period through the end of the month in which the individual enrolls, excluding both of the following:

(1) The months described in paragraphs (a)(1) through (a)(6) of this section.

(2) Any months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 406.27 provided the individual enrolls within the duration of the SEP.

* * * * *

■ 11. Section 406.34 is amended by—

■ a. Revising the introductory text for paragraph (a); and

■ b. Redesignating paragraph (e) as paragraph (f) and adding new paragraph (e).

The revision and addition read as follows:

§ 406.34 Determination of months to be counted for premium increase: Reenrollment.

(a) *First reenrollment before April 1, 1981 or after September 30, 1981 and before January 1, 2023.* The months to be counted for premium increase are:

* * * * *

(e) *Reenrollments on or after January 1, 2023.* (1) The months to be counted for premium increase are as follows:

(i) The months specified in § 406.33(c).

(ii) The months specified in paragraphs (b) and (d) of this section (if applicable).

(iii) The months from the end of the first period of entitlement through the end of the month during the general enrollment period in which the individual reenrolled.

(2) The months excluded from premium increase are the months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 406.27, provided the individual enrolls within the duration of the SEP.

* * * * *

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

■ 12. The authority citation for part 407 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1395p, 1395q, and 1395hh.

■ 13. Section 407.1 is amended by adding paragraph (a)(6) and revising paragraph (b) to read as follows:

§ 407.1 Basis and scope.

(a) * * *

(6) Sections 1836(b) and 1837(n) of the Act provide for coverage of immunosuppressive drugs as described

in section 1861(s)(2)(J) of the Act under Part B beginning on or after January 1, 2023, for eligible individuals whose benefits under Medicare Part A and eligibility to enroll in Part B on the basis of ESRD would otherwise end with the 36th month after the month in which the individual receives a kidney transplant by reason of section 226A(b)(2) of the Act.

(b) *Scope.* This part sets forth the eligibility, enrollment, and entitlement requirements and procedures for the following:

(1) Supplementary medical insurance. (The rules about premiums are in part 408 of this chapter.)

(2) The immunosuppressive drug benefit provided for under sections 1836(b) and 1837(n) of the Act, hereinafter referred to as the Part B-Immunosuppressive Drug Benefit (Part B–ID).

■ 14. Section 407.11 is revised to read as follows:

§ 407.11 Forms used to apply for enrollment under Medicare Part B.

Forms used to apply for enrollment under the supplementary medical insurance program are available free of charge by mail from CMS, or at any Social Security branch or district office and online at the CMS and SSA websites. As an alternative, the individual may request enrollment by signing a simple statement of request, if he or she is eligible to enroll at that time.

■ 15. Adding § 407.23 to read as follows:

§ 407.23 Special enrollment periods for exceptional conditions.

(a) *General rule:* Beginning January 1, 2023, in accordance with the Secretary's authority in sections 1837(m) and 1838(g) of the Act, the following SEPs, as defined under § 406.24(a)(4) of this subchapter, are provided for individuals who missed a Medicare enrollment period (as specified in § 407.21, 407.15 or 407.20) due to exceptional conditions as determined by the Secretary and established under paragraphs (b) through (f) of this section. SEPs are provided for exceptional conditions that took place on or after January 1, 2023 except as specified in paragraph (e) of this section.

(b) *Special enrollment period for individuals impacted by an emergency or disaster.* An SEP exists for individuals prevented from submitting a timely Medicare enrollment request by an emergency or disaster declared by a Federal, State or local government entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they reside (or resided) in an area for which a Federal, State or local government entity newly declared a disaster or other emergency. The individual must demonstrate that they reside (or resided) in the area during the period covered by that declaration.

(2) *SEP duration.* The SEP begins on the earlier of the date an emergency or disaster is declared or, if different, the start date identified in such declaration. The SEP ends 2 months after the end date identified in the declaration, the end date of any extensions or the date when the declaration has been determined to have ended or has been revoked, if applicable.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(c) *Special enrollment period for individuals affected by a health plan or employer misrepresentation.* An SEP exists for individuals whose non-enrollment in SMI is unintentional, inadvertent, or erroneous and results from misrepresentation or reliance on incorrect information provided by the individual's employer or GHP, or any person authorized to act on behalf of such entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they can demonstrate the both of the following:

(i) He or she did not enroll in SMI during another enrollment period in which they were eligible based on information received from an employer or GHP, or any person authorized to act on such organization's behalf.

