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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0731; Special Conditions No. 25–826–SC]

Special Conditions: StandardAero Business Aviation Services, LLC, Textron Aviation Inc. Model BAe.125 Series 800A/800B and Hawker 800/800XP Airplanes; Rechargeable Lithium Batteries and Battery Systems

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Textron Aviation Inc., (Textron) Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes. These airplanes, as modified by StandardAero Business Aviation Services, LLC, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a rechargeable lithium ion battery contained in the Standby Attitude Module (SAM). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on StandardAero Business Aviation Services, LLC on July 25, 2022. Send comments on or before September 8, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2022–0731 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to Nazih Khaouly, Aircraft Systems, AIR–623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *nazih.khaouly@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Aircraft Systems, AIR–623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *nazih.khaouly@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On March 15, 2022, StandardAero Business Aviation Services, LLC applied for a supplemental type certificate for a rechargeable lithium ion battery contained in the SAM on the Textron Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes. The SAM is a self-contained situational awareness instrument that provides aircraft attitude, altitude, airspeed, and slip indication, and contains a rechargeable lithium ion battery. The Textron Model

BAe.125 Series 800A/800B and Hawker 800/800XP airplanes are twin-engine transport category business jets, each with a maximum passenger capacity of 15 passengers and 2 crewmembers, and a maximum takeoff weight of 27,400 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, StandardAero Business Aviation Services, LLC must show that the Textron Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A3EU or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Textron Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Textron Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Textron Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes will incorporate the following novel or unusual design feature:

Installation of a rechargeable lithium ion battery contained in the SAM.

Discussion

Rechargeable lithium batteries are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in 14 CFR 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Special Condition 1 requires that each individual cell within a rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery. Special Condition 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and battery are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory.

Special Condition 4 clarifies that the flammable fluid fire-protection requirements of 14 CFR 25.863 apply to rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition. Special Condition 6 requires each rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas Special Condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries to have an ''automatic'' means to disconnect their charging source due to the fast acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions apply to all rechargeable lithium battery installations in lieu of 14 CFR 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations will remain in effect for other battery installations on these airplanes.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Textron Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes. Should StandardAero Business Aviation Services, LLC apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A3EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on these model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on these airplanes.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Textron Model BAe.125 Series 800A/800B and Hawker 800/800XP airplanes, as modified by

StandardAero Business Aviation Services, LLC.

Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging and overheating.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flight crew if its failure affects safe operation of the airplane.

8. Have a monitoring and warning feature that alerts the flightcrew when its charge state falls below acceptable levels if its function is required for safe operation of the airplane.

9. Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

Note: A battery system consists of the battery, battery charger and any protective, monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of this special condition, a battery and battery system are referred to as a battery.

Issued in Kansas City, Missouri, on July 20, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–15837 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. FDA–2017–D–6841]

Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices, Direct Marking, and Global Unique Device Identification Database Requirements for Certain Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Availability of guidance.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices, Direct Marking, and Global Unique Device Identification Database Requirements for Certain Devices.'' This guidance updates the previous version of the guidance, ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking,'' issued July 1, 2020. This final guidance explains FDA's compliance policy regarding Global Unique Device Identification Database (GUDID) submission requirements for certain class I devices considered consumer health products and describes how a labeler of a class I devices can determine if its device is one of these devices. Additionally, the guidance explains that FDA intends to extend our existing compliance policy regarding GUDID submission requirements for class I and unclassified devices, other than implantable, life-supporting, or life-sustaining (I/LS/LS) devices, for an additional 75 calendar days.

DATES: The announcement of the guidance is published in the **Federal Register** on July 25, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6841 for ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices, Direct Marking, and Global Unique Device Identification Database Requirements for Certain Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in

its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices, Direct Marking, and Global Unique Device Identification Database Requirements for Certain Devices'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Indira Konduri, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1104, Silver Spring, MD 20993–0002, 301–796–6658 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices, Direct Marking, and Global Unique Device Identification Database Requirements for Certain Devices.'' On September 24, 2013 (78 FR 58786), FDA published a final rule establishing a unique device identification system designed to adequately identify devices through distribution and use (the UDI Rule). Phased implementation of the regulatory requirements set forth in that final rule is based on a series of established compliance dates based primarily on device classification.

The UDI Rule requires a device to bear a unique device identifier (UDI) on its label and packages unless an exception or alternative applies (21 CFR 801.20), and special labeling requirements apply to stand-alone software regulated as a device (21 CFR 801.50). The UDI Rule also requires that data pertaining to the key characteristics of each device required to bear a UDI be submitted to FDA's GUDID (§ 830.300 (21 CFR 830.300)). In addition, the UDI Rule added 21 CFR 801.18, which requires certain dates on device labels to be in a standard format. For devices that: (1) must bear UDIs on their labels and (2) are intended to be used more than once and reprocessed between uses, 21 CFR 801.45 requires the devices to be directly marked with a UDI. Compliance dates for these labeling, GUDID submission, standard date format, and direct marking requirements can be found in the preamble to the UDI Rule (78 FR 58815–58816). For more information about UDI compliance dates, please see the UDI web page, available at: *https://www.fda.gov/medical-devices/unique-device-identification-system-udi-system/compliance-dates-udi-requirements.*

This final guidance supersedes the guidance: ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking, Immediately In Effect Guidance for Industry and Food and Drug Administration Staff'' (''2020 UDI Compliance Policy Guidance''), issued July 1, 2020 (85 FR 39477). This guidance explains FDA's compliance policy regarding GUDID submission requirements under § 830.300 for certain class I devices considered consumer health products and describes how a labeler of a class I device can determine whether its device is within the scope of that policy. With respect to class I devices that are consumer health products, as described in the guidance, FDA believes that the entry of UDI data into GUDID, especially given the frequent changes to the Universal Product Codes (UPCs) serving as the UDIs for these devices, is burdensome to stakeholders. Further, FDA considered the public health benefit of GUDID submission for consumer health products and the risks to public health if GUDID submission is not provided for these devices. After reviewing available postmarket information, such as medical device reports and recall data for class I devices, FDA has a better understanding of the devices and device characteristics for which GUDID information is particularly useful in evaluating and improving device safety throughout a product lifecycle, as well as those for which GUDID information may be less important in this regard. Based on this analysis, at this time, FDA does not intend to enforce the GUDID submission requirements under § 830.300 for consumer health products. We are implementing this change in policy through guidance to allow FDA and stakeholders an opportunity to fully assess its impact on public health. FDA may consider amending its regulations on this subject in the future.

In addition, the final guidance explains that we intend to extend our existing compliance policy regarding GUDID submission requirements for class I and unclassified devices, other than I/LS/LS devices, regardless of whether they are consumer health products, for an additional 75 calendar days. In the 2020 UDI Compliance Policy Guidance, FDA stated that we did not intend to enforce the GUDID submission requirements under § 830.300 for class I and unclassified devices, other than I/LS/LS devices, before September 24, 2022. At this time, in light of the considerations described in the guidance, FDA does not intend to enforce the GUDID submission requirements under § 830.300 for class I and unclassified devices, other than I/LS/LS devices, before December 8, 2022.

This guidance finalizes the draft guidance entitled ''Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Requirements for Certain Devices.'' A notice of availability of the draft guidance appeared in the **Federal Register** of October 14, 2021 (86 FR 57154). FDA considered comments received and revised the guidance as

appropriate in response to the comments, including further clarifying which devices are considered consumer health products.

The portion of this guidance describing the 75-day extension of FDA's existing compliance policy regarding GUDID submission requirements for class I and unclassified devices, other than I/LS/LS devices, is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)) and 21 CFR 10.115(g)(2)). FDA has determined that this is a less burdensome policy that is consistent with public health. Although this policy is being implemented immediately without prior comment, FDA will consider all comments received and revise the guidance document as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices, Direct Marking, and Global Unique Device Identification Database Requirements for Certain Devices.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics.* Persons unable to download an electronic copy of ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices, Direct Marking, and Global Unique Device Identification Database Requirements for Certain Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17029 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
801, subpart B, and 830	Unique Device Identification	0910–0720
800, 801, and 809	Medical Device Labeling Regulations	0910–0485

Dated: July 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15828 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 559

RIN 3141–AA76

Facility License Notifications

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is amending its facility license notification regulations to remove the requirement that a facility license notice submission include the name and address of the proposed gaming facility. Specifically, the National Indian Gaming Commission changes to require the submission of the name and address of the property *only if* known when the facility license notification is submitted to the NIGC Chair. The Commission proposes this action to assist tribal governments, and tribal gaming regulatory authorities that face challenges in meeting the regulatory requirement where a facility has not yet been issued a name or address.

DATES: This rule is effective August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, National Indian Gaming Commission; Telephone: (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On February 1, 2008, the NIGC published a final rule in the **Federal Register** titled ''Facility License Notifications and Submissions'' (73 FR 6019). The rule amended the then-current facility license regulations to provide for an expedited review to confirm a tribe's submittal of facility license information; to require notice to the NIGC when a tribe issues, renews, or terminates a facility license; to streamline the submittal of certain information relating to the construction, maintenance, and operation of a gaming facility; and to provide that a tribe need not submit a notification of seasonal or temporary closures of less than 180 days.

II. Development of the Proposed Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the Facility License notifications and submission requirements. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendments to the regulations were intended to implement flexibilities for tribes that submit notification of a new facility and

that facility has not yet been assigned a physical address at the time of submission.

The Commission held two virtual consultation sessions in July 2021 to receive tribal input on the possible changes. The Commission reviewed all comments and now proposes these changes which it believes will allow Tribes greater flexibility in submitting facility license notifications and afford the Agency greater efficiency in processing the applications.

III. Review of Public Comments

In response to our notice of proposed rulemaking, published December 1, 2021, 86 FR 68200, the NIGC received two comments.

General Comments

Comment: One commenter supports the proposed rule because the Tribal government may not know the gaming facility name or address when a facility license notice (FLN) is submitted to the Chair. Since the proposed revision contemplates this possibility, the commenter believes the proposed rule reduces a burden on tribal governments, and increases efficiency, which they believe will prove beneficial.

Another commenter supports the proposed rule because they don't believe the name and address of a property is necessary to determine whether the location of a gaming facility is Indian lands. The commenter believes the change eliminates needless red tape because Tribal governments would no longer be required to unnecessarily wait for such information to be available before submitting a FLN. Finally, the commenter believes the change will improve efficiency.

Response: The NIGC agrees with both commenters and will amend its regulations accordingly.

IV. Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, *et seq.,* and assigned OMB Control Number 3141–0012.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC consultation policy specifies that it will consult with tribes on Commission Actions with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the facility license notification process.

List of Subjects in 25 CFR Part 559

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 559 is amended as follows:

PART 559—FACILITY LICENSE NOTIFICATIONS AND SUBMISSIONS

■ 1. The authority citation for part 559 continues to read as follows:

Authority: 25 U.S.C. 2701, 2702(3), 2703(4), 2705, 2706(b)(10), 2710, 2719.

■ 2. Amend § 559.2 by revising paragraph (b) to read as follows:

§ 559.2 When must a tribe notify the Chair that it is considering issuing a new facility license?

* * * * *

(b) The notice shall contain the following:

(1) A legal description of the property;

(2) The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices, if any;

(3) If not maintained by the Bureau of Indian Affairs, Department of the Interior, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and

(4) If not maintained by the Bureau of Indian Affairs, Department of the Interior, documentation of property ownership.

* * * * *

Dated: July 13, 2022, Washington, DC.

E. Sequoyah Simermeyer,

Chairman.

Jeannie Hovland,

Vice Chair.

[FR Doc. 2022–15377 Filed 7–22–22; 8:45 am]

BILLING CODE 7565–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001 and 4901

RIN 1212–AB44

Examination and Copying of PBGC Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies guidance on examining records kept by PBGC. The amendments reflect statutory changes to the Freedom of Information Act and recent updates to PBGC's procedures for record examination.

DATES:

Effective date. This rule is effective on August 24, 2022.

Applicability date. The amendments under this final rule apply to requests under the Freedom of Information Act submitted to PBGC on or after August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6563. (If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

This final rule updates the Pension Benefit Guaranty Corporation's (PBGC's) regulation on requesting, obtaining, and examining records to reflect statutory changes and current agency practice. Authority for this rule is provided by section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 and by the Freedom of Information Act, as amended.

Major Provisions

This final rule:

- Clarifies that PBGC's disclosable records are generally available in an electronic, rather than paper, format.
- Describes the procedure to seek expedited treatment for record requests.
- Clarifies the acceptable methods for submitting record requests.
- Updates the time limit to respond to record requests.
- Clarifies the procedures available to a requester when PBGC extends the time to respond to a disclosure request or an appeal.
- Clarifies the procedure for responding to requests that are of concern to a Federal agency other than PBGC.
- Updates the fees for search and review time.
- Modifies the definitions of certain categories of requesters.

Background

The Pension Benefit Guaranty Corporation (PBGC) is amending its regulation on Examination and Copying of Pension Benefit Guaranty Corporation Records (29 CFR part 4901) (''FOIA regulation'') to: (1) incorporate statutory changes to the Freedom of Information Act (5 U.S.C. 552) (''FOIA'') made by the FOIA Improvement Act of 2016 (''the 2016 Act'') and prior statutory amendments; (2) reflect PBGC's current procedures for processing and responding to FOIA requests; and (3) update the fees charged to certain requesters to more accurately reflect PBGC's costs in performing the search and review work that is necessary to respond to their FOIA requests. The final rule also makes clarifications and other editorial changes to 29 CFR part 4901.

PBGC is committed to maintaining excellent customer service in responding to FOIA requests. Since 2015, PBGC has received the Department of Justice's Office of Information Policy's highest score in each key area for which it recognizes agencies: (1) applying a presumption of openness, (2) having an efficient system in place for responding to requests, (3) increasing proactive disclosures, (4) utilizing technology, and (5) reducing any backlogs and improving timeliness.[1] A 2015 audit by the National Security Archive, a non-governmental organization, gave PBGC its highest rating and found it to be among ''the best overall [for] . . . proactively meeting the 21st Century Standard of posting all or nearly all FOIA releases online.'' [2] The changes further improve PBGC's FOIA process and increase the transparency of its procedures.

On October 13, 2020 (at 85 FR 64425), PBGC published a proposed rule to amend this regulation and did not receive any public comments. The provisions of this final rule are the same as the proposed rule and are discussed below.

Final Rule Amendments

Records Available in an Electronic Format

Section 2 of the 2016 Act replaced references to ''public inspection and copying'' in the FOIA with ''public inspection in an electronic format.'' A stated goal of the 2016 Act was to ''require federal agencies to make their disclosable records and documents available for public inspection in an electronic format.'' [3] PBGC's Disclosure Division follows this directive and produces disclosable records in an electronic format, but in several places PBGC's FOIA regulation referred to the practice of offering paper copies of documents. The final rule replaces the term ''copy'' in its FOIA regulation with language conveying that, where practicable, records covered under the FOIA are available or will be made available in an electronic, rather than paper, format. Also, the final rule adds in § 4901.2 a definition of the term ''record'' with a reference to the statutory definition, which includes information in an electronic format.

Electronic Reading Room

PBGC used to maintain a reference room on-site where members of the public could inspect and copy certain PBGC records without formally requesting them. Following the directive of the 2016 Act to make records and documents available for public inspection in an electronic format, PBGC modified its FOIA regulation and replaced instances of the term ''reference room'' with ''electronic reading room,'' meaning an online and publicly accessible database of certain PBGC records.[4]

The final rule updates § 4901.4(c) of the FOIA regulation to remove the requirement that PBGC keep a register for the purpose of collecting the names of people who inspect rulemaking proceedings in the electronic reading room and the times at which they do so. This requirement was possible with PBGC's on-site reference room but is impractical with its electronic reading room. It would be unnecessarily burdensome to require individuals who inspect rulemaking proceedings in the

[1] See Department of Justice, Summary of Agency Chief FOIA Officer Reports for 2015, 2016, 2017, and 2018. See for 2018, *www.justice.gov/OIP/Reports/2018Summary%26Assessment/download#2018*; for 2017, *www.justice.gov/oip/reports/2017_cfo_summary_and_assessment.pdf/download*; for 2016, *www.justice.gov/oip/reports/2016_cfo_summary_and_assessment/download*; and for 2015, *www.justice.gov/oip/2015_cfo_summary_and_assessment.pdf/download.*

[2] See *Most Agencies Falling Short on Mandate for Online Records, The National Security Archive 2015 E–FOIA Audit, nsarchive2.gwu.edu/NSAEBB/NSAEBB505/.*

[3] Congressional Research Services, Summary of FOIA Improvement Act of 2016, Public Law 114–185, June 30, 2016.

[4] *See* 82 FR 26990 (June 13, 2017).

electronic reading room to provide their names.

Submitting a Record Request

The final rule amends § 4901.11 of the FOIA regulation to clarify the procedures for submitting a request for records. First, PBGC's Disclosure Division requires FOIA requests to be in writing, and the final rule codifies this requirement. Second, the final rule codifies that electronic telecommunication (*i.e.,* email, online portal) is an approved method to submit a FOIA request. Third, the final rule adds a statement that a requester may seek the assistance of a PBGC FOIA Public Liaison and a description of this position. PBGC's Disclosure Division has designated FOIA Public Liaisons, as required by FOIA, who assist requesters with describing records they are seeking, understanding the status of requests, and resolving disputes. This addition to § 4901.11 highlights the availability of this help.

In addition, the final rule clarifies PBGC procedures that apply when a FOIA request does not sufficiently describe the records being sought. Section 4901.12(b) of the FOIA regulation states that PBGC will offer assistance to a requester who has submitted a deficient request. The final rule adds that the requester will be informed of the availability of assistance from the FOIA Public Liaison, that the failure to reasonably describe the records being sought could cause a delay in responding to the request or a denial of the request, and that an amended request must provide sufficient detail to meet the requirements of an original request.