(ii) An employer, GHP or their representative materially misrepresented information or provided incorrect information relating to enrollment in SMI.

(2) *SEP duration.* This SEP begins the day the individual notifies SSA of the employer or GHP misrepresentation, or the incorrect information provided and ends 2 months later.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(d) *SEP for formerly incarcerated individuals.* An SEP exists for Medicare eligible individuals who are released from incarceration (as described in § 411.4(b)), on or after January 1, 2023.

(1) *SEP parameters.* An individual is eligible for this SEP if they demonstrate that they are eligible for Medicare and failed to enroll or reenroll in SMI due to their incarceration, and there is a record of release either through discharge documents or data available to SSA.

(2) *SEP duration.* The SEP starts the day of the individual's release from incarceration and ends the last day of the sixth month after the month in which the individual is released from incarceration.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment. so long as the date is on or after January 1, 2023.

(e) *Special enrollment period for termination of Medicaid coverage.* An SEP exists for individuals whose Medicaid eligibility is terminated.

(1) *SEP parameters.* An individual is eligible for this SEP if they can demonstrate that—

(i) They are eligible for Part B under § 407.4(a); and

(ii) Their Medicaid eligibility is being terminated after January 1, 2023, or after the last day of the Coronavirus Disease 2019 public health emergency (COVID–19 PHE) as determined by the Secretary, whichever is earlier.

(2) *SEP duration.* If the termination of Medicaid eligibility occurs—

(i) After the last day of the COVID–19 PHE and before January 1, 2023, the SEP starts on January 1, 2023 and ends on June 30, 2023.

(ii) On or after January 1, 2023, the SEP starts when the individual is notified of termination of Medicaid eligibility and ends 6 months after the termination of eligibility.

(3) *Entitlement.* (i) *General rule.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is the month following the last month of the COVID–19 PHE or on or after January 1, 2023, whichever is earlier.

(ii) *Special rule.* An individual whose Medicaid eligibility is terminated after the end of the COVID–19 PHE, but before January 1, 2023 (if applicable), has the option of requesting that entitlement begin back to the first of the month following termination of Medicaid eligibility provided the individual pays the monthly premiums for the period of coverage (as required under part 408 of this subchapter).

(4) *Effect on previously accrued late enrollment penalties.* Individuals who otherwise would be eligible for this SEP, but enrolled during the COVID–19 PHE prior to January 1, 2023, are eligible to have late enrollment penalties collected under § 408.22 of this subchapter reimbursed ongoing penalties removed.

(f) *Special enrollment period for other exceptional conditions.* An SEP exists for other exceptional conditions as CMS may provide.

(1) *SEP parameters.* An individual is eligible for the SEP if both of the following apply:

(i) The individual demonstrates that they missed an enrollment period in which they were eligible because of an event or circumstance outside of the individual's control which prevented them from enrolling in SMI.

(ii) It is determined that the conditions were exceptional in nature.

(2) *SEP duration.* The SEP duration is determined on a case by case basis.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

■ 16. Section 407.25 is amended by revising paragraphs (a), (b)(1) and (3) to read as follows:

§ 407.25 Beginning of entitlement: Individual enrollment.

The following apply whether an individual is self-enrolled or automatically enrolled in SMI:

(a) *Enrollment during initial enrollment period.* For individuals who first meet the eligibility requirements of § 407.10 in a month beginning—

(1) Before January 1, 2023, the following entitlement dates apply:

(i) If an individual enrolls during the first 3 months of the initial enrollment period, entitlement begins with the first month of eligibility.

(ii) If an individual enrolls during the fourth month of the initial enrollment period, entitlement begins with the following month.

(iii) If an individual enrolls during the fifth month of the initial enrollment period, entitlement begins with the second month after the month of enrollment.

(iv) If an individual enrolls in either of the last 2 months of the initial enrollment period, entitlement begins with the third month after the month of enrollment.

(v) *Example.* An individual first meets the eligibility requirements for enrollment in April. The individual's initial enrollment period is January through July. The month in which the individual enrolls determines the month that begins the period of entitlement, as follows:

TABLE 1 TO PARAGRAPH (a)(1)(v)

Enrolls in initial enrollment period	Entitlement begins on—
January	April 1 (month eligibility requirements first met).
February	April 1.
March	April 1.
April	May 1 (month following month of enrollment).
May	July 1 (second month after month of enrollment).
June	September 1 (third month after month of enrollment).
July	October 1 (third month after month of enrollment).

(2) On or after January 1, 2023, the following entitlement dates apply:

(i) If an individual enrolls during the first 3 months of the initial enrollment period, entitlement begins with the first month of eligibility.

(ii) If an individual enrolls during the last 4 months of the initial enrollment period, entitlement begins with the month following the month in which they enroll.

(b) *Enrollment or reenrollment during general enrollment period.* (1) If an individual enrolls or reenrolls during a general enrollment period before April 1, 1981, or after September 30, 1981 and before January 1, 2023, entitlement begins on July 1 of that calendar year.

* * * * *

(3) If an individual enrolls or reenrolls during a general enrollment period on or after January 1, 2023, entitlement begins on the first day of the month following the month in which they enroll.

* * * * *

■ 17. Section 407.40 is amended by—

■ a. Adding paragraphs (a)(6) through (10);

■ b. In paragraph (b):

■ (i). Revising the introductory text;

■ (ii) Arranging the definitions in alphabetical order;

■ (iii) Adding the definitions of ''1634 State'' in alphabetical order;

■ (iv) Revising the definition of ''AFDC'';

■ (v) Adding the definition of ''Buy-in group'' in alphabetical order;

■ (vi) Removing the definition of ''Qualified Medicare Beneficiary'';

■ (vii) Revising the definition of ''State buy-in agreement or buy-in agreement'';

■ c. Revising paragraph (c)(1); and

■ d. Adding paragraph (c)(5) and (6).

The additions and revisions read as follows:

§ 407.40 Enrollment under a State buy-in agreement.

(a) * * *

(6) Section 4501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) established the Specified Low-Income Medicare Beneficiary (SLMB) eligibility group effective January 1993.

(7) Section 4732 of the Balanced Budget Act of 1997 (Pub. L. 105–33) established the Qualifying Individual or QI eligibility group effective January 1998.

(8) Section 112 of the Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275) increased the resource standard for QMB, SLMB, and QI to the same level as the full Part D LIS resource standard effective January 1, 2010.

(9) Title II, section 211, of the Medicare Access and CHIP Reauthorization Act (Pub. L. 114–10), effective April 16, 2015, permanently extended the QI eligibility group.

(10) Title II, section 402 of the Consolidated Appropriations Act of (Pub. L. 116–260), effective January 1, 2023, expands QMB, SLMB, and QI to cover individuals who are enrolled in Medicare Part B for coverage of immunosuppressive drugs.

(b) *Definitions.* As used in this subpart C, unless the context indicates otherwise—

1634 State means a State that has an agreement with SSA, in accordance with section 1634 of the Act, for SSA to determine Medicaid eligibility on behalf of the State for individuals residing in the State whom the SSA has determined eligible for SSI.

* * * * *

AFDC stands for aid to families with dependent children under Part A of title IV of the Act, as it was in effect on July 16, 1996.

* * * * *

Buy-in group means a coverage group described in section 1843 of the Act that is identified by the State and is composed of multiple Medicaid eligibility groups specified in the buy-in agreement.

* * * * *

State buy-in agreement or buy-in agreement means an agreement authorized or modified by sections 1843 or 1818(g) of the Act, under which a State secures Part B or premium Part A coverage for individuals who are members of the buy-in group specified in the agreement, by enrolling them and paying the premiums on their behalf. A State's submission of a State plan amendment addressing its buy-in process, if approved by CMS, constitutes the ''buy-in agreement'' between the State and CMS for purposes of sections 1843 and 1818(g) of the Act.