Action on Request

Section 552(a)(6)(A)(i) of the FOIA provides that a Federal agency has 20 working days to make a determination on a FOIA request. A Senate Report to the Electronic Freedom of Information Act Amendments of 1996,[5] the law that increased the required response period from 10 to 20 days, said, ''Compliance with the 10-day rule is a practical impossibility for the majority of agencies.'' [6] Therefore, the final rule updates the time limit for responding to FOIA requests in § 4901.14(a) of the FOIA regulation from 10 working days to 20 working days, not including extensions. In practice, PBGC already follows the time limit permitted under the statute to allow for thorough and appropriate searches and reviews of agency records.

Section 552(a)(6)(A)(ii) of the FOIA provides that Federal agencies have a single opportunity to ask the requester for additional information and to toll the 20-working day response period while awaiting the requester's response. This provision is intended to ''ensure accuracy in FOIA responses.'' [7] PBGC's Disclosure Division follows the statute with respect to tolling the response period, and the final rule codifies this practice in § 4901.14(a).

Also, the final rule adds to § 4901.14(b) a provision that PBGC will provide records in the format specified in the request if practicable.

Finally, the final rule clarifies PBGC's procedures for when a requested record cannot be located. Section 4901.14(d) of the FOIA regulation states that a request may be denied if a record is not located in time to determine whether it may be disclosed. The final rule clarifies that when records cannot be located despite a reasonably calculated search to uncover all relevant documents, PBGC will let the requester know there are no records to provide, rather than deny the request.

Appeals

Under PBGC's procedures, a requester may appeal any adverse determination by the Disclosure Division. However, before the final rule, § 4901.15(a) stated that a requester may appeal only a denial of a request for disclosure of information. The amendment to § 4901.15(a) clarifies that a requester may appeal any adverse decision by the Disclosure Division under FOIA, including a denial of: access to records, expedited processing, or waiver of fees. It also clarifies the instructions for submitting an appeal.

Extensions of Time

As provided for in section 552(a)(6)(B) of the FOIA and § 4901.16 of the FOIA regulation, PBGC may extend its time to respond to a disclosure request or an appeal when it must collect records stored off-site, examine a voluminous amount of records, or consult with another agency to respond to a FOIA request. The final rule adds to § 4901.16 that when an extension of time exceeds 10 working days, the requester will be notified of the opportunity to seek assistance, modify the request, or arrange an alternative time period (with new response due dates) for processing the original or modified request. This change is intended to improve customer service.

Expedited Action on Requests and Appeals

Section 552(a)(6)(E)(i) of the FOIA states that Federal agencies must promulgate regulations to provide expedited processing of FOIA requests and appeals where the requester demonstrates a compelling need and for other reasons determined by the agency. PBGC's Disclosure Division has a process to request and receive expedited processing. The final rule codifies this process. New § 4901.17 allows a requester to submit a request for expedited action on a disclosure request or appeal. PBGC will act on the disclosure request or appeal as soon as practicable if the requester demonstrates that: (1) a lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual's substantial due process rights, or (2) the requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently needed to inform the public about an actual or alleged Federal Government activity.

The final rule also moves what was § 4901.17 on exhaustion of administrative remedies to newly added § 4901.18.

Record of Concern to More Than One Agency

The final rule modifies § 4901.23, which covers the procedures for a requested record that is of interest to a Federal agency other than PBGC. Before the final rule, PBGC could release such a record only if it determined that PBGC's interest in the record was greater than that of the other agency. Under the amendment, PBGC has greater discretion over whether to transfer the request to another agency. If PBGC receives a request for records that is of concern to another agency, PBGC will either consult with the interested Federal agency about the requested records before determining whether the record is disclosable or refer the request to the interested Federal agency to make that determination. This change is intended to eliminate referrals where the requested record is of concern to the other agency, but PBGC is nonetheless able to determine whether it may be disclosed. Allowing a consultation in these situations will help to ensure that certain requests for records are not unnecessarily delayed.

[5] Public Law 104–231.

[6] S. Rep. 104–272, May 15, 1996.

[7] 153 Cong. Rec. S15701–04, on the OPEN Government Act on 2007, Public Law 110–175.

Charges for Services

The final rule simplifies the categories of requesters used to determine if a requester will be charged fees. Before, under § 4901.31(b), (1) non-commercial scientific or educational institutions and (2) the news media were considered two separate categories. Under the amendment, they are combined into a single category, as requesters that fall within these parameters are not assessed fees for responses to their FOIA requests.

In addition, the final rule updates the definitions in § 4901.31(b). In § 4901.31(b)(1)(ii), the definition of ''commercial use'' states that such use may include litigation work and that PBGC will determine if a requester should be in the ''commercial use'' category on a case-by-case basis and inform the requester of its decision. In § 4901.31(b)(2)(iii), the definition of ''educational institution'' is modified to allow PBGC to verify that a request is in furtherance of scholarly research and to state that PBGC will inform the requester of its decision. Also, the final rule updates and clarifies the definition of ''representative of the news media'' in § 4901.31(b)(2)(iv).

Finally, the final rule amends § 4901.31(e) to clarify the circumstances in which PBGC may fail to comply with a time limit under section 552(a)(6) of the FOIA but still assess fees.

Fee Schedule

The final rule updates the fees charged for search and review time on its FOIA fee schedule. Under section 552(a)(4)(A)(i) of the FOIA,[8] Federal agencies must conform their FOIA fee schedules with OMB's Uniform Freedom of Information Act Fee Schedule and Guidelines [9] (OMB Guidelines). This guidance states, ''Agencies should charge fees that recoup the full allowable direct costs they incur.'' Direct costs, per OMB Guidelines, include the salary rate, meaning basic rate of pay plus 16 percent, intended to cover benefits,[10] of the employee making the search. Agencies may establish an average rate for the range of grades typically involved if ''a homogeneous class of personnel is used exclusively (*e.g.,* all administrative/clerical, or all professional/executive).''

Before the final rule, PBGC's fees were too low to comport with the requirement to fully recoup direct costs, per OMB Guidelines and 5 U.S.C. 552(a)(4)(A)(i). PBGC charged $1.75 per quarter hour ($7.00 per hour) for search and review work performed by custodial or clerical personnel and $4.00 per quarter hour ($16.00 per hour) for search and review work performed by supervisory and professional personnel. These rates were set in 1987 [11] and were well below the salary rates of PBGC employees working on FOIA requests.

PBGC personnel who typically conduct search and review work are a homogeneous class of professional employees. These employees generally are at the grade level of GS–12 or higher. Accordingly, the final rule, like the proposed, sets a single fee for search and review work performed by professional personnel at $54.00 per hour (approximately basic pay plus 16 percent [12] for a GS–12, step 5 employee in Washington, DC in 2020). The rate is within the range of fees charged by other agencies for search and review work by professional personnel.

The change to PBGC's fee schedule is unlikely to increase fees to individual plan participants or beneficiaries requesting their own records. PBGC considers most such requests to be covered wholly under the Privacy Act of 1974, 5 U.S.C. 552a, which allows fees only for duplication. Based on PBGC's experience processing these requests, any components of them that are not covered under the Privacy Act likely require no more than 2 hours of search time. As these are for ''other requesters,'' *i.e.,* individual plan participants requesting their own records, they are granted at no charge. In addition, PBGC will not earn any additional funds from this change as FOIA fees are paid to the U.S. Treasury, not to the agency responding to the request.

The final rule also streamlines and simplifies PBGC's methods of calculating certain fees under FOIA. Before the final rule, § 4901.32(a)(2) stated that PBGC's transportation costs necessary to retrieve off-site records would be charged to a requester. Under the amendment, PBGC will charge these costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

Finally, the final rule deletes § 4901.32(a)(3), which establishes a different system of charges for searches of computerized records; the outmoded limits on copied documents in § 4901.32(b)(3); and the outmoded references to PBGC's provision of a manual copying machine in § 4901.32(b)(4).

Payment of Fees

The final rule changes the approved methods for payment of FOIA fees in § 4901.33 to include: check, money order or other PBGC permitted means. This change will allow PBGC to employ new technologies for submitting FOIA fee payments as they are developed.

Waiver or Reduction of Charges

Section 552(a)(4)(A)(iii) of the FOIA describes the conditions necessary to waive FOIA fees.[13] Because inability to pay is not described in this provision of the statute, the final rule deletes the language in § 4901.34(b) of the FOIA regulation, which provided that the Disclosure Officer could waive or reduce fees based on the requester's inability to pay. The final rule instead adheres to the statutory language about when fees may be waived. It also provides that PBGC will inform the requester in writing that a fee waiver request was denied and why. This amendment is intended to increase accuracy and transparency about when fees may be waived.

Compliance With Rulemaking Guidelines

Executive Orders 12866 and 13563

The Office of Management and Budget has determined that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866. This rule updates PBGC's FOIA regulation to comport with amendments to 5 U.S.C. 552 and PBGC's procedures. Accordingly, OMB has not reviewed the final rule under Executive Order 12866.

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

Although this is not a significant regulatory action under Executive Order

[8] ''[E]ach agency shall promulgate regulations . . . specifying the schedule of fees applicable to the processing of requests . . . Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.''

[9] 52 FR 10012 (March 27, 1987).

[10] *See* id; *see also* Department of Justice, Office of Information Policy's Template for Agency FOIA Regulations.

[11] *See* 52 FR 30662 (August 17, 1987).

[12] The 16 percent accounts for benefits, per OMB Guidelines.

[13] The conditions under 552(a)(4)(A)(iii) of the FOIA are, ''if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.''

12866, PBGC has examined the economic implications of this final rule and has concluded that there will be no significant economic impact as a result of the amendments to PBGC's regulation. Most of the amendments merely clarify existing PBGC practices or modify the regulation to meet statutory requirements. The only additional costs to the public come from the update to the fees for search and review time under § 4901.32 to bring the fee schedule in line with current costs. PBGC collects annually less than $3,000 in fees for responding to FOIA requests. Under the final rule, PBGC is raising its FOIA fee to $54.00 per hour, which is 3.375 times its previous FOIA fee of $16.00 per hour. With the increase of 3.375 times, PBGC anticipates that it will collect roughly between $6,500 and $10,000 in fees annually. Therefore, the increased fees under § 4901.32 will not have a significant economic impact on the public.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that ''may be outmoded, ineffective, insufficient, or excessively burdensome.'' These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified clarifications, updates, and improvements to this regulation consistent with the principles for review under Executive Order 13563. PBGC believes that the changes will provide clearer guidance to the public.

Regulatory Flexibility Act

The Regulatory Flexibility Act [14] imposes certain requirements with respect to rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. Although PBGC does not have data on the number of small entities that the rule will impact, the rule's economic impact on small entities will be nominal. Most of the amendments clarify existing PBGC practices and will have a neutral cost impact. The amendment to PBGC's search and review fees is consistent with the mandates on all Federal agencies under FOIA and OMB Guidelines. Under FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, under the final rule, the fees assessed by PBGC are nominal. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

Paperwork Reduction Act

This document does not contain a collection-of-information requirement subject to the Paperwork Reduction Act (PRA).

List of Subjects

29 CFR Part 4001

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

29 CFR Part 4901

Freedom of information.

In consideration of the foregoing, PBGC amends 29 CFR parts 4001 and 4901 as follows:

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. Amend § 4001.2 by revising the definition of ''Disclosure officer'' to read as follows:

§ 4001.2 Definitions.

* * * * *

Disclosure Officer means the official designated as Disclosure Officer in the Office of the General Counsel, PBGC.

* * * * *

PART 4901—DISCLOSURE AND PUBLIC INSPECTION OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

■ 3. The authority citation for part 4901 continues to read as follows:

Authority: 5 U.S.C. 552, 29 U.S.C. 1302(b)(3), E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 4. Revise the heading of part 4901 to read as set forth above.

■ 5. Revise § 4901.1 to read as follows:

§ 4901.1 Purpose and scope.

This part contains PBGC's general rules implementing the Freedom of Information Act. This part sets forth generally the categories of records accessible to the public, types of records subject to prohibitions or restrictions on disclosure, and procedures whereby members of the public may access and inspect PBGC records.

■ 6. Amend § 4901.2 by:

■ a. Removing ''party,'' from the first definition; and

■ b. Adding in alphabetical order a definition for ''Record''.

The addition reads as follows:

§ 4901.2 Definitions.

* * * * *

Record has the meaning attributed to it by section 552(f)(2) of FOIA.

* * * * *

§ 4901.3 [Amended]

■ 7. Amend § 4901.3 by removing ''The PBGC'' and ''website'' and adding in their places ''PBGC'' and ''website'', respectively.

■ 8. Amend § 4901.4 by:

■ a. Removing ''The PBGC shall'' and adding in its place ''PBGC will'' in the introductory text;

■ b. Removing ''Copies of **Federal Register** documents published by the PBGC, and copies of'' and adding in its place ''**Federal Register** documents published by PBGC, and'' in paragraph (a);

■ c. Removing ''Copies of informational'' and adding in its place ''Informational'' in paragraph (b);

■ d. Revising paragraphs (c) and (d); and

■ e. Removing ''paragraph (a)(2)'' and adding in its place ''section 552(a)(2)'' in paragraph (e).

The revisions read as follows:

§ 4901.4 Information maintained in electronic reading room.

* * * * *

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof;

(d) *Other agency proceedings, policies, staff manuals and instructions, and records.* Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case PBGC will

[14] 5 U.S.C. 601 *et seq.*

explain in writing the justification for the deletion)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by PBGC;

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member of the public which have been adopted by PBGC and which have not been published in the **Federal Register**;

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by PBGC that affect any member of the public;

(4) *Frequently requested records.* Records that have been released under section 552(a)(3) of FOIA and have been the subject of three or more disclosure requests; and

(5) *Other records.* Records that have been released under section 552(a)(3) of FOIA and that PBGC determines, because of the nature of the records' subject matter, have become or are likely to become the subject of subsequent disclosure requests for substantially the same records; and

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■ 9. Revise § 4901.5 to read as follows:

§ 4901.5 Disclosure of other information.

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the Disclosure Officer will make any document (or portion thereof) from the records of PBGC in the custody of any official of PBGC available for inspection unless PBGC reasonably foresees that disclosure would harm an interest protected by an exemption under the provisions of section 552(b) of FOIA and subpart C of this part or disclosure is otherwise prohibited by law. The procedures in subpart B of this part must be used for records that are not made available in PBGC's electronic reading room under § 4901.4 and may be used for records that are available in the electronic reading room. Records are not records of PBGC and are not required to be furnished under FOIA, if they could only be produced by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in existence.

(b) *Discretionary disclosure.* Unless prohibited from disclosure by § 4901.21(a), the Disclosure Officer may make any document (or portion thereof) from the records of PBGC available for inspection if the Disclosure Officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of PBGC.

■ 10. Revise § 4901.6 to read as follows:

§ 4901.6 Filing rules; computation of time.

(a) *Place, method, and date of filing.* (1) For rules about where to file a submission under this part with PBGC, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this part, see § 4000.3 of this chapter.

(3) For rules about the date that a submission under this part was filed with PBGC, see subpart C of part 4000 of this chapter.

(b) *Computation of time.* For rules about any time period under this part, see subpart D of part 4000 of this chapter.

■ 11. Revise § 4901.11 to read as follows:

§ 4901.11 Submission of requests for access to records.

(a) *In general.* A request to inspect any record subject to this subpart must be submitted in writing to the Disclosure Officer, Pension Benefit Guaranty Corporation, by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.* To facilitate processing, ''FOIA request'' should appear prominently on the request.

(b) *Assistance with requests.* A person who intends to submit or has submitted a request to inspect any record subject to this subpart may at any time seek assistance from a FOIA Public Liaison listed on PBGC's website, *www.pbgc.gov.* PBGC's FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

■ 12. Amend § 4901.12 by:

■ a. Removing ''Each request'' and adding in its place ''Each disclosure request'' in paragraph (a);

■ b. Revising paragraph (b); and

■ c. Removing ''Requests calling'', ''paragraph (a)(3)'', ''the PBGC'', and ''disclosure officer shall'' and adding in their places ''Disclosure requests calling'', ''section 552(a)(3)'', ''PBGC'', and ''Disclosure Officer will'', respectively, in paragraph (c).

The revision reads as follows:

§ 4901.12 Description of information requested.

* * * * *

(b) *Deficient descriptions.* (1) If the description is insufficient to enable a professional employee familiar with the subject area of the disclosure request to locate the record with a reasonable amount of effort, the Disclosure Officer will notify the requester and, to the extent possible, indicate the additional information required. PBGC will make every reasonable effort to assist a requester in the identification and location of the record or records sought. PBGC will not withhold records merely because of difficulty in finding them.

(2) A requester who is attempting to modify or reformulate a disclosure request may discuss the request with a FOIA Public Liaison, who is available to assist the requester in reasonably describing the records sought. If the requester fails to reasonably describe the records sought, PBGC's response to the request may be delayed or denied.

(3) Any amended disclosure request must meet the requirements for a request under paragraph (a) of this section.

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■ 13. Revise § 4901.13 to read as follows:

§ 4901.13 Receipt by agency of request.

The Disclosure Officer will note the date and time of receipt on each disclosure request for access to records. A disclosure request is deemed received and the period within which PBGC acts on the request, as set forth in § 4901.14, begins on the next working day following receipt, except that a disclosure request is deemed received only if and when PBGC receives all of the following:

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if PBGC determines that such charges may be substantial and so notifies the requester. Consent must be in the form of a statement that charges under subpart D of this part will be acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in an initial disclosure request.

■ 14. Revise § 4901.14 to read as follows:

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 20 working days after

receipt of a disclosure request (subject to extension under § 4901.16), the Disclosure Officer will take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section. Following receipt, PBGC may ask the requester for information once and toll the 20-day period until PBGC receives such information.

(b) *Request granted.* If the Disclosure Officer determines that the disclosure request will be granted, PBGC will so advise the requester and will promptly make the records available to the requester. PBGC will accommodate any specification of the preferred form or format for the sought record as stated in the request, if the record is readily reproducible in the preferred form or format.

(c) *Request denied.* If the Disclosure Officer determines that the disclosure request will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial, including, if applicable, a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld.

(d) *Records not located.* If the Disclosure Officer determines that, despite a reasonably calculated search to uncover all relevant documents, the requested records could not be located, PBGC will issue a ''no-records'' response, and so advise the requester in writing.

(e) *Information for requester.* Written responses issued under paragraph (c) or (d) of this section will include the name and title of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

■ 15. Amend § 4901.15 by:

■ a. Revising paragraphs (a) through (c); and

■ b. Removing ''shall'' and ''the PBGC's public reference'' and adding in their places ''will'' and ''PBGC's electronic reading'', respectively, in paragraph (d).

The revisions read as follows:

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* A requester may appeal any adverse determination by the Disclosure Officer of a request under FOIA, including a denial of a request for access to records, expedited action, or fee waiver. The requester may file a written appeal within 90 days from the date of the denial or, in the case of a partial denial, 90 days from the date the requester receives the disclosed material. The appeal must include the grounds for appeal and any supporting statements or arguments. The requester must address the appeal to the General Counsel, Pension Benefit Guaranty Corporation, and must submit the appeal by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.* To facilitate processing, the words ''FOIA appeal'' should appear prominently on the appeal.

(b) *Receipt and consideration of appeal.* The General Counsel will note the date and time of receipt on each appeal and notify the requester thereof. Within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel will issue a decision on the appeal.

(1) The General Counsel will determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat the pending action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose nondisclosure is appealed, the General Counsel will either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted will promptly be made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in section 552(a)(4) of FOIA. The General Counsel's decision will be the final action of PBGC with respect to the request.

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■ 16. Revise § 4901.16 to read as follows:

§ 4901.16 Extensions of time.

In unusual circumstances (as described in section 552(a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The Disclosure Officer will notify the requester in writing within the original time period of the unusual circumstances and the date when a response is expected to be sent. When the extension for a disclosure request exceeds 10 working days, the notice will provide the requester with an opportunity to modify the disclosure request or arrange an alternative time period for processing the original or modified request. This notice will also alert the requester of the availability of a PBGC FOIA Public Liaison for assistance and the Office of Government Information Services for dispute resolution services. The maximum extension for responding to an appeal is 10 working days minus the amount of any extension on the request to which the appeal relates.

■ 17. Revise § 4901.17 to read as follows:

§ 4901.17 Expedited action on requests and appeals.

(a) *In general.* Upon a request submitted in accordance with paragraph (b) of this section, PBGC will expedite a disclosure request under § 4901.11 or an appeal under § 4901.15 if PBGC determines that the requester has demonstrated one of the following:

(1) The disclosure request or appeal involves circumstances in which the lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual's substantial due process rights.

(2) The requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently needed to inform the public about an actual or alleged Federal Government activity.

(b) *Timing and method of request.* A request for PBGC to expedite a disclosure request or an appeal may be made at any time and must be made by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.*

(c) *Action on request.* (1) PBGC will notify the requester within 10 calendar days of receipt of a request for expedited action whether PBGC will expedite a disclosure request or an appeal.

(2) *Request granted.* If PBGC determines that the request for expedited action will be granted, PBGC will take action on the disclosure request or the appeal as soon as practicable.

(3) *Request denied.* If PBGC determines that the request for expedited action will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for

the denial. The writing will also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services. PBGC will act on any appeal of that decision expeditiously.

■ 18. Add § 4901.18 to read as follows:

§ 4901.18 Exhaustion of administrative remedies.

If the Disclosure Officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies will be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow PBGC additional time to act as provided in FOIA, processing of the disclosure request or appeal will continue and PBGC will so advise the requester.

■ 19. Revise § 4901.21 to read as follows:

§ 4901.21 Restrictions in general.

(a) *Records not disclosable.* PBGC will not disclose records to the extent prohibited by section 552(b)(1) or (3) of FOIA, sections 4010 and 4043 of ERISA, or other statutes.

(b) *Records disclosure of which may be refused.* Unless prohibited from disclosure by paragraph (a) of this section, PBGC need not but may, as provided in § 4901.5(b), disclose records exempted from FOIA, which include as of August 24, 2022 records under:

(1) Section 552(b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Section 552(b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

(3) Section 552(b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Section 552(b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Section 552(b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Section 552(b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Section 552(b)(9) of FOIA, dealing in general with information about wells.

§ 4901.22 [Amended]

■ 20. Amend § 4901.22 by removing ''shall not'' and adding in its place ''will not'' in the first sentence and removing ''shall be'' and adding in its place ''will be'' in the second sentence.

■ 21. Revise § 4901.23 to read as follows:

§ 4901.23 Record of concern to agency other than PBGC.

When reviewing a record in response to a disclosure request, PBGC will determine whether another agency is better able to determine whether the record is exempt from disclosure under FOIA. As to any such record, PBGC will proceed in one of the following ways:

(a) *Consultation with another agency.* When the record contains information of interest to another agency, PBGC will make a release determination only if its interest in the record is the primary interest and only after PBGC consults with that agency.

(b) *Referral to another agency.* (1) When an agency other than PBGC has primary interest in the record, then PBGC will refer the responsibility for responding to the disclosure request regarding that record to that agency.

(2) Whenever PBGC refers any part of the responsibility for responding to a disclosure request to another agency, PBGC will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA office.

■ 22. Amend § 4901.24 by:
■ a. Revising the section heading and paragraph (a);
■ b. Removing ''submitter shall'' and ''paragraph shall'' and adding in their places ''submitter must'' and ''paragraph (b) will'', respectively, and removing ''therefor'' in paragraph (b);
■ c. Removing ''disclosure officer'', ''Counsel shall'', ''this paragraph'', and ''requester shall'' and adding in their places ''Disclosure Officer'', ''Counsel will'', ''this paragraph (c)'', and ''requester will'', respectively, in paragraph (c);
■ d. Removing ''disclosure should'', ''subsection (b)'', ''paragraph (b)(4) of FOIA'', ''asserted should'', and ''paragraph shall'' and adding in their places ''disclosure must'', ''section 552(b)'', ''section 552(b)(4)'', ''asserted must'', and ''paragraph (d) will'', respectively, in paragraph (d);
■ e. Revising paragraph (e); and
■ f. Removing ''disclosure officer'' and ''Counsel shall'' and adding in their places ''Disclosure Officer'' and ''Counsel will'', respectively, in paragraph (f).

The revisions read as follows:

§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to PBGC.

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that PBGC has reason to believe contains such information, unless one of the following applies:

(1) Access to the information is denied.

(2) The information has been published or officially made available to the public.

(3) Disclosure of the information is required by law other than FOIA.

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

* * * * *

(e) *Notification to submitter of decision to disclose.* If the Disclosure Officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the Disclosure Officer (or General Counsel) will give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification will, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy will be provided to the requester.

* * * * *

■ 23. Amend § 4901.31 by:
■ a. Revising paragraphs (a) and (b);
■ b. Removing ''the PBGC'' and adding in its place ''PBGC'' in paragraph (c); and
■ c. Revising paragraphs (d) and (e).

The revisions read as follows:

§ 4901.31 Charges for services.

(a) *In general.* Pursuant to the provisions of section 552 of FOIA, as amended, PBGC will assess charges to cover the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA, except where the charges are limited or waived under

paragraph (b) or (d) of this section, according to the fee schedule in § 4901.32. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself. Except as provided in paragraph (e) of this section, no charge for searching (or in the case of a requester described under section 552(a)(4)(A)(ii)(II) of FOIA, for duplication) will be assessed if PBGC has failed to comply with any time limit under section 552(a)(6) of FOIA.

(1) *Direct costs* means those expenditures which PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a disclosure request under FOIA and this part. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* means all time spent looking for material that is responsive to a disclosure request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required. Searches may be done manually or by computer using existing programming. Search is distinguishable from ''review'' which is defined in paragraph (a)(3) of this section.

(3) *Review* means the process of examining documents located in response to a disclosure request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to redact them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Duplication* means the process of making a copy of a document necessary to respond to a disclosure request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, audio-visual materials, or electronic records, among others.

(b) *Categories of requesters.* For purposes of assessing fees, requesters who seek access to records under FOIA and this part are divided into three categories: commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. PBGC will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* (i) When records are requested for commercial use, PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under section 552(b) of FOIA and this part.

(ii) A ''commercial use'' request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. PBGC's decision to place a requester in the commercial use category will be made on a case-by-case basis dependent upon on the requester's intended use of the information. PBGC will notify requesters of their placement in this category.

(2) *Non-commercial scientific or educational institutions, or news media requesters.* (i) When records are requested by a non-commercial scientific or educational institution or a news media requester, PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(ii) A non-commercial scientific institution is an institution that is not operated for a ''commercial use'' as that term is defined in paragraph (b)(1)(ii) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) An educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. PBGC may seek verification from the requester that the request is in furtherance of scholarly research and PBGC will advise requesters of their placement in this category.

(iv)(A) A representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. These examples are not intended to be all-inclusive. A ''freelance'' journalist who demonstrates a solid basis for expecting publication through a news media entity will be considered as a representative of the news media.

(B) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media will not be considered to be a request that is for a commercial use.

(3) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraph (b)(1) or (2) of this section, PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first 2 hours of search time. Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in PBGC's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record sought is not found.

* * * * *

(d) *Waiver or reduction of charges.* Circumstances under which any fee listed in § 4901.32 may be waived or reduced are set forth in § 4901.34.

(e) *Unusual or exceptional circumstances.* Notwithstanding paragraph (a) of this section, if PBGC fails to comply with a time limit under section 552(a)(6) of FOIA, PBGC may nevertheless assess a charge for search and review services (or in the case of a requester described under section 552(a)(4)(A)(ii)(II), for duplication) if one of the following circumstances applies:

(1) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC needs more than 10 additional days to process the disclosure request, and more than 5,000 pages are necessary to respond to the request, provided that:

(i) PBGC has provided timely written notice of this determination to the requester; and

(ii) PBGC has discussed with the requester, or made three or more good-faith attempts to do so, via written mail, electronic mail, or telephone how the

requester could effectively limit the scope of the request.

(2) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC has provided timely written notice to the requester of the unusual circumstances extending the time limit by 10 additional days, and PBGC processes the disclosure request within that time.

(3) A court has determined that exceptional circumstances exist (as defined in section 552(a)(6)(C) of FOIA) and has issued an order excusing PBGC's failure to comply with the time limit.

■ 24. Amend § 4901.32 by revising paragraphs (a) and (b) to read as follows:

§ 4901.32 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search time and review time.* For ordinary search services and review services, PBGC charges $54.00 per hour. PBGC charges fees in quarter hour increments.

(2) *Retrieving records stored by NARA.* For disclosure requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), PBGC charges additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) *Standard copying fee.* $0.15 for each page of record copies furnished.

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $50, the person desiring reproduction may request a special rate quotation from PBGC.

(3) *Indexes.* Pursuant to section 552(a)(2) of FOIA copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

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■ 25. Amend § 4901.33 by:

■ a. Revising paragraphs (a), (b) introductory text, and (b)(1);

■ b. Removing ''the PBGC'' and adding in its place ''PBGC'' in paragraph (b)(2); and

■ c. Removing ''The PBGC'' and adding in its place ''PBGC'' in paragraph (c).

The revisions read as follows:

§ 4901.33 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as provided in this section must be made by check, money order, or other PBGC permitted method, and in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov.*

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a disclosure request may be required as follows:

(1) Where PBGC estimates or determines that charges allowable under the rules in this subpart, are likely to exceed $250, PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, PBGC will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

* * * * *

■ 26. Amend § 4901.34 by:

■ a. Removing ''disclosure officer'', ''government'', ''waiver request shall'', and ''request for waiver'' and adding in their places ''Disclosure Officer'', ''Government'', ''waiver or reduction request must'', and ''request'', respectively, in paragraph (a); and

■ b. Revising paragraph (b).

The revision reads as follows:

§ 4901.34 Waiver or reduction of charges.

* * * * *

(b) If the Disclosure Officer determines that the request for fee waiver or reduction will be denied, the requester will be so advised in writing with a brief statement of the reasons for the denial. The writing will include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0571; FRL–9964–01–OCSPP]

Methylorubrum extorquens Strain NLS0042; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Methylorubrum extorquens* strain NLS0042 in or on all food commodities when used in accordance with label directions and good agricultural practices. NewLeaf Symbiotics, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Methylorubrum extorquens* strain NLS0042 under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective July 25, 2022. Objections and requests for hearings must be received on or before September 23, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0571, 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 and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0571 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 23, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although EPA strongly encourages those interested in submitting objections or a hearing request to submit objections and hearing requests electronically. *See* Order Urging Electronic Service and Filing (April 10, 2020), *https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.* At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal delivery, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/OA/EAB/EAB-ALJ_upload.nsf.*

Although EPA's regulations require submission via U.S. Mail or hand delivery, EPA intends to treat submissions filed via electronic means as properly filed submissions during this time that the Agency continues to maximize telework due to the pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, *e.g.,* the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges, Mail Code 1900R, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0571, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background

In the **Federal Register** of September 22, 2021 (86 FR 52624) (FRL–8792–03), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F8903) by NewLeaf Symbiotics Inc., 1005 North Warson Road, St. Louis, MO 63132. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Methylorubrum extorquens* strain NLS0042 in or on all food commodities. That document referenced a summary of the petition prepared by the petitioner NewLeaf Symbiotics Inc., which is available in the docket via *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption, and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on *Methylorubrum extorquens* strain NLS0042 and considered its validity, completeness, and reliability, as well as the

relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on that data can be found within the document entitled, ''Human Health Risk Assessment of *Methylorubrum extorquens* strain NLS0042, a New Active Ingredient, in TS201 (End-use Product) Proposed for Registration and an Associated Petition Requesting a Tolerance Exemption'' (*Methylorubrum extorquens* strain NLS0042 Human Health Risk Assessment). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data and rationale demonstrated that, with regard to humans, *Methylorubrum extorquens* strain NLS0042 is not toxic, pathogenic, or infective via the pulmonary route of exposure when *Methylorubrum extorquens* strain NLS0042 and other (inert) ingredients were administered through the intratracheal route at a single dose of 3.16×10^7 colony-forming units per test animal. Although the dose used in the pulmonary toxicity/pathogenicity study was below the guideline minimum dose, EPA determined the results of the study to be useful for risk assessment purposes. *Methylorubrum extorquens* strain NLS0042 is not anticipated to be toxic, pathogenic, or infective via the oral or injection routes of exposure based on rationale supported by acute toxicity data conducted with a mixture of *Methylorubrum extorquens* strain NLS0042 and other (inert) ingredients and a temperature growth curve study which demonstrated that *Methylorubrum extorquens* strain NLS0042 does not grow at human body temperature. Additionally, the acute pulmonary toxicity/pathogenicity study demonstrated a pattern of clearance of *Methylorubrum extorquens* strain NLS0042 from the lungs of the test animals. Significant dietary and non-occupational exposures to residues of *Methylorubrum extorquens* strain NLS0042 are not anticipated because it will be used only in soil directed or seed treatment applications at low application rates. These uses are not expected to significantly increase levels of *Methylorubrum extorquens* strain NLS0042 above naturally occurring background levels and *Methylorubrum extorquens* strain NLS0042 is not expected to survive the harsh conditions of municipal water treatment processes (*e.g.,* pH adjustments). Even if dietary exposure to residues of *Methylorubrum extorquens* strain NLS0042 were to occur, there is not a concern due to the lack of potential for adverse effects. If non-occupational, residential exposure were to occur, there is not a concern due to lack of potential for adverse effects and lack of exposure. Although there is uncertainty regarding inhalation hazard, there is no non-occupational, residential exposure via the inhalation route, therefore there is no risk of concern. Because there are no threshold levels of concern with the toxicity, pathogenicity, or infectivity of *Methylorubrum extorquens* strain NLS0042, EPA determined that the additional margin of safety referred to as the Food Quality Protection Act Safety Factor is not necessary to protect infants and children as part of the qualitative assessment conducted.

Based upon its evaluation in the *Methylorubrum extorquens* strain NLS0042 Human Health Risk Assessment, which concludes that there are no risks of concern from aggregate exposure to *Methylorubrum extorquens* strain NLS0042, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Methylorubrum extorquens* strain NLS0042. Therefore, an exemption from the requirement of a tolerance is established for residues of *Methylorubrum extorquens* strain NLS0042 in or on all food commodities when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required for *Methylorubrum extorquens* strain NLS0042 because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of *Methylorubrum extorquens* strain NLS0042 in or on all food commodities when used in accordance with label directions and good agricultural practices.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 2022.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1393 to subpart D to read as follows:

§ 180.1393 Methylorubrum extorquens strain NLS0042; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Methylorubrum extorquens* strain NLS0042 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2022–15836 Filed 7–22–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 1

[HHS–OS–2020–0008; HHS–OS–2021–0001]

RIN 0991–AC29

Department of Health and Human Services Repeal of HHS Rules on Guidance, Enforcement, and Adjudication Procedures

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or the Department) is issuing a final rule that repeals the regulations issued under two final rules: ''Department of Health and Human Services Good Guidance Practices,'' published in the **Federal Register** of December 7, 2020; and ''Department of Health and Human Services Transparency and Fairness in Civil Administrative Enforcement Actions,'' published in the **Federal Register** of January 14, 2021. This action removes HHS regulations regarding guidance, enforcement, and adjudication procedures.