(c) * * *

(1) A State that has a buy-in agreement in effect must enroll any individual who is eligible to enroll in SMI under § 407.10 and who is a member of the buy-in group, with the State paying the premiums on the individual's behalf. Individuals enrolled in the buy-in group can enroll in Part B

at any time of the year, without regard to Medicare enrollment periods.

* * * * *

(5) In a 1634 State, CMS enrolls SSI beneficiaries in Medicare Part B, on behalf of the State, with the State paying the beneficiary's Part B premiums.

(6) Premiums paid under a State buy-in agreement are not subject to increase because of late enrollment or reenrollment.

■ 18. Section 407.42 is revised to read as follows:

§ 407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

(a) *Basic rule.* The 50 States, the District of Columbia, and the Northern Mariana Islands must select one of the buy-in groups described in paragraph (b) in their buy-in agreements.

(b) *Buy-in groups available.* (1) *Group 1:* Cash Assistance and Deemed Recipients of Cash Assistance: This buy-in group includes all of the following:

(i) Individuals who receive SSI or SSP or both and are covered under the State's Medicaid state plan as categorically needy.

(ii) Individuals who under the Act or any other provision of Federal Law are treated, for Medicaid eligibility purposes, as though the individual was receiving SSI or SSP and are covered under the State's Medicaid state plan as categorically needy.

(iii) At State option, individuals whom the State must consider to be recipients of AFDC, including those who receive adoption assistance, foster care or guardianship care under part E of title IV of the Act, in accordance with § 435.145, or who receive Medicaid coverage for low income families, in accordance with section 1931(b) of the Act.

(2) *Group 2:* Cash Assistance and Deemed Recipients of Cash Assistance and three Medicare Savings Program eligibility groups. This buy-in group includes both of the following:

(i) Group 1.

(ii) Individuals enrolled in the—

(A) Qualified Medicare Beneficiary eligibility group described in § 435.123;

(B) Specified Low-Income Beneficiary eligibility group described in § 435.124; and

(C) Qualifying Individual eligibility group described in § 435.125.

(3) *Group 3:* All Medicaid Eligibility Groups: This buy-in group includes all individuals eligible for Medicaid.

§ 407.45 [Removed]

■ 19. Section 407.45 is removed.

■ 20. Section 407.47 is amended by—

■ a. Revising paragraph (a)(2); and

■ b. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

§ 407.47 Beginning of coverage under a State buy-in agreement.

(a) * * *

(2) The effective date of the buy-in agreement or agreement modification that covers the buy-in group to which the individual belongs, and which may not be earlier than the third month after the month in which the agreement or modification is executed. The State must apply the earliest applicable start date for the applicable buy-in group.

* * * * *

(f) *Limitations on retroactive adjustments in the case of retroactive Medicare Part A entitlement.* (1) In cases in which a Medicaid beneficiary is retroactively entitled to Medicare Part A, State liability for retroactive Medicare Part B premiums for Medicaid beneficiaries under a buy-in agreement is limited to a period of no greater than 36 months prior to the date of the Medicare eligibility determination.

(2) The Secretary may grant good cause exceptions for periods of greater or less than 36 months if application of paragraph (f)(1) would result in harm to a beneficiary or if the State cannot benefit from Medicare and further limiting State liability would not result in harm to the beneficiary.

(g) *Part B enrollment under a buy-in agreement.* Individuals in a buy-in group can enroll in Part B at any time of the year, without regard to Medicare enrollment periods.

■ 21. Section 407.48 is amended by—

■ a. Revising paragraphs (c)(1) and (2); and

■ b. Adding paragraph (e).

The revisions and addition read as follows:

§ 407.48 Termination of coverage under a State buy-in agreement.

* * * * *

(c) * * *

(1) On the last day of the last month for which he or she is eligible for inclusion in the buy-in group, if CMS determines ineligibility or receives a State ineligibility notice by a processing cut-off date as described in paragraph (e) of this section, by the second month after the month in which the individual becomes ineligible for inclusion in the buy-in group.