DATES: This rule is effective August 24, 2022.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Daniel J. Barry, Deputy General Counsel, 200 Independence Avenue SW, Washington, DC 20201. Email: *GoodGuidance@hhs.gov.* Telephone: 877–696–6775.

SUPPLEMENTARY INFORMATION:

I. Overview

HHS is repealing two procedural rules that were issued in December 2020 and January 2021 to implement Executive orders (EOs) issued on October 9, 2019. One rule relates to guidance document procedures and the other relates to civil administrative enforcement and adjudication procedures (collectively, the Final Rules). The Department codified the Final Rules in 45 CFR part 1.

On January 20, 2021, President Biden, under a new Administration, revoked both EOs that served as the basis for the Final Rules and directed agencies to promptly take steps to rescind any rules and policies implementing or enforcing the revoked EOs, as appropriate and consistent with applicable law. Accordingly, the Department has reconsidered the Final Rules. We now conclude that they create unnecessary hurdles that hinder the Department's ability to issue guidance, bring enforcement actions, and take other appropriate actions that advance the Department's mission. The Department continues to abide by its longstanding commitment to follow applicable principles of due process and administrative law; however, upon further reflection, we now conclude that the Final Rules establish procedures well beyond anything required by applicable law. Moreover, in significantly burdening the Department, these procedures are inconsistent with the policies and goals of the current Administration to ensure that HHS can appropriately leverage administrative tools to protect and advance the public health and welfare. In addition, the Final Rules created a single set of procedures for guidance documents and civil enforcement for the entire Department, which we believe is contrary to the efficient and effective administration of the wide array of programs carried out by the Department, given the diversity of those programs.

For these reasons, we issued a notice of proposed rulemaking on October 19, 2021, to repeal the Final Rules. 86 FR 58042 (Oct. 20, 2021) (Repeal NPRM). As discussed in greater detail in the Repeal NPRM and in this document, and consistent with the President's January 20, 2021, directive, we are now repealing the Final Rules in their entirety.

II. History of the Rulemaking

On October 9, 2019, the White House issued two EOs: Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' 84 FR 55235 (Oct. 15, 2019) (E.O. 13891), and Executive Order 13892, ''Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication,'' 84 FR 55239 (Oct. 15, 2019) (E.O. 13892). These EOs served as the basis for the Final Rules, which were promulgated by the Department in December 2020 and January 2021: ''Department of Health and Human Services Good Guidance Practices,'' 85 FR 78770 (Dec. 7, 2020) (the Guidance rule, effective January 6, 2021), and ''Department of Health and Human Services Transparency and Fairness in Civil Administrative Enforcement Actions,'' 86 FR 3010 (Jan. 14, 2021) (the Civil Enforcement rule, effective January 12, 2021). The Department codified the Final Rules collectively in 45 CFR part 1. Shortly after the rules became effective, on January 20, 2021, President Biden, under a new Administration, issued Executive Order 13992, which revoked both EOs that served as the basis for these rules and instructed agencies to rescind, ''as appropriate and consistent with applicable law,'' any rules that were based on the revoked EOs. 86 FR 7049 (Jan. 25, 2021). Consistent with that instruction, the Department carefully reconsidered the Final Rules and then published the Repeal NPRM explaining why it proposed to repeal the Final Rules. 86 FR 58042 (Oct. 20, 2021).

A. Revoked Executive Orders

E.O. 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' required agencies, among other things, to: treat guidance documents as non-binding both in law and in practice, except as incorporated into a contract; take public input on certain guidance documents into account; and make all guidance documents available on a single website. 84 FR 55235. E.O. 13892, ''Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication,'' imposed a number of procedural hurdles on agencies engaged in civil administrative enforcement or adjudication. 84 FR 55239. As noted, both EOs have since been revoked. 86 FR 7049.

However, prior to the revocation of these EOs, and consistent with the directive in E.O. 13891, the Department published the Guidance rule. Although E.O. 13892 did not require rulemaking, the Department also published a final rule to implement E.O. 13892, the Civil Enforcement rule.

B. Guidance Rule

On August 20, 2020, consistent with the requirements of E.O. 13891, HHS published a notice of proposed rulemaking entitled ''Department of Health and Human Services Good Guidance Practices,'' the stated purpose of which was to ''promote the appropriate issuance and use of guidance documents . . . .'' 85 FR 51396. The rule's stated intent was to increase accountability, improve the fairness of guidance issued by the Department, guard against unlawful regulation through guidance, and safeguard the important principles underlying the United States administrative law system. *Id.*

The major provisions of the proposed Guidance rule were: (1) a requirement that each guidance document issued by the Department generally include certain information, including a statement that the guidance does not have the force and effect of law and is not binding unless specifically incorporated into a contract; (2) heightened procedures for ''significant guidance documents,'' including a period of notice and comment, a requirement for HHS Secretary (Secretary) approval on a non-delegable basis, and a requirement for submission to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) for review under Executive Order 12866; (3) creation of a repository for all guidance documents along with a provision stating that guidance documents not in the repository are not effective and will be considered rescinded; and (4) procedures for the public to petition the Department to withdraw or modify any particular guidance document.

HHS proposed that its new requirements for guidance would apply to all components of the Department except for the Food and Drug Administration (FDA). 85 FR 51396. The preamble to the proposed Guidance rule explained that FDA already operates under a set of Good Guidance Practice (GGP) regulations, *see* 21 CFR 10.115, as required by the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C. 371(h); no other agency within HHS functions under a similar set of regulations or statutory provisions. 85 FR 51396. FDA's GGP regulations have been in effect for more than two decades. *See* 21 CFR 10.115. The preamble also explained that FDA would be proposing amendments to its GGP regulations to address E.O. 13891 separately. 85 FR 51396.

During the comment period for the notice of proposed rulemaking, the Department received nearly 90 comments on the proposed rule. 85 FR 78771. The comments are available at *https://www.regulations.gov/document/HHS-OS-2020-0008-0001/comment.*

The Department issued the Guidance rule on December 7, 2020. 85 FR 78770. In response to public comment and the Department's further consideration of the policies addressed in the rule, the Guidance rule made several changes to the proposed rule. First, in addition to the requirement in the proposed rule that the Secretary approve, on a non-delegable basis, all significant guidance documents, the final rule added the requirement that the Secretary approve, on a non-delegable basis, all *non*-significant guidance documents that the Secretary determines would implicate a policy matter of priority to the Secretary, potentially create a serious inconsistency, or otherwise interfere with an action taken or planned by another HHS agency or the Office of the Secretary. *Id.* at 78786.

Second, the Guidance rule added more detail on what information the Department needs to provide when responding to a petition to amend or withdraw guidance, including a statement on whether the Department agrees or disagrees with the petition and its rationale. 85 FR 78787.

Third, although FDA had been excluded from the scope of the HHS proposed Guidance rule, the final Guidance rule included FDA within its scope. 85 FR 78785. The preamble to the final Guidance rule explained that one commenter had urged HHS to amend FDA's GGP regulations to be consistent with the requirements in the HHS Guidance rule. 85 FR 78771. HHS agreed with this comment, and then explained that, because the FDA regulations had not yet been amended to address E.O. 13891, FDA would be included in the Guidance rule until the Secretary issued a final rule amending FDA's separate GGP regulations. *Id.*[1] The Department did not reopen the comment period to invite comments on the inclusion of FDA within its scope.

The Department codified the Guidance rule in 45 CFR 1.1 through 1.5.

C. Civil Enforcement Rule

On January 14, 2021, HHS issued a final rule entitled ''Department of Health and Human Services Transparency and Fairness in Civil Administrative Enforcement Actions.'' 86 FR 3010 (Jan. 14, 2021). The Civil Enforcement rule, which was issued as a procedural rule without notice-and-comment rulemaking, stated that it was intended to provide regulated parties with greater transparency and fairness in administrative actions and to be consistent with the requirements of E.O. 13892. 86 FR 3010. The Department stated that ''[t]he rule is designed to ensure accountability, fairness of how the Department uses guidance, proper use of guidance documents, and opportunities for third parties to be heard, and to safeguard the important principles underlying the United States administrative law system.'' 86 FR 3011.

The rule contains a number of provisions, including the following: (1) a requirement that the agency avoid unfair surprise by only applying standards and practices in a civil enforcement action that have been publicly stated; (2) a requirement that, if the agency relies on a decision to assert new or expanded claims of jurisdiction, it must publish the initial decision in the **Federal Register** or the Department's guidance repository before the conduct over which the jurisdiction is sought occurs; and (3) a requirement that the Department give parties—before the agency takes a civil enforcement action—written notice of its initial legal and factual determinations, an opportunity to respond in writing and in certain cases orally, and a written response to the affected entity (when timely requested).

[1] In fact, the Department did not issue a proposed or final rule to amend FDA's GGP regulations to address E.O. 13891 before January 20, 2021, when E.O. 13891 was revoked.

The Department codified the Civil Enforcement rule in 45 CFR part 1, by revising §§ 1.1 and 1.2, and adding §§ 1.6 through 1.9.

D. Repeal NPRM

On October 19, 2021, HHS issued the Repeal NPRM proposing to repeal the Final Rules in their entirety. 86 FR 58042. The preamble explained that, after the Biden-Harris Administration revoked the EOs that served as the basis for these rules and directed agencies to promptly take steps to rescind any rules and policies implementing or enforcing the revoked EOs, as appropriate and consistent with applicable law, the Department reconsidered the Final Rules. That review led the Department to conclude that the Final Rules create unnecessary hurdles that hinder the Department's ability to issue guidance, bring enforcement actions, and take other appropriate actions that advance the Department's mission. The preamble further explained that these rules significantly burden the Department and are inconsistent with the policies and goals of the current Administration. We received approximately thirty comment submissions on the Repeal NPRM, which we have reviewed and considered. Our responses to the comments are discussed in Section IV.

III. Legal Authority

The legal authority for this final repeal rule is 5 U.S.C. 301. That provision states in relevant part that ''[t]he head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.'' The Guidance rule, the Civil Enforcement rule, and the Repeal NPRM relied on the same authority.

In addition, Congress's grant of broad, discretionary rulemaking authority necessarily includes the authority not to promulgate—and therefore also to repeal—a proposed or final rule. *See Natural Res. Def. Council, Inc.* v. *Securities and Exchange Commission (SEC),* 606 F.2d 1031, 1045 (D.C. Cir. 1979); *see also* 5 U.S.C. 551(5) (defining ''rule making'' to include formulating, amending, and repealing a rule). In addition, ''[t]he power to reconsider is inherent in the power to decide,'' *Albertson* v. *Federal Communications Commission (FCC),* 182 F.2d 397, 399 (1950), and, thus, ''[a]dministrative agencies have an inherent authority to reconsider their own decisions.'' *Trujillo* v. *Gen. Elec. Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980).

IV. Discussion of Final Repeal Rule

This rule repeals the Final Rules, which had been codified in 45 CFR part 1. HHS will reserve 45 CFR part 1.

The thirty comments we received on the Repeal NPRM were mixed, but a substantial majority favored repeal. Commenters in favor of repeal consisted of non-profit policy and advocacy groups; a law school clinic; trade organizations; and an insurance company. Commenters in favor of retaining the Final Rules consisted of non-profit policy and advocacy groups; a law school clinic; trade associations; a state government agency; and individuals. This section summarizes and responds to the comments received and discusses the Department's overall conclusions regarding issues related to repealing the Final Rules. In a few instances, the public comments offered were outside the scope of the proposed rule and will not be addressed in this preamble.

A. Comments on the Policy Basis for Repeal

1. The Final Rules Run Counter to the Administration's Goals of Advancing Public Health and Welfare

As discussed in the Repeal NPRM, the Biden-Harris Administration is committed to using available tools of Federal administrative agencies to, among other things: confront the urgent challenges facing the nation; equip executive departments with flexibility to use robust regulatory action to address national priorities; pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality; and protect and strengthen Medicaid and the Affordable Care Act (ACA) and make high-quality healthcare accessible and affordable for every American.[2]

Many of the procedures in the Final Rules run counter to those goals. As the Repeal NPRM explained, the Final Rules were issued by the previous Administration to advance its policy goals, as reflected in Executive orders (EOs 13891 and 13892) issued under that Administration. The current Administration revoked both EOs 13891 and 13892 and directed agencies to take all necessary steps to halt implementation and enforcement of those EOs as appropriate and consistent with applicable law. *See* E.O. 13992. Accordingly, many procedural rules—like the Final Rules—that were issued by other departments and agencies under the previous Administration, have already been repealed.[3]

[2] See ''Revocation of Certain Executive Orders Concerning Federal Regulation,'' 86 FR 7049 (Jan. 25, 2021) (E.O. 13992); ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' 86 FR 7009 (Jan. 25, 2021) (E.O. 13985); ''Strengthening Medicaid and the Affordable Care Act,'' 86 FR 7793 (Feb. 2, 2021) (E.O. 14009); ''Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage,'' 87 FR 20689 (April 8, 2022) (E.O. 14070).

[3] *See*

- Architectural and Transportation Barriers Compliance Board, ''Procedures for Issuing Guidance Documents; Recission'' 87 FR 5692 (Feb. 2, 2022) (rescinding rule creating internal procedural requirements on the issuance, public availability, and modification or withdrawal of guidance documents);
- Environmental Protection Agency, ''On-Site Civil Inspection Procedures; Rescission,'' 86 FR 74371 (Dec. 30, 2021) (rescinding rule on civil inspection procedures);
- National Endowment for the Arts final rule, ''Procedures for Guidance Documents,'' 86 FR 58809 (Oct. 25, 2021) (rescinding rule on issuing guidance);
- Department of Education final rule, ''Rulemaking and Guidance Procedures,'' 86 FR 53863 (Sept. 29, 2021) (rescinding rule on rulemaking and guidance procedures);
- Department of Justice interim final rule, ''Processes and Procedures for Issuance and Use of Guidance Documents,'' 86 FR 37674 (July 16, 2021) (revoking regulations regarding the issuance and use of guidance documents);
- Department of Housing and Urban Development final rule, ''Implementing Executive Order 13992, Revocation of Certain Executive Orders Concerning Federal Regulation,'' 86 FR 35391 (July 6, 2021) (removing regulations on guidance procedures);
- Department of Energy final rule, ''Procedures for the Issuance of Guidance Documents,'' 86 FR 29932 (June 4, 2021) (withdrawing final rule on issuing guidance);
- Federal Mediation and Conciliation Service final rule, ''Recission of Federal Mediation and Conciliation Rule on Administrative Guidance,'' 86 FR 29196 (June 1, 2021) (rescinding rule on guidance);
- Tennessee Valley Authority final rule, '''Promoting the Rule of Law Through Improved Agency Guidance' Regulations; Rescission,'' 86 FR 28488 (May 27, 2021) (rescinding rule on guidance);
- Environmental Protection Agency final rule, ''EPA Guidance; Administrative Procedures for Issuance and Public Petitions; Rescission,'' 86 FR 26842 (May 18, 2021) (rescinding rule on guidance);
- National Endowment for the Humanities and National Foundation on the Arts and the Humanities final rule, ''Processes and Procedures for Issuing Guidance Documents,'' 86 FR 26184 (May 13, 2021) (rescinding rule on guidance);
- U.S. Office of Government Ethics final rule, ''Removal of U.S. Office of Government Ethics Guidance Documents Regulations''86 FR 25801 (May 11, 2021) (rescinding rule on guidance);
- Railroad Retirement Board final rule, ''Guidance Documents,'' 86 FR 22866 (Apr. 30, 2021) (rescinding rule on guidance);
- Social Security Administration final rule, ''Rescission of Rules on Improved Agency Guidance Documents'' 86 FR 20631 (Apr. 21, 2021) (rescinding regulations on guidance);
- Department of Interior final rule, ''Procedures for Issuing Guidance Documents,'' 86 FR 19786

At least one commenter objected to the repeal of the recently promulgated rules because the process of promulgating and repealing rules in a short time period unnecessarily creates inconsistency and confusion and muddies the waters of the administrative world. We generally agree that the scenario of issuing rules that are then quickly repealed is regrettable. However, we disagree that the Final Rules should be retained merely for the sake of consistency, considering the substantial adverse impacts from these rules, as discussed in the Repeal NPRM, the comments, and this preamble. Given that both Final Rules involve matters relating to agency procedure and practice, the decision of one Administration to quickly issue procedural rules in the final weeks of its term to govern the operations of the next Administration can be seen as questionable and ill-timed. In sum, the Department now believes that the prior Administration's decision to issue these rulemakings was ill-advised, and it is necessary to repeal the resulting regulations, consistent with the revocation of similar rules by other departments and agencies.

2. The Final Rules Impose Burdensome Standards and Procedures

As described in the Repeal NPRM, the Final Rules impose burdensome standards and procedures that interfere with HHS's ability to respond efficiently to public health matters. Contrary to the policy of the current Administration that agencies must be equipped with flexible and robust tools to address national priorities, including the COVID–19 pandemic, economic recovery, racial justice, and climate change, *see* E.O. 13992, these rules inappropriately constrict and impede the Department's ability to: (1) efficiently direct and operate in the interest of public health; (2) quickly communicate its regulatory interpretations, policies, and recommendations, such as by unduly extending the time needed to promulgate significant guidance, and by limiting the use of tools such as circulars, bulletins, advisories, and other guidance documents; and (3) take swift enforcement action when appropriate.