(2) On the last day of the second month before the month in which CMS receives a State ineligibility notice later than the time specified in paragraph (c)(1) of this section. If CMS receives a notice after the processing cut-off date conveyed under paragraph (e) of this section, CMS considers it to have been received the following month.

* * * * *

(e) *Processing cut-off dates for each calendar month.* On a quarterly basis, CMS is to prospectively convey to States a schedule of processing cut-off dates for each calendar month.

■ 22. Add subpart D to read as follows:

Subpart D—Part B Immunosuppressive Drug Benefit

Sec.

Subpart D—Part B Immunosuppressive Drug Benefit

§ 407.55 Eligibility to enroll.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, an individual is eligible to enroll, be deemed enrolled, or reenroll in the Part B–ID benefit if their Part A entitlement ends as described in § 406.13(f)(2) of this chapter.

(b) *Exception.* An individual is not eligible for the Part B–ID benefit if the individual is enrolled in or for any of the following:

(1) A group health plan or group or individual health insurance coverage, as such terms are defined in section 2791 of the Public Health Service Act.

(2) Coverage under the TRICARE for Life program under section 1086(d) of title 10, United States Code.

(3) A State plan (or waiver of such plan) under title XIX and is eligible to receive benefits for immunosuppressive drugs described in section 1836(b) of the Act under such plan (or such waiver).

(4) A State child health plan (or waiver of such plan) under title XXI and is eligible to receive benefits for such drugs under such plan (or such waiver).

(5) The patient enrollment system of the Department of Veterans Affairs established and operated under section 1705 of title 38, United States Code and is either of the following:

(i) Not required to enroll under section 1705 of title 38 to receive immunosuppressive drugs described in section 1836(b) of the Act.

(ii) Otherwise eligible under a provision of title 38, United States Code, other than section 1710 of such title, to receive immunosuppressive drugs described in section 1836(b) of the Act.

(c) *Appeals.* Denials for enrollment in the Part B–ID benefit will be considered an initial determination that is appealable under § 405.904(a)(1).

§ 407.57 Part B–ID benefit enrollment.

(a) *Deemed enrollment.* An individual whose Part A entitlement ends in

accordance with § 406.13(f)(2) of this chapter on or after January 1, 2023, is deemed to have enrolled into the Part B–ID benefit effective the first day of the month in which the individual first satisfies § 407.55, provided he or she provides the attestation required under § 407.59 prior to the termination of their Part A benefits.

(b) *Individual enrollment.* An individual whose Part A entitlement ends in accordance with § 406.13(f)(2) of this chapter, and who meets the requirements of § 407.55 and provides the attestation required under § 407.59, may enroll in the Part B–ID benefit under the following conditions:

(1) If the individual's entitlement ends prior to January 1, 2023, he or she may enroll in the Part B–ID benefit beginning on October 1, 2022.

(2) If individual's entitlement ends on or after January 1, 2023, the individual may enroll at any time after their entitlement ends.

(c) *Reenrollment.* An individual who had previously enrolled in the Part B–ID benefit, but terminated that benefit, can reenroll at any time, provided the individual meets the requirements of § 407.55 and provides the attestation required under § 407.59.

(d) *Attestation.* To enroll in the Part B–ID benefit, an individual must submit the required attestation as described in § 407.59.

(e) *Entitlement date.* The entitlement to the Part B–ID benefit will start as follows:

(1) For enrollments provided under paragraph (a) of this section, entitlement is effective the month Part A benefits are terminated.

(2) For enrollments provided under paragraphs (b) and (c) of this section, the Part B–ID benefit is effective the month following the month in which the individual provides the attestation required in § 407.59.

(3) *Exception.* Enrollments submitted October 1, 2022 through December 31, 2022, are effective January 1, 2023.

§ 407.59 Attestation.

As a condition of enrollment, an individual must attest to SSA in either a verbal attestation or signed paper form provided by SSA, that—

(a) The individual is not enrolled and does not expect to enroll in other coverage described in § 407.55(b); and

(b) If the individual does enroll in other coverage described in § 407.55(b), the individual will notify SSA within 60 days of enrollment in such other coverage.

§ 407.62 Termination of coverage.