Several commenters agreed with the Department's position on this issue as explained in the Repeal NPRM and reaffirmed that the Final Rules impose burdensome standards and procedures that interfere with HHS's ability to respond quickly and efficiently to public health matters. Commenters noted, for example, that the Guidance rule's notice-and-comment requirements at 45 CFR 1.3 were especially onerous and time-consuming and needlessly hinder HHS's ability to timely issue critical information on public health and HHS programs. This additional burden harms not only HHS programs, but also the people who rely on those programs. The commenters explained, for example, that robust, swift, efficient, and effective guidance can be a critical tool for conveying health and safety information to the public on accessing medical and preventive care services and communicating allocation of funding decisions to state health administrators. Commenters also noted that guidance is essential for Medicaid, Medicare, and ACA program enrollees, who often look to such guidance to explain complicated program rules and requirements. We discuss other comments regarding burdensome procedures in Sections IV.D. and E.

Although no commenter disputed that the Final Rules' requirements increase the burdens on the Department, several argued that these requirements were nonetheless necessary to increase transparency, accountability, and public participation in the regulatory process, and provide for a more robust and efficient administration. We disagree that the Final Rules are necessary to accomplish these ends. In the several months that these rules have been in effect, we have seen no evidence of benefit such as those suggested in comments from their operations. Further, the comments supporting the original rules do not cite any evidence to support their opinions. As one commenter in favor of repeal explained, although the Final Rules stated that they were intended to enhance transparency, fairness, and stakeholder engagement, the Final Rules accomplish none of these goals. Instead, the Final Rules hinder the Department and frustrate its mission by creating new, confusing, and unnecessary bureaucratic inefficiencies that slow down or halt Department initiatives.

One commenter expressed concern that a repeal of the Guidance rule's notice-and-comment provisions would deprive stakeholders [4] of a framework for providing input on future Departmental guidance defined as significant under the rule. While the Department recognizes that repealing the Guidance rule will eliminate a Department-wide formal process for providing public input on such draft guidance, HHS agencies have adequate processes in place to obtain meaningful input from stakeholders on significant guidance without the Guidance rule's cumbersome requirements. Moreover, we now conclude that any benefit derived from the ability to formally comment on guidance and providing the Department's responses to comments—which, by operation of law, is non-binding and does not have the force and effect of an agency rule—is outweighed by the Department's interest in quickly and responsively communicating current thinking on its rules and policies. Further, because compliance with these provisions diverts HHS labor to time-consuming comment analysis and response, eliminating these provisions would expedite the publication of guidance, enhance agency efficiency, and reduce administrative burden.[5]

3. The Final Rules Harm Historically Underserved Constituencies

As discussed in the Repeal NPRM and above, *see* Section IV.A.1., the Federal Government under the Biden-Harris Administration is pursuing a comprehensive approach to advancing equity for all, including people of color and others who have been historically

(Apr. 15, 2021) (rescinding regulations on issuing guidance);

• Council on Environmental Quality final rule, ''Guidance Document Procedures Rescission,'' 86 FR 19149 (Apr. 13, 2021) (rescinding regulations on issuing guidance);

• U.S. Agency for International Development final rule, ''Procedures for the Review and Clearance of USAID's Guidance Documents; Rescission'' 86 FR 18444 (Apr. 9, 2021) (rescinding regulations on issuing guidance);

• Department of Transportation final rule, ''Administrative Rulemaking, Guidance, and Enforcement Procedures,'' 86 FR 17292 (Apr. 2, 2021) (removing regulations regarding issuing guidance and conducting enforcement actions, among other things);

• Pension Benefit Guaranty Corporation final rule, ''Rescission of Pension Benefit Guaranty Corporation Rule on Guidance,'' 86 FR 17066 (Apr. 1, 2021) (rescinding rule on issuing guidance);

• Department of Labor final rule, ''Rescission of Department of Labor Rule on Guidance,'' 86 FR 7237 (Jan. 27, 2021) (rescinding rule on issuing guidance).

We note that most of these rules were issued and repealed without engaging in notice-and-comment proceedings.

[4] In the context of this document, ''stakeholder'' means anyone who may be affected or interested in a guidance document or civil enforcement action, including regulated entities, states, tribes, and local governments, groups working with beneficiaries, and individual members of the public.

[5] As noted, FDA already operates under its own set of GGP regulations, *see* 21 CFR 10.115, as required by the FD&C Act, 21 U.S.C. 371(h), and these authorities require that certain categories of FDA guidance documents be implemented only after an opportunity for public comment is provided. This rulemaking does not intend to question or limit those authorities as applied specifically to FDA. As we discuss in Section IV.A.4.b. below, we do not believe it is efficient or effective for a Department as large and diverse as HHS to mandate a single set of procedures for guidance documents and civil enforcement for the entire Department.

underserved, marginalized, and adversely affected by persistent poverty and inequality. *See* E.O. 13985. Accordingly, the current Administration directed Federal agencies to recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity. *Id.* The current Administration also aims to protect and strengthen Medicaid and the ACA and to make high-quality healthcare accessible and affordable for every American. E.O. 14009; E.O. 14070. To accomplish that policy goal, the current Administration directed HHS, among others, to examine its regulations and policies to better ensure that they help provide high quality and accessible health care for all, and do not undermine protections for people with pre-existing conditions under the ACA, reduce coverage under or otherwise undermine Medicaid or the ACA, or undermine the Health Insurance Exchanges or the individual, small group, or large group markets for health insurance in the United States.

As the Repeal NPRM further explained, both Final Rules disproportionately impact marginalized and historically underserved communities, because they make it harder for HHS agencies to take action to protect public health or remove bad actors from the market, which, in turn, harms those who need HHS services the most. In addition, because HHS frequently issues guidance to clarify policies and beneficiary protections under Medicaid, the additional regulatory hurdles and confusion created by the Guidance rule would delay the issuance of Medicaid guidance and thereby undermine HHS' goals of supporting program beneficiaries.

Several commenters agreed that the Guidance rule harms underserved groups by imposing burdensome requirements that impede HHS' ability to timely communicate important guidance on health programs. Commenters explained that Medicaid and other HHS programs that serve marginalized communities frequently rely on guidance to provide current information on program rules and requirements to program participants. Timely issuance of guidance is therefore essential to ensure that participants receive the most up-to-date information and can access needed services. The Guidance rule, however, introduces unnecessary bureaucratic inefficiencies for guidance that slow down or prevent the publication of this information, to the potential detriment of program beneficiaries. Commenters noted that, during the COVID–19 pandemic, the Department has issued and continues to issue and update guidance on a range of topics affecting underserved communities, including vaccine coverage, healthcare safety net programs, and non-discrimination in the provision of health care among other topics. Subjecting these guidance documents to the Guidance rule's burdensome publication requirements has the potential to impede their release and harm individuals who rely on Medicaid and other HHS programs. Further, commenters noted that the automatic rescission provision of the guidance document repository, discussed in greater detail in Section IV.D.5 below, creates confusion for individuals seeking information about Medicaid, Medicare, and other HHS programs.

We agree with these comments. We believe that interested groups and individuals—in particular, beneficiaries of Medicaid, ACA, and other HHS programs relied upon by underserved communities and individuals—would be better served with a more nimble, less cumbersome, and clearer process that ensures the expeditious release of program information needed to access services. The Guidance rule frustrates this goal by imposing unnecessary, burdensome, and ambiguous requirements that slow down the guidance process and in turn delay dissemination of information needed to access Medicaid, ACA, and other HHS programs.

4. The Final Rules Impede Department Flexibility

a. Codified, Binding Rules Are Too Rigid for Department-Wide Implementation, and the Final Rules Open the Door to Opportunistic Litigation

In addition to HHS's concerns about the substance of the Final Rules, HHS also has concerns about the procedural choice to implement them through binding, Department-wide regulations. Binding regulations have drawbacks that, in HHS's view, make them ill-suited for the Department-wide procedures at issue here.

First, binding regulations can be inflexible. This inflexibility raises several concerns regarding the ability to adapt to different circumstances. For example, the Final Rules impact a wide range of agency actions that come under the umbrella of guidance and civil enforcement proceedings, and the range and diversity of these types of actions are shaped by the various missions and underlying authorities of each of HHS's individual agencies. When HHS hastily issued these rules, it did not—and could not—fully consider all of these actions and how the rules would affect them. For example, HHS did not consider how the Guidance rule's procedures could slow down the work of other agencies, such as when HHS seeks to issue joint guidance, as it has with the Department of Labor and the Department of the Treasury. Similarly, the Civil Enforcement rule imposed a formalized system of written communication regarding a potential issue of non-compliance, without adequately considering that HHS agencies already have procedures and practices in place that allow for other options, such as in-person discussions, depending on the context. Since issuing these binding regulations, the Department has been tethered to specific procedures and cannot adjust its procedures as appropriate in specific circumstances.

Codified requirements also make it more difficult for the Department to adapt its procedures over time. The Department recognizes that a variety of factors—such as changing circumstances, new priorities, public health emergencies, input from interested parties, new technology, changes in applicable legal precedent, and agency experience—may require HHS to modify its procedures. It is unrealistic to expect any set of procedures to fully account for the range of circumstances that may confront HHS now or in the future. Codification of regulations, however, makes the modification process more burdensome. The issue is particularly pronounced considering the decision to issue the Guidance rule through notice-and-comment rulemaking, which may make revisions and updates more cumbersome. Indeed, most of the other Federal departments and agencies, in issuing (and repealing) similar regulations under the prior Administration, did not use notice-and-comment rulemaking procedures. *See* Section IV.A.1. n 3.

This inflexibility is especially problematic when the Department does not necessarily know, at least without more experience, which procedures would most effectively achieve its goals. For example, the Guidance rule mandates the use of a centralized HHS guidance repository, but many commenters were critical of its current functionality. Commenters explained that the search function often failed to find the most relevant documents and instead retrieved irrelevant ones. Some commenters suggested that the search function may be improved by separating the database by HHS agency to help ensure more focused responses to queries. HHS explained in the Repeal

NPRM that, while it proposed to repeal the regulation governing the guidance document repository, HHS intended to retain the repository itself (absent the automatic rescission provision) with changes to improve its functionality. Repealing the regulation will facilitate making improvements to the functionality of the centralized repository to address the problems related to its initial set-up, and to adapt to technological changes going forward—without considering whether those changes require amending the regulation.

Second, HHS no longer believes it is appropriate to create an opportunity for lawsuits on these procedural rules, in which a litigant may cite to binding regulations to allege a cause of action against the Department. As noted elsewhere in this preamble, the procedural requirements in the Guidance and Civil Enforcement rules are self-imposed and go beyond the requirements in preexisting law, such as the Administrative Procedure Act (APA). Both because these rules establish new procedural requirements and because many provisions in the rules are opaque and susceptible to multiple interpretations, HHS is concerned about the risk of opportunistic litigation here, which can consume time and resources even when the litigation lacks merit. In addition, other Federal departments and agencies under the previous Administration, in issuing similar procedural rules, expressly provided that the regulations were ''not intended to, and do[] not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.'' *See, e.g.,* 84 FR 71729 (Dec. 27, 2019). HHS, however, did not include such a provision in the Final Rules. Thus, it is possible that, if the Final Rules are not repealed, litigants will attempt to sue HHS based on non-compliance with these procedural regulations.

Expending resources on this type of litigation is wasteful: even if the Department had no concerns with the substance of the procedures (which it does, as explained elsewhere), HHS believes that its resources are far better spent on public health initiatives that can improve the health and safety of Americans than on defending challenges concerning compliance with self-imposed procedures.

b. The Final Rules Are Not Tailored to the Various HHS Agencies

Another concerning aspect of the Final Rules is their establishment of a single set of procedures for guidance documents and civil enforcement for the entire Department, which is incompatible with the efficient and effective administration of a Department as large and diverse as HHS. The Department's mission is to enhance the health and well-being of all Americans, and it accomplishes that mission through the work of many individual agencies, including the Administration for Children and Families (ACF), the Administration for Community Living (ACL), the Centers for Disease Control and Prevention (CDC), the Centers for Medicare & Medicaid Services (CMS), FDA, the Health Resources and Services Administration (HRSA), the Indian Health Service (IHS), the National Institutes of Health (NIH), and the Office for Civil Rights (OCR). Each of HHS's agencies plays a critical role in protecting and advancing public health by, for example, confronting the COVID–19 pandemic; administering and overseeing the Medicaid and Medicare programs and ACA Exchanges; providing Federal health services to more than two million American Indians and Alaska Natives; taking action to protect consumers from unapproved, misbranded, or adulterated human or animal medical products or tobacco products; investigating, detaining, and recalling contaminated foods; addressing medical product shortages; enforcing age-restrictions or other controls around access to certain regulated products; and quickly distributing grant funds that help marginalized populations, low-income families, elderly Americans, Indian tribes, and persons with disabilities to receive key resources, especially during the COVID–19 pandemic. Each agency within HHS serves the overall mission but does so in unique ways, often addressing different stakeholders and using specialized regulatory tools.

Several commenters confirmed that they share these concerns regarding the imposition of inflexible requirements on all HHS agencies. Regarding the Guidance rule, one commenter explained that the uniform requirements imposed by the rule primarily serve to make the issuance of guidance more cumbersome and less responsive to the needs of the communities who benefit from HHS programs. Another comment explained that burdensome, one-size fits-all procedural requirements that the Guidance rule imposes on CMS are the epitome of practices that present unnecessary barriers to individuals and families seeking Medicaid coverage. Regarding the Civil Enforcement rule, a commenter explained that application of the new enforcement requirements to all HHS agencies may cause confusion as various agencies under the HHS umbrella each already have procedural regulations, some of which have been specifically designed to govern a particular type of proceeding. We agree with these comments and find that they raise valid concerns supporting repeal.

In contrast, one commenter asserted that the Final Rules did not establish a single set of procedures for the Department; instead, the Final Rules merely expressed broad principles—consistent with the APA and due process—that allow HHS agencies to retain discretion to devise procedures for carrying out their statutory mandates that are consistent with those broad principles. Another commenter similarly claimed that the Repeal NPRM erred in asserting that the notice requirements in the Civil Enforcement rule conflict with or undermine preexisting procedures. We disagree with both comments because the Final Rules created actual conflicts and inconsistencies with preexisting agency procedures. For example, with respect to procedures for issuing guidance, the FD&C Act and the Guidance rule provide for different circumstances when guidance will be subject to prior notice and comment and different criteria for a guidance to be exempt from prior notice and comment. *Compare* 21 U.S.C. 371(h)(1)(C)(1) and 45 CFR 1.3(b). While the FD&C Act provides for an appeals mechanism when FDA employees are not using guidance in accordance with the FD&C Act, the Guidance rule provided that this should be addressed in a petition. *Compare* 21 U.S.C. 371(h)(4) and 45 CFR 1.5(a)(2). For petitions, the Guidance rule specifies one set of requirements regarding their submission, response time, and substantive review and response, 45 CFR 1.5, while FDA regulations provide different governing requirements in each of those areas for its citizen petitions, 21 CFR 10.20 and 10.30(b) (submission), (e)(2) & (4) (response time), and (e)(1) & (3) and (h) (substantive review and response).

FDA also has regulations governing various types of adjudicatory hearings, *see* 21 CFR parts 12, 16, and 17, which conflict with the Civil Enforcement rule. For example, the Civil Enforcement rule provides for a series of limitations on the grounds for civil enforcement actions, 45 CFR 1.6 through 1.8, which are not consistent with FDA's governing regulations for civil money penalty

(CMP) proceedings. 21 CFR 17.1, 17.5. FDA's CMP regulations establish an adjudicatory process that is similar to the Federal process for civil adjudication, with a complaint, answer, motions, and hearing. *See, e.g.,* 21 CFR 17.5, 17.9. In contrast, the Civil Enforcement rule requires that, after the affected entity responds to the initial notice, HHS must respond to the affected entity in writing, articulating the ''basis for its final decision.'' 45 CFR 1.9. That requirement makes no sense in the context of 21 CFR part 17. Having two sets of regulations governing FDA guidance practices, citizen petitions related to FDA guidance documents, and CMP proceedings creates practical difficulties and confusion.

Other provisions that do not directly conflict with existing processes create additional layers of process. For example, while the FD&C Act only requires uniform internal procedures for the approval of guidance and provides discretion to the FDA to develop appropriate processes, the Guidance rule required Secretarial approval of significant guidance documents. *Compare* 21 U.S.C. 371(h)(1)(D)(2) and 45 CFR 1.3(b)(1). The FD&C Act requires FDA to make its guidance documents available to the public, but the HHS Guidance rule required all guidance documents to be included in the repository and deemed guidance documents not included in the repository withdrawn. *Compare* 21 U.S.C. 371(h)(1)(A) and 45 CFR 1.4(a)(2).

Accordingly, the Department no longer believes that a one-size-fits-all approach to Department guidance or civil administrative enforcement is appropriate. The imposition of one set of requirements for HHS' vastly different agencies hinders the agencies' abilities to efficiently address public health issues, including but not limited to public health emergencies, and creates confusion.

5. The Final Rules Divert Limited Department Resources

In the Repeal NPRM, the Department expressed the concern that the Final Rules divert agency resources without providing adequate compensating benefit, and that they are unnecessary. 86 FR 58049, 58051. Several commenters confirmed that, in their view, the Final Rules divert finite Department resources to unnecessary and unhelpful ends. The commenters were concerned that this diversion would delay Department activities that protect and advance the public health and welfare. For example, one comment asserted that the Final Rules make it harder for the Department to timely respond to emergencies, to address the glaring disparities in provision of services that have been highlighted during the COVID–19 pandemic, and to respond to and help shape the rapid changes in the healthcare delivery system. One comment disagreed and asserted that the Department's statement in the Repeal NPRM—that ''[h]aving a robust, efficient guidance system has been especially critical during the COVID–19 emergency''—''proves that the Rule does not impede the Department's effective use of guidance.''