(a) *Other coverage.* An individual who enrolls in other coverage as described in § 407.55(b) will have his or her enrollment in the Part B–ID benefit terminated on either of the following bases:

(1) If the individual notifies SSA of such coverage consistent with § 407.59(b), their enrollment in the Part B–ID benefit will be terminated effective the first day of the month after the month of notification unless the individual requests a different, prospective termination date that is not after the effective date of enrollment in other health insurance coverage, as described in § 407.55(b).

(2) If the individual does not notify SSA of this coverage consistent with § 407.59(b), their enrollment in the Part B–ID benefit will be terminated effective the first day of the month after the month in which there is a determination of the individual's enrollment in coverage described in § 407.55(b).

(b) *Death.* Enrollment in the Part B–ID benefit ends on the last day of the month in which the individual dies.

(c) *Nonpayment of premiums.* If an individual fails to pay the premiums, the Part B–ID benefit enrollment will end as provided in the rules for Part B premiums set forth in part 408 of this chapter.

(d) *Request by individual.* An individual may request disenrollment at any time by notifying SSA that he or she no longer wants to be enrolled in the Part B–ID benefit. Such individual's enrollment in the Part B–ID benefit ends with the last day of the month in which the individual provides the disenrollment request, except for an individual who loses coverage under a State buy-in agreement, as described in § 407.50(b)(2)(i).

(e) *Entitlement to Hospital Insurance benefits.* Enrollment in the Part B–ID benefit ends effective the last day of the month prior to the month that the individual becomes entitled to benefits under §§ 406.5, 406.12 or 406.13 of this chapter.

(f) *Appeals.* An involuntary termination of the Part B–ID benefit for reasons described at paragraphs (a)(2), (b) or (c) of this section, will be considered an initial determination that is appealable under § 405.904(a)(1) of this chapter. An individual can request to continue receiving Part B–ID benefits while waiting for an appeals decision.

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

■ 23. The authority citation for part 408 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 24. Section 408.20 is amended by adding paragraph (f) to read as follows:

§ 408.20 Monthly premiums.

* * * * *

(f) *Part B–ID premiums*—(1) *Premium amount.* Beginning in 2022, and every year thereafter, the Secretary, as mandated by section 1839(j) of the Act, will determine and promulgate a monthly premium rate in September for the succeeding calendar year for individuals enrolled only in the Part B–ID benefit. Such premium is equal to 15 percent of the monthly actuarial rate for enrollees age 65 and over for that succeeding calendar year.

(2) *Premium adjustments.* (i) The Part B–ID benefit premium is subject to adjustments specified in §§ 408.20(e) (Nonstandard premiums for certain cases), 408.27 (Rounding the monthly premium), and 408.28 (Increased premiums due to the income-related monthly adjustment amount (IRMAA)).

(ii) The Part B–ID benefit premium is not subject to § 408.22 (Increased premiums for late enrollment and for reenrollment).

(3) *Premium collection.* Premiums for the Part B–ID benefit are collected as set out in § 408.6 and subpart C of this part.

(4) *Premium deductions.* Part B–ID premiums are to be deducted following the rules set forth in § 408.40.

■ 25. Section 408.24 is amended by—

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraph (b) as paragraph (c) and adding new paragraph (b);

■ c. Revising newly redesignated paragraph (c) introductory text; and

■ d. Adding paragraph (d).

The revisions and additions read as follows:

§ 408.24 Individuals who enrolled or reenrolled before April 1, 1981 or after September 30, 1981.

(a) *Enrollment.* For an individual who first enrolled before April 1, 1981 or after September 30, 1981 and before January 1, 2023, the period includes the number of months elapsed between the close of the individual's initial enrollment period and the close of the enrollment period in which he or she first enrolled, and excludes the following:

* * * * *

(b) *Enrollment on or after January 1, 2023.* For an individual who first enrolled on or after January 1, 2023, the period *includes* the number of months elapsed between the close of the individual's initial enrollment period and the close of the month in which he or she first enrolled and *excludes*—

(1) The periods of time described in (a)(1) through (a)(10) of this section; and

(2) Any months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 407.23 of this chapter provided the individual enrolls within the duration of the SEP.