We agree with the comments expressing concern about the diversion of resources. Our experience with the Final Rules thus far is that they create unhelpful impediments to achieving Department goals, and addressing those impediments diverts resources from other Department priorities. The fact that the Department has devoted substantial resources to the COVID–19 crisis both before and after the Final Rules became effective does not undermine the Department's position that the Final Rules impose unnecessary and burdensome requirements. For example, one comment explained that CMS guidance has played a critical role in addressing the COVID–19 pandemic and the Afghan mission. Although many of these important CMS guidance documents predate the Final Rules, those that followed the rules were required to adhere to the more onerous procedures of the Final Rules without any apparent benefits. We discuss below some examples in connection with consideration of specific provisions of the Final Rules. See Section IV.F.2.e.

In another example of resource diversion caused by the new procedures, the Department recently issued a response to a petition that purported to be submitted under the Guidance rule and that was addressed to HHS, CDC, and FDA. Attorneys from HHS, CDC, and FDA, as well as CDC and FDA subject matter experts, reviewed and deliberated on the petition. Ultimately, the Department concluded that petitioner had not properly invoked the Guidance rule procedures or appropriately included FDA in its request. Given the short timeline for responding to petitions under the Guidance rule, Departmental staff were forced to prioritize those deliberations over other, more significant matters.

In addition, as discussed above, because the Final Rules impose rigid requirements and do not disclaim any right of action based on them, it is possible that litigants will sue HHS based on non-compliance with these procedures. The Department has concluded that expending resources on litigating internal procedural rules is wasteful, and that its resources are far better spent on public health initiatives that can improve the health and safety of Americans than on defending challenges concerning compliance with self-imposed procedures.

B. Comments on Consideration of Purported Benefits of Final Rules

Some commenters urged the Department to retain the Final Rules and identified several purported benefits. A few commenters asserted that the Final Rules helpfully clarify that guidance are simply non-binding, interpretive statements, consistent with the APA. One commenter asserted that Federal agencies have relied on guidance to reinterpret or expand the law. Another commenter asserted that CMS had taken enforcement actions against it for violating policies based only on guidance, and therefore the Final Rules were appropriate to reaffirm basic principles of administrative law. Relatedly, another commenter urged the Department to provide greater clarity to the public on its rulemaking obligations related to Medicare pursuant to the Supreme Court's opinion in *Azar* v. *Allina Health Servs.,* 139 S. Ct. 1804 (2019). Another commenter asserted that the Final Rules provide notice and clarity by aggregating guidance documents in one central location. The same commenter suggested that the additional requirements for issuing significant guidance would help the Department screen for whether the guidance content would be more appropriately issued through rulemaking.

As discussed in more detail throughout this preamble, the Department has considered all comments on the purported benefits of the Final Rules and does not find that there are any significant benefits to retaining the Final Rules that outweigh the many detriments identified in the comments and summarized in the Repeal NPRM and in this preamble.

We disagree with the commenters who asserted that the Final Rules are necessary or appropriate to reaffirm the APA's principles of administrative law. As explained in the Repeal NPRM, ''the APA governs agency conduct concerning guidance without the need for agency regulations.'' 86 FR 58049. Appropriate parameters and procedures for guidance issued by HHS agencies will remain in place after the Department repeals the Final Rules; and, repealing the Final Rules does not give an agency license to use guidance

to establish or change policies where rulemaking is otherwise required, or to require outside parties to take or refrain from taking certain actions that are not addressed by statute or regulation. *See generally Azar* v. *Allina Health Servs.,* 139 S. Ct. 1804 (2019) (finding, with respect to the Medicare program, that statements of policy that establish or change a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits must be promulgated through the notice-and-comment rulemaking process). Accordingly, repealing the Final Rule will not transform guidance into binding rules with the force and effect of law.

The commenter who expressed disappointment that the Department has yet to apprise stakeholders of the agency's rulemaking obligations under section 1871 of the Social Security Act (SSA), as outlined in *Allina,* 139 S. Ct. at 1804, also requested that the Department provide greater clarity to the public on these rulemaking obligations, given the central role of the Medicare program in the Department's rulemaking and guidance procedures. We agree that the Medicare program is central to certain parts of the Department's rulemaking and guidance procedures. However, this specific request is outside of the scope of the Repeal NPRM, and therefore, the Department will take this request under advisement. In the interim, we invite those seeking information on CMS' rulemaking obligations under the Medicare Act to review the already-existing guidance available at *https://www.cms.gov/regulations-and-guidance/regulations-and-policies/cms-rulemaking.*

We disagree with another commenter's assertion that the process outlined for significant guidance in the Guidance rule is needed or helpful to screen for content that should be issued as a legislative rule. In particular, the comment opined that the Guidance rule's criteria for significant guidance documents will identify procedural defects in proposed guidance documents and thus effectively screen for guidance documents that are more likely to require notice and comment. The Guidance rule itself, however, made clear that its criteria for significant guidance documents does not necessarily correspond to the criteria for legislative rules. 85 FR 78776 (noting that to qualify as guidance, as opposed to a legislative rule, a document must reflect, implement, interpret, or describe a legal obligation imposed by a pre-existing, external source or advise the public prospectively of the way the agency intends to exercise a discretionary power).

With respect to the comment that repealing the Guidance rule erases the benefit of enhanced notice resulting from the aggregation of guidance documents in one central location, the Department plans to maintain a central guidance repository even after the Guidance rule is repealed, without the problematic rescission requirement for documents not in the repository. This topic is discussed in more detail in Section IV.D.5. below.

C. Comments on HHS Repealing the Final Rules in Their Entirety

As the Department explained in the Repeal NPRM, the Final Rules: frustrate the Department's ability to efficiently direct and operate in the interest of public health; are inconsistent with the policies and goals of the current Administration; make Department operations more cumbersome and burdensome; impede the Department's ability to quickly communicate its regulatory interpretations, policies, and recommendations; and prevent the Department from using robust tools to protect and advance the public health and to promote the Department's mission. For those reasons, HHS proposed to repeal the Final Rules in their entirety and remove 45 CFR part 1.

The Repeal NPRM further explained that HHS had rejected the alternative approach of addressing these problems by revising the Final Rules. For the reason described in Section IV.A.4.b. above, it would be difficult to establish definitions, standard descriptors, policies, and procedures that are clear and workable across the Department's many components. Rather than codified, Department-wide procedures, the Department prefers a more flexible approach. With the repeal of the Final Rules, HHS agencies would be able to continue to follow or develop their own procedural policies, practices, and rules, consistent with applicable law and as appropriate to their context, and they would be able to update these over time and to address specific circumstances as warranted. *See* Section IV.A.4.b. This more decentralized approach is also consistent with the revocation of E.O. 13891, under which the previous Administration had taken a relatively centralized and standardized approach.

A few commenters objected to this aspect of our proposal, asserting that our concerns can be better addressed by fine-tuning the Final Rules rather than scrapping them entirely. One commenter, for example, asserted that the concerns noted by HHS in the Repeal NPRM (and raised by other comments submitted in earlier stages of the rulemaking) could be addressed by targeted revisions to the Final Rules such as creating new exemptions for particular matters of concern.

We have considered these suggestions and reject the approach proposed by these commenters. We address these proposals in greater detail in Section IV.F.2.h. below, including the reasons for rejecting specific proposals for modifying the Final Rules. Here we explain, as a matter of policy, why we have chosen repeal over modification.

Although it may be possible, as the commenter asserts, to address *some* of the concerns noted by HHS in the Repeal NPRM though revisions and exemptions, HHS sees no value in doing so. Codifying procedural policies and practices as rules makes them more rigid. Updates and changes would become resource-intensive. None of this is desirable or necessary for these types of procedural policies and practices.

For example, the Guidance rule required Secretarial approval for guidance documents under certain circumstances. The Repeal NPRM expressed concern that this requirement could delay the issuance of these guidance documents by drawing on the Secretary's finite time and resources. A commenter asserted that the Secretarial approval requirement should be maintained to avoid a greater drain on the Secretary's time to fix guidance issued in error. We disagree with this comment and its underlying assumption. It is entirely speculative to assert that guidance will be issued in error if not done under the Secretary's signature. In any event, the Secretary is best positioned to determine how to appropriately allocate their time and resources, without having to publish a **Federal Register** document to codify a new set of procedures.

We are not convinced by the comments that there are benefits to mandating the procedures required by the Final Rules through codified regulations. As discussed elsewhere in this preamble, codification impedes the Department's flexibility to adapt its rules to different contexts across the broad spectrum of matters regulated by HHS agencies, opens the door to opportunistic litigation, and increases the burden and difficulty of adjusting and modernizing procedures. Improving processes less formally allows for efficient updates to respond to a variety of factors, including changed circumstances, new priorities, public

health emergencies, stakeholder input, and new technology.

D. Comments on Specific Issues Related to the Guidance Rule

1. The Guidance Rule Created Administrative Hurdles That May Delay or Prevent Issuing Guidance

In the Repeal NPRM, the Department expressed the concern that both Final Rules delay or prevent the issuance of guidance documents. 86 FR 58046, 58047. In particular, we noted that the Guidance rule established substantial, time-consuming, and resource intensive requirements for the issuance of ''significant guidance documents,'' such as requirements to submit such documents to OIRA for review prior to publication; provide a public notice-and-comment process; generate an agency response to major concerns raised during the comment period; comply with applicable requirements for significant regulatory actions as set forth in Executive orders; and obtain approval by the Secretary on a non-delegable basis. *See* 45 CFR 1.3(b). Under the Guidance rule, all of these steps are required in combination before a significant guidance can be finalized. The Guidance rule also adds steps to the process of issuing nonsignificant guidance, such as requiring Secretarial approval of guidance that they determine will (1) implicate, including potentially impede, any policy matter of priority to the Secretary, or (2) potentially create a serious inconsistency, or otherwise interfere, with an action taken or planned by another operating division or the Office of the Secretary. 85 FR 78780.

Several commenters confirmed that, in their view, the rules create bureaucratic inefficiencies that slow down or halt the important guidance that stakeholders require to adequately understand and comply with agency rules. These commenters explained that agency guidance documents provide necessary, valuable information to stakeholders. For example, one commenter asserted that healthcare service providers rely heavily on timely guidance, including policy clarification notices, for program operations to ensure timely delivery of care and treatment to their patients. Some commenters asserted that the COVID–19 pandemic has shown the need for HHS to be able to move quickly, especially when public health and human life are on the line, to keep abreast with the rapid-fire pace of new laws and evolving public health needs, and to respond to the high volume of important stakeholder questions. In contrast, one commenter who supported retention of most of the Guidance rule stated that the Department's concern with potential delays from the new procedures for significant guidance documents was misplaced because there would be relatively few guidance documents that qualify as significant.

We agree with the commenters that explained that the Guidance rule established unnecessary and burdensome inefficiencies, and we disagree with the commenter who suggested that our concerns should be mitigated by the commenter's assertion that relatively few guidance documents would qualify as significant. The definition of ''significant guidance'' is susceptible to broad interpretation, as noted in the Repeal NPRM. 86 FR 58046. Indeed, although HHS stated in the preamble to the final Guidance rule that it believed there would be relatively few significant guidance documents, 85 FR 78775, we no longer consider that statement to accurately represent past practice. Moreover, the Guidance rule makes it harder for the Department to timely issue guidance to respond to emergencies, rapid changes in the healthcare delivery system, and other critical needs. The additional administrative processes require significant additional time and could serve as a disincentive or obstacle to issuing guidance, particularly for matters requiring expediency. Even the clearance of non-significant guidance takes significant time, because the Department would need to affirmatively decide whether a guidance implicates or potentially impedes any policy matter of priority to the Secretary, or will potentially create a serious inconsistency, or otherwise interfere, with an action taken or planned by another operating division or the Office of the Secretary. These hurdles in turn could make it harder for the Department to expediently respond to stakeholder needs, especially in the cases of public health emergencies or where other critical needs are at issue. Thus, the Department has determined that the delay or non-issuance of guidance could have substantial negative consequences for the public, including for regulated entities.

At least one commenter indicated that these concerns are speculative, overstated, and can be better addressed by fine-tuning the Guidance rule rather than scrapping it entirely. One commenter asserted that our concerns regarding burdens were based on a misreading of the regulations, in that, while the Guidance rule requires that the Secretary must approve certain guidance, the decision on whether a guidance requires Secretarial approval can be delegated. We disagree with the comments and find the delegation point unconvincing because the distinction being drawn by the commenter is not material. Based on our experience, we know that *each* step in the drafting of a document and any associated analysis, review, and clearance process takes time. In the case of significant guidance documents, the Department would have to draft: (1) an initial version of the guidance for public comment; (2) a second version of the guidance taking comments into account; (3) responses to major concerns raised during the comment period; and (4) the analyses required for significant regulatory actions as set forth in Executive orders. Further, we know that adding more steps in the clearance process that include the Department and other Departments throughout the Administration will undoubtedly take even more time. Because this assessment is based on our experience, we disagree with the commenter's assertion that our concern is ''speculative.'' We address the proposals to modify the Guidance rule in greater detail in Section IV.F.2.h., but we note here that we can think of no fine-tuning that would provide adequate time savings, beyond rescinding the rule.

In the case of public health emergencies, some commenters suggested that the exceptions processes for significant guidance documents were sufficient to allow the Department to rapidly respond. Under § 1.3(b)(2)(ii) of the Guidance rule, HHS could elect not to conduct a comment period on significant guidance if it were to find that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Additionally, under § 1.3(b)(4), the Guidance rule permits significant guidance documents to be exempted from applicable requirements ''if the Secretary [of HHS] and the Administrator of OIRA agree that exigency, safety, health, or other compelling cause warrants the exemption.''

The Department disagrees that the exceptions processes for significant guidance documents provide sufficient flexibility for the Department to respond to public health emergencies quickly and effectively. To rely on the exception under § 1.3(b)(2)(ii), the Department would still need to make findings that public comment would be impracticable, unnecessary, or contrary to the public interest and incorporate the findings and a statement of the reasons into the guidance document. And, to rely on § 1.3(b)(4), the Secretary and OIRA Administrator must come to

the described agreement, the Secretary ''must make this finding,'' and ''the significant guidance document must incorporate the finding and a brief statement of reasons in support.'' *See* 45 CFR 1.3(b)(4). Even if the exceptions could be met during a public health emergency, these additional processes would still need to be followed and would still consume time and resources in a situation where time is of the essence and limited human resources are better allocated to directly responding to the emergency rather that addressing the procedural requirements of the Guidance rule.

2. The Guidance Rule's Notice and Comment Process Is Not Necessary for Guidance

In the Repeal NPRM, the Department expressed the concern that the additional procedures provide little value, because the Department already has all the tools it needs to ensure adequate public notice and participation in the guidance process. The Repeal NPRM indicated that the Department has reconsidered the relative merits of an efficient, flexible guidance process and weighed them against the processes finalized in the Guidance rule, and that the Department favors an approach that is consistent with the APA, which exempts non-binding documents like interpretive rules and general statements of policy from notice-and-comment rulemaking requirements.

Some commenters expressed concerns that the Guidance rule selectively applied portions of the APA to guidance documents, requiring heightened procedural requirements to apply to significant guidance documents in ways not contemplated or authorized by the APA, and that HHS failed to explain the statutory basis authorizing it to apply notice-and-comment requirements to significant guidance. Another commenter stated that the Guidance rule imposes burdensome requirements akin to rulemaking for significant guidance, despite the Department's history and practice of providing adequate public notice and stakeholder participation in the guidance process.

We agree with these commenters' concerns that the Guidance rule's notice and comment is not necessary for most Department guidance because it is not required by law (except for certain FDA guidance)[6] and because the Department already has a history and practice of providing adequate public notice and stakeholder participation in the guidance process. Moreover, the Department continues to believe that the relative merits of an efficient, flexible guidance process outweigh the alleged benefits of the processes finalized in the Guidance rule.

Guidance holds an important—and legally distinct—place in the Department's regulatory toolbox: it provides an approach to communicating the Department's policies and interpretations that can be more immediate and clearer than case-by-case adjudication, as well as being faster and more flexible than legislative rulemaking. Through guidance, traditionally, the Department has been able to communicate quickly and responsively its agencies' non-binding current thinking regarding legal interpretations, recommendations, and policies. Timely issuance of guidance is particularly important to parties that are subject to Department regulation because guidance can assist regulated industries by helping guard against unequal treatment, unnecessary costs, and unnecessary risk. Having a robust, efficient guidance system has been especially critical during the COVID–19 emergency. Retaining the Guidance rule, with its relative lack of flexibility and procedural burdens that go far beyond what is required both by law and practice for a transparent and inclusive guidance process, unduly hampers the Department's mission, particularly at this critical time.

3. The Guidance Rule's Vague Standards Are Confusing

In the Repeal NPRM, the Department expressed concern that the Guidance rule contains vague standards that are likely to cause confusion. For example, the Repeal NPRM noted that the definition of ''guidance'' in 45 CFR 1.2 is vague and overly broad and could lead to confusion over the type of documents subject to the rule's requirements. ''Guidance'' is defined, in part, as a ''Department statement of general applicability, intended to have future effect on the behavior of regulated parties and which sets forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation.'' *See* 45 CFR 1.2(a). In addition, the preamble to the proposed Guidance rule provided that ''guidance may come in a variety of forms, including, but not limited to, letters, memoranda, circulars, bulletins, advisories, and preambles and may include video, audio, and Web-based formats.'' 85 FR 51396. The Repeal NPRM stated that this broad definition and understanding could be read to encompass an entire range of documents not intended to serve as guidance, such as resolution documents, agreements, case closure letters, and memoranda published on Department agency websites to inform and educate the general public and regulated entities about agency enforcement activities. 85 FR 78772.

Several commenters agreed with our concern that the definition of ''guidance'' is too vague. Some commenters remarked that the Department further muddles its definition of guidance documents by stating that material contained within non-guidance could be guidance: ''[M]aterial embedded within an advisory opinion or similar letter that otherwise satisfies the definition of 'guidance document' would still be guidance for purposes of this rule. If a document addressed to specific individuals nonetheless contains a statement of general applicability setting forth a relevant policy or interpretation that is intended to have future effect by guiding the conduct of other regulated parties, then the document would be a guidance document.'' 85 FR 78772.

We agree with these concerns. The broad spectrum of documents encompassed by the definition, as well as the nested feature of guidance-within-non-guidance, could make it difficult for stakeholders to ascertain which documents are ''intended'' to be guidance documents. We believe it is reasonable to anticipate that this could lead to confusion over the types of documents subject to the rule's requirements.

The Repeal NPRM also raised concerns with generalized statements in the Guidance rule on the role and effect of guidance that are not necessary and could cause confusion. For example, § 1.3(a)(1) states, ''[u]nder the [APA], the Department may not issue any guidance document that establishes a legal obligation that is not reflected in a duly enacted statute or in a regulation lawfully promulgated under a statute.'' The Department continues to see little benefit in this provision if it is intended to capture a current understanding of principles established by the APA. The APA itself governs agency conduct concerning guidance without the need for agency regulations to do so.

4. Uniform Requirements for the Disclaimer Are Confusing

The Repeal NPRM expressed concern that the Guidance rule imposed identical requirements on agencies with different legal authorities and mechanisms for achieving their mission. In particular, § 1.3(a)(3)(i) of the Guidance rule requires every guidance document, regardless of the authoring agency or program, to bear the following

[6] *See* Section IV.A.2. n. 4.

statement: ''The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.'' The Repeal NPRM indicated that this universal statement is not appropriate for and cannot cover the range of HHS documents that fall within the definition of ''guidance document'' under § 1.2(a).

Several commenters expressed concern that the required disclaimer is both confusing and unnecessary. Some commenters remarked that the Department failed to address the confusion created with a guidance document that simultaneously clarifies obligations and declares it has no legal effect. Additionally, some commenters remarked that the Guidance rule fails to explain why a disclaimer is needed, or what problem a disclaimer is attempting to solve; and that ultimately, courts decide the degree of deference to afford agency action, including guidance. We agree with these concerns. For example, if a guidance clarifies underlying legal obligations, but then states that the guidance has no force and effect of law, it is reasonable to anticipate that many regulated entities may be confused about how the disclaimer applies to the obligations described in the guidance. Or, if the guidance describes how an HHS agency views certain scientific questions, or how it intends to exercise enforcement discretion, it may be confusing or even nonsensical for the cover to state that the guidance ''only'' clarifies ''existing requirements under the law.''

That said, we acknowledge there may be some circumstances where some form of a disclaimer about the nature of a guidance may be helpful and would not cause confusion. To the extent a disclaimer could be useful for some guidance, the Department does not believe that the solution is to impose a one-size-fits all disclaimer on all guidance. This attempt to fit vastly different documents into one rubric is unnecessary, counterproductive, and likely to confuse the public about the role of different documents. The Department maintains its position described in the Repeal NPRM that a better approach would be for each agency to provide information that is appropriate to the agency's stakeholders and the expected uses of the document.

Another concern raised in the Repeal NPRM is that the public may be confused by the required statement that incorporation of provisions of a guidance document into a contract would render the guidance binding. One commenter disagreed that this statement would cause confusion because the commenter stated it is common that contracts may incorporate specifically enumerated guidance documents as binding on the contracting party, and it is well understood that compliance with the guidance document becomes mandatory through the party's affirmative acceptance of the contract. This statement may not be confusing to some stakeholders in some situations, but it may not always be so clear-cut, including for guidance that are unrelated to contracts. In addition, the Department continues to be concerned with the ambiguity of the term ''contract,'' especially as it relates to assistance agreements, such as grants and cooperative agreements. While it is understood that assistance agreements have contractual aspects, in several other contexts the Department draws a clear legal and programmatic distinction between contracts and assistance agreements. Nevertheless, both contracts and grants require entering into an agreement that binds both parties to its terms, including in some instances terms found in guidance. Thus, it is reasonable to anticipate that the undefined nature of such a key term in a required disclaimer term could create uncertainty and confusion with some stakeholders, as well as within the Department itself.

5. The Provisions Governing the Guidance Repository Are Problematic

The Guidance rule provides for a repository that includes all Department guidance documents, and the rule deems any guidance document not in the repository to be automatically rescinded. 45 CFR 1.4. The Repeal NPRM stated that the Department considers the provisions of the Guidance rule governing the repository to be inappropriate and unnecessary, particularly with respect to the rescission requirement for documents not in the repository. The Department expressed concern that the rescission requirement creates additional burdens among stakeholders by causing confusion about which guidance documents have been rescinded, superseded, or otherwise become obsolete. Under the Guidance rule, rescission can occur simply because a guidance is not uploaded to or is removed from the repository due to human error or technical failures, even if it is publicly available elsewhere. Moreover, the Department questioned whether this rescission approach is consistent with the APA, which requires an agency to consider relevant factors and make policy choices based on those factors.

Several commenters agreed with this assessment, noting the troubling implications of the repository provision. In particular, some commenters expressed concern with 45 CFR 1.4(a)(3)(ii), which rescinds guidance documents previously issued by HHS that are not included in the repository. One commenter noted that since the repository was created, it has been unclear whether omissions in the repository were purposeful or accidental, and that this has been particularly concerning given that the rule intended for the absence of a guidance document from the repository to in effect rescind that document. The commenter indicated that members of the public—particularly individuals seeking information about Medicaid, Medicare, and other HHS programs—will likely be confused if a guidance document appears on an HHS website, but it is not included in the repository. Commenters further noted that, even if stakeholders petition to reinstate guidance omitted from the repository, such a process would be time consuming, burdensome, and cause uncertainty among the public and regulated entities. Commenters also noted potential confusion regarding joint guidance HHS has issued with other Federal agencies. In particular, they mention a joint guidance regarding the ACA, which appears on HHS and Department of Labor websites, but does not appear in the HHS guidance repository.

We agree with these concerns. Although the Department intends to maintain a centralized location for guidance, which may offer convenience to some users, these comments illustrate how the Guidance rule's recission provision is counterproductive and creates confusion. For example, certain users may find it easier to access guidance on an HHS agency or program website rather than in the repository. Once they locate a guidance on the HHS program website, users should not have to take the additional step of searching the repository to determine whether a guidance is in effect. Moreover, if a guidance document is deemed ''rescinded'' under the Guidance rule because it does not appear in the repository, it is reasonable to anticipate that regulated entities would face a high degree of uncertainty as to the Department's current thinking, particularly considering the possibility that the guidance may have been unintentionally rescinded because of human error or technical failure. The

rescission requirement creates additional burdens among stakeholders by causing confusion about which guidance documents have been rescinded, superseded, or otherwise become obsolete. Additionally, if a guidance document is listed in the repository, but a regulated entity cannot access or view it (for example, as the result of a ''broken link'' to the guidance document), the regulated entity may act based on a misunderstanding of the Department's current interpretations and policies. Alternatively, they might choose to engage with the HHS agency about the status of the guidance, which would consume time and resources for both the requestor and the Department.

These concerns are not speculative. One commenter described difficulties when performing searches of exact guidance names in the ''keyword search'' function of the repository. Those guidance documents would not always appear in the search results. In addition, filtering guidance documents by topics, HHS division or offices, or language did not always guarantee a guidance document would be retrieved in the search results. The commenter remarked that it has not been uncommon to perform the same search on different days and obtain different search results, many times which did not contain the guidance document an individual is looking for. The commenter stated that the guidance repository appeared to not be working at all on some days, with an error page showing up after a search was performed. Accordingly, this difficulty in finding documents has led to confusion over whether a guidance had been rescinded.

Many commenters supported the existence of a central repository, stating that having a centralized location to search for and identify relevant guidance improves regulated entities' compliance with agency policies and applicable law. We agree. Consistent with the discussion in the Repeal NPRM, we continue to believe that having a central repository for guidance is a helpful tool, both for stakeholders and the Department, and the Department still plans to maintain a guidance repository. However, the Guidance rule is not needed for the Department to maintain a central repository, and the automatic rescission provision is likewise unnecessary.

The Department continues to believe that the better approach would be to engage with its individual agencies to develop the most efficient and user-friendly repository system that has the flexibility to change with improving technology and experience, and not to be constrained by regulatory requirements. The Department intends for the repository at *www.hhs.gov/guidance* to remain active, but the additional requirements imposed by the Guidance rule (for example, that removal from the repository would affect rescission of a guidance) would be removed. Guidance will remain validly issued regardless of whether they were ever inadvertently not included in the repository.

In the Repeal NPRM, the Department invited stakeholders to comment on their experience with the repository and to comment on how the Department can improve its usability and utility. In response to this request, the Department received several helpful comments on how to improve the usability of the repository. We appreciate the comments, and we will continue to consider them as we work to ensure the repository is as complete, user-friendly, and current as possible.

6. The Guidance Petition Process Is Unnecessary and Burdensome

Section 1.5 of the Guidance rule established a petition process under which an interested party may petition the Department to withdraw or modify any particular guidance document. The provision requires the Department to issue a substantive response within 90 days regardless of the petition's subject matter or merits or competing public health priorities. The Department has decided to repeal this new guidance petition process because it is unnecessary, burdensome, and not legally required.

One commenter noted that it had commented earlier on the proposed Guidance rule that it was unclear how this provision impacted the status of guidance or any right to challenge guidance under the APA, and the final Guidance rule did not address its concerns. However, because the Department has decided to repeal the regulation establishing the new petition process, it is unnecessary for us to clarify what the effects of this provision would have been on the status of guidance or any right to challenge guidance under the APA.

Another comment opined that eliminating the petition process entirely would effectively leave interested parties with no formal methods other than litigation to seek the withdrawal or modification of improper or unwise guidance. We disagree. As discussed in the Repeal NPRM, the new guidance petition process created by the Guidance rule is unnecessarily duplicative of other already existing methods through which stakeholders can challenge agency decisions relating to guidance applicability or request changes in or the rescission of existing guidance. These methods include (but are not limited to): FDA's citizen petitions process related to ''any . . . form of administrative action,'' 21 CFR 10.25(a); FDA's GGP regulation providing that affected parties may suggest at any time that FDA withdraw an already existing guidance document and may elevate concerns that an FDA employee has not followed the procedures in the GGP regulation or has treated a guidance document as binding, 21 CFR 10.115(f)(4) & (o); the appeals process for facilities that disagree with decisions involving application of guidance governing Medicare eligibility and participation, 42 CFR part 498; and already-existing relationships between regulated entities and HHS agencies that allow stakeholders to express comments, suggestions, or concerns with guidance in their formal and informal discussions with agency employees. Furthermore, we note that, while stakeholders have a right to petition government agencies under the First Amendment, the Petition Clause does not require ''government policymakers to listen or respond to individuals' communications on public issues.'' *Minn. State Bd. for Cmty. Colleges* v. *Knight,* 465 U.S. 271, 285 (1984); *see also We the People Found., Inc.* v. *United States,* 485 F.3d 140, 143 (D.C. Cir. 2007); *Small Bus. in Transp. Coal.* v. *U.S. Dep't of Transp.,* 2021 WL 4399581, at *14 (D.D.C. Sept. 27, 2021).

The same commenter further stated that, in the Repeal NPRM, the Department's ''real concern'' with the new guidance petition process was that the current deadline is too short, rather than its stated concern that process itself is unworkable in practice. The comment further asserted that HHS had offered insufficient evidence that this 90-day deadline for responding to petitions had proven unworkable in practice.

We agree with the comment to the extent that it acknowledges our concern with the 90-day deadline, but that represents only part of the problem. In practice, since the inception of the good guidance petition process, most submissions that have come to the Department through this process have not been petitions ''to withdraw or modify any particular guidance document.'' 45 CFR 1.5. The Department has expended substantial resources to respond to submissions asserted to be petitions under § 1.5 that: ask about where to find information in the guidance repository; complain about vaccination policies; query for

information for how to file personal medical claims; and request the agency to take action to withdraw policies with which the petitioners disagree. Even though these submissions do not qualify as good guidance petitions under the Guidance rule, they require significant time and effort to determine whether the submission meets the Guidance rule's requirements and draft a substantive response. For petitions that do qualify under the Guidance rule, even more effort is necessary to review the scope and nature of the request, draft and revise responses to the petitions, and complete any necessary clearance.

For example, one petition ostensibly submitted under § 1.5, requested that HHS, CDC, FDA, and ''all other component agencies of HHS'' revise each guidance document, order, and regulation that related to mask-wearing or vaccine administration for children in the context of COVID–19. As noted above, although the Department ultimately concluded that petitioner had not properly invoked § 1.5, deliberating over and responding to the petition consumed a substantial amount of time from attorneys and subject matter experts in the Office of the Secretary, CDC, and FDA, and, because of the deadline, those deliberations were prioritized over other matters that had more potential to advance public health.

It is not necessary or appropriate to establish a special guidance petition pathway. In operation, it has led HHS agencies to sort through submissions that were not submitted properly under the Guidance rule. Moreover, we no longer see any utility in retaining a process that forces the agency to expend its valuable resources when stakeholders already have other methods to bring guidance-related concerns to the agency. As explained in the Repeal NPRM and borne out in actuality, the guidance petition process is structured in a way that leads to wasting Government resources on potentially meritless petitions. For example, the process allows a petitioner to petition for hundreds of guidance documents to be rescinded at once, and/or allows one or many petitioners to re-petition regarding a single guidance document multiple times.

Finally, one comment expressed concern that rescinding the Final Rule would result in only some agency components with petition processes in place, and that this would be less effective than keeping one petition process for the whole Department. As we discuss in Section IV.A.4.b. above, a single set of procedures for guidance documents and civil enforcement for the entire Department is incompatible with the efficient and effective administration of a Department as large and diverse as HHS. We therefore disagree that it is overall less effective to have different petition processes depending on the agency component.

7. Comments Raising Issues Specific to CMS Do Not Support Retention of the Guidance Rule

One commenter, who did not believe HHS should pursue a wholesale repeal of the Guidance rule, instead recommended that the agency take steps to systematically re-evaluate its guidance practices. In particular, the commenter believed CMS should consider the timing of rulemaking and guidance for the Medicare Part D prescription drug program and recommended that regulations be issued earlier to allow time for development of guidance and for stakeholders to prepare for and implement new regulatory requirements before the start of the applicable plan year. This commenter also believed HHS should address the limits of guidance and when it is inappropriate to use. As an example, the commenter noted that the requirements included in contracts with Part D plan sponsors should be subject to full notice-and-comment rulemaking.

We appreciate these suggestions and will take these recommendations into consideration when planning future rulemaking, including for the Part D program. However, for the reasons discussed in the Repeal NPRM, we continue to believe it is necessary to repeal the Guidance rule to enable efficient and effective administration of all HHS programs.

Another commenter opined that the Medicare program would significantly benefit from the Guidance rule and urged HHS to retain it. Unregulated guidance documents, this commenter stated, have a significant impact on healthcare organizations, particularly in the case of accrediting organizations (AOs), due to the unique nature of the deeming partnership with CMS. The commenter further stated that certain Department communications can go beyond the informational purposes mentioned in the proposed rule and may contain meaningful policy changes that can be unnecessarily disruptive and costly, and therefore should undergo public review. For example, the commenter stated that CMS often issues guidance to states and agency regional offices that impact healthcare organizations and accredited bodies. These documents may contain new requirements that can impact AOs and accredited organizations, despite not having undergone a notice-and-comment period. The commenter further stated that healthcare organizations and the public are often unaware of certain policy memoranda and frequently do not know where to find them for review. For example, the commenter said certain memoranda are kept in a portal for state and regional offices and thus stakeholders may not know when new ones are published.

We disagree with the characterization that, without the Guidance rule, Department guidance in general, and CMS guidance in particular, is unregulated. We note that, although we are repealing the Guidance rule, we are still bound by the APA and—when administering the Medicare program—the *Allina* holding (interpreting section 1871 of the Social Security Act), both of which require rulemaking whenever we ''establish[] or change[] a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under [Title XVIII of the Social Security Act].'' In the particular context of Medicare, we expect the same level rulemaking activity after the repeal as previously, including while the Guidance rule has been in effect. The APA requires all enforceable standards to go through notice-and-comment rulemaking; to the extent that CMS continues to issue sub-regulatory guidance, they are intended to provide additional information, not establish or change substantive legal standards. Finally, we note that section 1865 of the Social Security Act only requires accrediting organizations to demonstrate to CMS that their accreditation programs indicate that our ''applicable conditions or requirements . . . are met or exceeded.'' The statute does not require accrediting organizations to adopt any CMS guidance or other sub-regulatory policies or methodologies.

In contrast, other CMS stakeholders supported repeal of the Final Rules. For example, one commenter supported repeal of the Guidance rule because it promotes confusion among beneficiaries, state agencies, and other Medicaid and Children's Health Insurance Program (CHIP) stakeholders. The commenter further stated that the Guidance rule created a central guidance repository that duplicates and undermines the guidance compilation maintained by the Center for Medicaid and CHIP Services. We thank the commenter for its input and agree that the Guidance rule should be repealed.