(c) *Reenrollment.* For an individual who reenrolled before April 1, 1981 or after September 30, 1981 and before January 1, 2023, the period—

* * * * *

(d) *Reenrollment on or after January 1, 2023.* For an individual who reenrolled on or after January 1, 2023, the period—

(1) Includes the number of months specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section; and

(2) Excludes—

(i) The number of months specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

(ii) Any months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 407.23 of this chapter provided the individual enrolls within the duration of the SEP.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 26. The authority citation for part 410 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395m, 1395hh, 1395rr, and 1395ddd.

■ 27. Section 410.30 is amended by revising paragraph (b) to read as follows:

§ 410.30 Prescription drugs used in immunosuppressive therapy.

* * * * *

(b) *Eligibility.* For drugs furnished on or after December 21, 2000, coverage is available only for prescription drugs used in immunosuppressive therapy, furnished to an individual who received an organ or tissue transplant for which Medicare payment is made, provided the individual is eligible to receive Medicare Part B benefits, including, beginning January 1, 2023, an individual who meets the requirements specified in § 407.55 of this chapter.

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 28. The authority citation for part 423 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh.

■ 29. Section 423.30 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 423.30 Eligibility and enrollment.

(a) * * *

(1) * * *

(i) Is entitled to Medicare benefits under Part A or enrolled in Medicare Part B (but not including an individual enrolled solely for coverage of immunosuppressive drugs under § 407.1(a)(6)).

* * * * *

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 30. The authority citation for part 431 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 31. Section 431.625 is amended—

■ a. In (d)(1) by removing the reference ''title I, IV–A., X'' and adding is its place the reference ''title I, X'';

■ b. By removing paragraphs (d)(2)(i), (vi), and (x);

■ c. By redesignating paragraphs (d)(2)(ii), (iii), (iv), and (v) as paragraphs (d)(2)(i), (ii), (iii), and (iv), respectively, and redesignating paragraphs (d)(2)(vii), (viii), and (ix) as paragraphs (d)(2)(v), (vi), and (vii), respectively;

■ d. In newly redesignated paragraph (d)(2)(i) by removing the reference ''435.114,'';

■ e. By revising newly redesignated paragraph (d)(2)(iii);

■ f. In newly redesignated paragraph (d)(2)(iv) by removing ''chapter'' and adding in its place ''subchapter'';

■ g. By revising newly redesignated paragraphs (d)(2)(vi) and (vii);

■ h. By adding new paragraphs (d)(2)(viii) and (ix); and

■ i. In paragraph (d)(3) by removing the reference ''435.914'' and adding in its place the reference ''435.915''.

The additions read as follows:

§ 431.625 Coordination of Medicaid with Medicare Part B.

* * * * *

(d) * * *

(2) * * *

(iii) Beneficiaries whom States must consider to be recipients of AFDC, including those who receive adoption assistance, foster care or guardianship care, under part E of title IV of the Act, in accordance with § 435.145 of this subchapter, or who receive Medicaid coverage for low income families, in accordance with section 1931(b) of the Act.

* * * * *

(vi) Disabled children living at home to whom the State provides Medicaid under § 435.225 of this subchapter.

(vii) Beneficiaries required to be covered under §§ 435.115 and 436.114(f) and (h) of this subchapter, that is, those who remain eligible for 4 months of temporary Medicaid coverage because of the increased collection of spousal support under part D of title IV of the Act.

(viii) Individuals required to be covered under the QMB, SLMB, and QI eligibility groups, each separately defined in §§ 435.123 through 435.125 of this subchapter.

(ix) Adult children with disabilities, as described in 1634(c) of the Act.

* * * * *

PART 435—MANDATORY COVERAGE OF THE AGED, BLIND AND DISABLED

■ 32. The authority citation for part 435 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 33. Amend § 435.4 by adding, in alphabetical order, the definition ''of Medicare Savings Programs'' as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Medicare Savings Programs means four Medicaid eligibility groups authorized under section 1902(a)(10)(E) and 1905(p) and (s) of the Act that serve certain low-income Medicare beneficiaries. These groups include the Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, Qualifying Individual, and Qualified Disabled and Working Individual eligibility groups, each separately codified in §§ 435.123 through 435.126.

* * * * *

■ 34. Add § 435.123 to read as follows:

§ 435.123 Individuals eligible as qualified Medicare beneficiaries.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(i) and 1905(p)(1) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet all of the following:

(1) Are entitled to Medicare Part A based on the eligibility requirements set forth in § 406.5(a) or § 406.20(b) of this chapter or who are enrolled in Medicare Part B for coverage of immunosuppressive drugs based on eligibility requirements described in § 407.55 of this chapter.

(2) Have an income, subject to paragraphs (b)(2)(i) and (ii) of this section, that does not exceed 100 percent of the Federal poverty level.

(i) During a transition month (as defined in paragraph (b)(2)(ii) of this section), any income attributable to a cost of living adjustment in Social Security retirement, survivors, or

disability benefits does not count in determining an individual's income.

(ii) A transition month is any month of the year beginning when the cost of living adjustment takes effect, through the month following the month of publication of the revised official poverty level.

(3) Have resources, determined using financial methodologies no more restrictive than SSI, that do not exceed the Medicare Part D low-income subsidy (LIS) resource standard defined in section 1860D–14(a)(3)(D) of the Act and in § 423.773(d)(2)(ii) of this chapter.

(c) *Scope.* Medical assistance included in paragraph (b) includes all of the following:

(1) For individuals entitled to Medicare Part A as described in paragraph (b)(1) of this section, coverage for Parts A and B premiums and cost sharing, including deductibles and coinsurance, and copays.

(2) For individuals enrolled in Medicare Part B for coverage of immunosuppressive drugs as described in paragraph (b)(1) of this section, only coverage of premiums and cost sharing related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

■ 35. Add § 435.124 to read as follows:

§ 435.124 Individuals eligible as specified low-income Medicare beneficiaries.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(iii) and 1905(p)(3)(A)(ii) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet the eligibility requirements in § 435.123(b), except that income exceeds 100 percent, but is less than 120 percent of the poverty level.

(c) *Scope.* Medical assistance included in paragraph (b) of this section includes the following:

(1) For individuals entitled to Medicare Part A as described in paragraph (b)(1) of this section, coverage for the Part B premium.

(2) For individuals enrolled under Medicare Part B for coverage of immunosuppressive drugs as described in paragraph (b)(1) of this section, only coverage of the Part B premium related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

■ 36. Add § 435.125 to read as follows:

§ 435.125 Individuals eligible as qualifying individuals.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(iv) and 1905(p)(3)(A)(ii) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet the eligibility requirements in § 435.123(b), except that income is at least 120 percent, but is less than 135 percent of the federal poverty level.

(c) *Scope.* Medical assistance included in paragraph (b) includes the following:

(1) For individuals entitled to Medicare Part A as described in paragraph (b)(1) of this section, coverage for the Part B premium.

(2) For individuals enrolled under Medicare Part B for coverage of immunosuppressive drugs as described in paragraph (b)(1) of this section, only payment of the Part B premium related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

■ 37. Add § 435.126 to read as follows:

§ 435.126 Individuals eligible as Qualified Disabled and Working Individuals.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(ii) and 1905(s) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet all of the following:

(1) Are entitled to Medicare Part A based on the eligibility requirements set forth in § 406.20(c) of this chapter.

(2) Have income, subject to paragraphs (b)(2)(1)(i) and (ii) of this section, that is less than or equal to 200 percent of the federal poverty level.

(i) During a transition month (as defined in paragraph (b)(2)(ii) of this section), any income attributable to a cost of living adjustment in Social Security retirement, survivors, or disability benefits does not count in determining an individual's income.

(ii) A transition month is any month of the year beginning when the cost of living adjustment takes effect, through the month following the month of publication of the revised official poverty level.

(3) Have resources that do not exceed twice the SSI resource standard described in section 1613 of the Act.

(c) *Scope.* Medical assistance included in paragraph (b) of this section is coverage of the Part A premium.

Dated: April 21, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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