8. The Guidance Rule Conflicts With Preexisting FDA Regulations

The Guidance rule has presented unique implementation problems for FDA. As explained in the preamble to the Repeal NPRM and above, FDA, unlike the other divisions of HHS, has long operated under a statutory provision concerning guidance and has its own GGP regulations, which address FDA's practices related to guidance documents, including practices and procedures for issuing, revising, and implementing guidance documents. *See* 21 U.S.C. 371(h); 21 CFR 10.115. FDA also operates under longstanding regulations regarding citizen petitions, *see* 21 CFR 10.30, 10.31, which interested persons have used to request that FDA take certain actions with regard to FDA guidance documents.

The Repeal NPRM discussed several problems with applying the Guidance rule to FDA. First, it noted that the Guidance rule establishes standards and processes that overlap with but are distinct from FDA's existing requirements, which creates practical difficulties and confusion. For example, 21 U.S.C. 371(h) and 45 CFR 1.3(b)(4) contain different standards for dispensing with prior public participation for certain guidance documents. Second, the application of the Guidance rule to FDA guidance presents complex unaddressed challenges. For example, if a guidance document is erroneously rescinded under § 1.4(a)(2) of the Guidance rule, FDA would need to consider how to repromulgate its guidance in a manner consistent not only with the Guidance rule, but also with its own statute and regulations. Third, it is inefficient and confusing for regulated entities as well as FDA staff to toggle back-and-forth between HHS and FDA Guidance rules to try to figure out what the requirements are and, in some instances, to meet the requirements of the HHS Guidance rule, the FD&C Act, and FDA's GGP regulation.

One commenter discussed whether the Guidance rule should apply to FDA, particularly considering the agency's preexisting regulations. Although the commenter did not support repeal of the Final Rules overall, it did recommend that FDA be exempted from the Guidance rule because ''the superimposition of the HHS rule has led to some confusion.'' HHS agrees that this superimposition has led to problems, including confusion, and that the rule should not apply to FDA. Prior to the Guidance rule, stakeholders were familiar with FDA practices and processes, which had been in effect for twenty years. The Guidance rule has called those processes into question and introduced new, burdensome procedures that will make it more difficult for regulated entities to receive important non-binding information. HHS continues to believe that repealing the Guidance rule is important to stabilize and clarify the regulatory regime for FDA guidance documents.

E. Comments on Specific Issues Related to the Civil Enforcement Rule

1. The Civil Enforcement Rule Established an Unnecessary and Confusing Overlay of New Procedural Requirements

In the Repeal NPRM, the Department explained that the requirements in §§ 1.6 through 1.9 create conflicts with existing agency processes and regulations. The various agencies under the HHS umbrella each have procedural regulations, some of which have been specifically designed to govern a particular type of proceeding. *See, e.g.,* 21 CFR part 17 (procedures governing hearings concerning the imposition of civil money penalties by FDA); 42 CFR part 488 (CMS and State Agency survey, certification, and enforcement procedures for Medicare providers and suppliers); 42 CFR part 498 (appeals procedures for determinations that affect participation in the Medicare Program); 45 CFR part 160, subpart E (procedures governing hearings challenging the imposition of civil monetary penalties in Health Insurance Portability and Accountability Act (HIPAA) cases). The procedures required under the Civil Enforcement rule do not adequately account for these pre-existing, agency-specific procedures, nor do they account for the differences between agencies within the Department. Instead, the Civil Enforcement rule dictates an overlay of new, and in some cases redundant, requirements.

Commenters confirmed these concerns. For example, one comment explained that the Civil Enforcement rule undermines the well-developed procedures and plans that are tailored by each agency to govern specific types of proceedings.

The Department agrees with this comment. HHS agencies have designed their procedural regulations to comply with principles of due notice, fairness, and transparency. Parties that are subject to civil administrative enforcement actions and adjudications under the existing procedures established prior to the Civil Enforcement rule are routinely provided with sufficient notice of the action, adequately informed of laws and regulations to which they are subject to, fully instructed on contesting or appealing agency determinations prior to actions of legal consequence, and protected from unfair surprise. To the extent the requirements of the Civil Enforcement rule diverge from the existing procedures, the conflict creates confusion for both HHS agencies and regulated parties and could delay or prevent civil enforcement.

2. Hurdles Will Leave Bad Actors in the Market for Longer

In the Repeal NPRM, the Department explained that the processes and procedures set forth in the Civil Enforcement rule create unnecessary hurdles and roadblocks for agency actions, to the detriment of the public health and other national priorities. 86 FR 58050. Comments confirmed that the Civil Enforcement rule creates unnecessary hurdles for the Department. One comment further explained that the lengthy procedures established by the rule hamper enforcement which results in leaving bad actors (such as those committing billing fraud) in the market for a lengthier period of time. The comment further noted that, although the Civil Enforcement rule contains an exception for ''health, safety, or a similar emergency,'' this exception was inadequate to address the concern that the rule institutes rigid requirements that could create roadblocks to agency enforcement actions.

The Department agrees with these comments. For example, § 1.9 requires the Department to follow certain steps before taking civil enforcement actions, including providing parties with an initial notice of the agency's legal and factual determinations, an opportunity to object or respond, and the Department's ''written response'' to the affected party's objections. In issuing the Civil Enforcement rule, the Department stated that it anticipated that existing HHS procedures already satisfied the requirements established in § 1.9. 86 FR 3012. Upon reconsideration, the Department now finds that the Civil Enforcement rule creates a rigid, burdensome, and resource-intensive path for Department staff, which is unnecessary when other tools in use, such as informal negotiation, could be more efficient and effective. *See, e.g.,* FDA's Regulatory Procedures Manual section 10–3 (describing FDA's use of ''regulatory meetings'' as an option in seeking industry compliance) (available at *https://www.fda.gov/media/71765/download*).

Section 1.7(a) prohibits the Department from applying ''standards or

practices'' in a civil enforcement action that have not been ''publicly stated.'' That new restriction on the Department's authority is not required under settled case law,[7] and it could interfere with the Department's ability to enforce new laws and address emerging threats, particularly through the use of adjudicatory proceedings.

We also agree with the commenters that the exception in § 1.9 involving ''a serious threat to health, safety, or similar emergency,'' 86 FR 3013, does not adequately address the concerns with that regulation. For example, the exception does not address fraudulent actors who drain the Department's resources when allowed to remain in Departmental programs. It is not in the public interest for an HHS agency such as CMS to take fewer enforcement actions against providers and suppliers who fraudulently bill patients and harm the Medicare trust funds. Delayed action against fraudulent billing would allow further diversion of taxpayer dollars and loss of program funding, forcing divisions to reprioritize program resources. Additionally, the exception does not alleviate the burden on the Department, because the process, including the Department's written response to the party's objections, must still be followed ''as soon as practicable.'' 86 FR 3013. Finally, analyzing whether a particular action falls into the exceptions set forth in § 1.9(c) would itself require an expenditure of time and resources that could delay actions needed to be taken on a time-sensitive basis.

3. ''Fairness and Notice'' Provisions Exceed Existing Legal Requirements and Are Burdensome

The Civil Enforcement rule imposed a series of limitations on enforcement actions by requiring prior notice of various positions in a variety of contexts. For example, the rule imposes a requirement that, if the agency intends to rely on a decision to assert new or expanded claims of jurisdiction, it must have published the initial decision in the **Federal Register** or the HHS guidance repository before the conduct subject to enforcement occurs. 45 CFR 1.8. Similarly, the Civil Enforcement rule prohibits an agency in taking civil enforcement action from applying standards and practices that have not been publicly stated or citing guidance that does not appear in the HHS guidance repository. 45 CFR 1.6 &1.7. Although the preamble to the Civil Enforcement rule and some commenters attached a ''fairness and notice'' label to provisions, that preamble conceded that the requirements in the regulations ''exceed the requirements imposed by the Due Process clause'' and ''may impose a burden by delaying the time until HHS can take actions with legal consequence.'' *See* 86 FR 3013.

Several commenters supported the ''fairness and notice'' requirements and thus opposed their repeal. The comments noted that, in the Civil Enforcement rule preamble, HHS had explained that these regulations would give regulated parties a method to challenge certain types of unfair enforcement. The commenters maintain that the Repeal NPRM provided an inadequate explanation as to why the Department had changed its mind. One comment suggested that the ''fairness and notice'' requirements could be revised to narrow their scope and reduce their burden.

We disagree with the positions advocated by these commenters. As the Civil Enforcement rule acknowledged and we agree, these ''fairness and notice'' provisions exceed the requirements of existing law. We also find that neither the Civil Enforcement rule nor the commenters provided a persuasive explanation as to why these additional regulatory hurdles are necessary to advance the interests of justice. As we explained in the Repeal NPRM and above, the Department continues to abide by its longstanding commitment to follow applicable principles of due process and administrative law, and these well-established requirements guarantee that fair notice is provided to the subjects of civil enforcement actions. Accordingly, we conclude that these additional regulatory hurdles are unnecessary to ensure fairness.

The preamble to the Civil Enforcement rule also acknowledged that these ''fairness and notice'' procedures would burden and delay HHS enforcement actions. *See* 86 FR 3013. Again, we agree with that assessment. The preamble to the Repeal NPRM also raised the additional concern that ambiguities in the new procedural requirement could lead to spurious challenges to valid enforcement actions and adjudications, which would significantly impede the Department's ability to take enforcement actions and would divert resources from mission-critical activities. Although the Civil Enforcement rule concluded that these provisions would benefit regulated industry, or at least those who are the subject of enforcement actions, there was no explanation of how these provisions protect or advance public health and welfare. Indeed, by impeding legitimate enforcement actions against bad actors, the Department now concludes that these provisions adversely impact the public health and welfare.

As described in this preamble, the Department has changed its position on the value of the entirety of the Final Rules, in that they impose a rigid layer of bureaucracy that impedes the effective operations of the Department and will deflect resources from mission critical endeavors. The ''fairness and notice'' requirements are no exception. They would require extra steps as prerequisites to enforcement action, which slow the initiation of such actions, create new grounds for challenging Department actions, and absorb resources that would otherwise be dedicated to other Department objectives. As such, they are contrary to the policies and goals of the Biden-Harris Administration to ensure that HHS can appropriately leverage administrative tools to protect and advance the public health and welfare and to efficiently and effectively administer its wide array of programs.

F. Comments on Legal Issues

1. Take Care Clause and Separation of Powers Doctrine

Several commenters noted that the Final Rules create procedural requirements beyond those in existing law. One commenter disagreed with that view, stating that the rules strike no new legal ground and only capture existing law under the Fifth Amendment, the Appointments Clause, the separation-of-powers doctrine, the APA, and the Freedom of Information Act (FOIA). The commenter stated that repeal of the rules would amount to HHS actively ignoring or overruling relevant law and would constitute a violation of the Take Care Clause, U.S. Const. art. II, sec. 3, and the separation-of-powers doctrine. The commenter further stated that E.O. 13992 was unlawful and could not provide an adequate basis for the repeal because the President cannot make a policy choice to derogate portions of the Nation's laws.

HHS agrees with the commenters who stated that the Final Rules go beyond

[7] *See SEC* v. *Chenery Corp.,* 332 U.S. 194, 203 (1947) (''[P]roblems may arise in a case which the administrative agency could not reasonably foresee . . . . Hence, we refuse to say that the Commission, which had not previously been confronted with the problem of management trading during reorganization, was forbidden from utilizing this [adjudicatory] proceeding for announcing and applying a new standard of conduct''); *Martin* v. *Occupational Safety & Health Rev. Comm'n,* 499 U.S. 144, 154 (1991) (''Within traditional agencies . . . adjudication operates as an appropriate mechanism not only for factfinding, but also for the exercise of delegated lawmaking powers, including lawmaking by interpretation.'').

existing legal requirements and disagrees with the arguments that the repeal is unlawful. For example, for significant guidance, as defined in 45 CFR 1.2(a), the Department is required to submit such documents to OIRA for review prior to publication, provide public notice-and-comment process, generate an agency response to major concerns raised during the comment period, comply with applicable requirements for significant regulatory actions as set forth in Executive orders, and obtain approval by the Secretary on a non-delegable basis. 45 CFR 1.3(b). The rules also create a special process for the submissions and review of petitions related to guidance, which includes a 90-day deadline for the Department's response. 45 CFR 1.5. The Department is not aware of any prior existing law that mandates these procedures. Indeed, when HHS promulgated the Final Rules, it acknowledged that the rules went beyond existing law. *See, e.g.,* 85 FR 78777 (relying on agencies' authority to ''grant additional procedural rights in the exercise of their discretion'' as a basis for the rule); 86 FR 3013 (''[§ 1.9] may exceed the requirements imposed by the Due Process clause of the Constitution'').

Because the Final Rules go beyond existing legal requirements and constitute an exercise of HHS discretion, HHS has discretion to eliminate these self-imposed procedural requirements. The President's EOs referenced in this comment, including E.O. 13992, did not direct agencies to derogate portions of the nation's laws; rather, they provided policy direction in the application of the Department's discretion.

Furthermore, even assuming that some portions of the regulations only codify existing legal principles, HHS does not agree that it is required as a matter of law to retain these portions of the regulations. The commenter cited the Take Care Clause and the separation-of-powers doctrine, which require the President and executive officials to adhere to existing law. *See, e.g., Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579 (1952). But the Department can adhere to the law, and fully intends to do so, without maintaining regulations that attempt to codify that law. The requirements of existing law from applicable statutes, case law, and the Constitution already bind HHS, and there is no legal requirement that HHS duplicate them in regulation. Nor does HHS agree that such a requirement takes hold only once the regulations have already been promulgated. We are not aware of any legal principle that requires agencies to maintain regulations seeking to codify existing law after they have been issued.

The Department's choice to repeal the Final Rules in no way reflects disagreement with or a rejection of its legal duties. On the contrary, given the evolving nature of the law and the complexity of current precedent, as discussed in Section IV.F.2.c. below, HHS believes it will be *better* positioned to comply with the law and to ''take Care that the Laws be faithfully executed'' by repealing these regulations. U.S. Const. art. II, sec. 3.

2. Administrative Procedure Act

a. Adequate Justification for Repeal

Several commenters asserted that, as a general matter, HHS had not adequately justified the repeal under the APA and the Supreme Court's precedents in *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983) and *Dep't of Homeland Sec. (DHS)* v. *Regents of the Univ. of Cal.,* 140 S. Ct. 1891 (2020).

HHS disagrees with the commenter's assertion that the repeal does not comply with the APA. In *State Farm* and *Regents,* the Supreme Court considered the rescission of two different substantive policies and laid out certain standards for agencies to meet in justifying their rescission decisions. *E.g.,* 463 U.S. at 42 (requiring ''reasoned analysis'' and ''consideration of relevant factors''). However, as an initial matter, it is not clear that these standards apply equally to rules governing agency procedures. The Supreme Court has recognized a ''very basic tenet of administrative law that agencies should be free to fashion their own rules of procedure.'' *Vt. Yankee Nuclear Power Corp.* v. *Natural Res. Def. Council,* 435 U.S. 519, 544 (1978); *see also Ass'n of Bus. Advoc. Tariff Eq.* v. *Hanzlik,* 779 F.2d 697, 701 (D.C. Cir. 1985) (''It is too well-established to be seriously questioned that agencies are empowered to order their own proceedings and control their own dockets.''). This principle is an '''outgrowth of the congressional determination that administrative agencies and administrators will be familiar with the industries which they regulate and will be in a better position than federal courts or Congress itself to design procedural rules adapted to the peculiarities of the industry and the tasks of the agency involved.''' *Id.* at 525 (quoting *FCC* v. *Schreiber,* 381 U.S. 279 (1965)). When rules are procedural in nature, it makes sense for courts to give agencies greater leeway to organize their operations and deploy resources as they see fit. HHS and its agencies are uniquely suited to understand which procedures will best facilitate the execution of its duties. The Final Rules constitute self-imposed procedural requirements governing agency, not private, conduct. Now that HHS has determined that these procedures will not best enable the Department to serve its mission, these discretionary revisions of its procedural rules are not subject to the APA standards for changing substantive policy under *State Farm* and *Regents.*

Indeed, it is not clear that there can be *any* judicial review of these discretionary procedural rules, let alone under the standards applied to the review of substantive rules. The statutory authority cited as the bases for the Final Rules provides in relevant part that ''[t]he head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.'' 5 U.S.C. 301. As the Supreme Court has explained, the APA at 5 U.S.C. 701(a)(2) ''makes it clear that 'review is not to be had' in those rare circumstances where the relevant statute 'is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.''' *Lincoln* v. *Vigil,* 508 U.S. 182, 191 (1993) (quoting *Heckler* v. *Chaney,* 470 U.S. 821, 830 (1985)). Because 5 U.S.C. 301 contains no judicially manageable standard, the repeal of the Final Rules should not be subject to judicial review.

Even assuming the APA standards for changing substantive policies apply, HHS's decision is adequately justified under *State Farm* and its progeny. As discussed in more detail elsewhere in this preamble, HHS's reasons for repealing the Final Rules include that the Final Rules: (1) run counter to the Administration's goals of advancing public health and welfare; (2) impose burdensome standards and procedures; (3) harm marginalized constituencies; (4) impede Department flexibility; and (5) divert limited Department resources. The Supreme Court has explained that, when changing course, an agency ''need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.'' *FCC* v. *Fox TV Stations, Inc.,*

556 U.S. 502, 515–16 (2009). HHS's new policies, as articulated in this preamble and in the Repeal NPRM, are permissible under the statute and are supported by good reasons; therefore, this repeal action complies with the APA.

HHS recognizes that, in some cases, an agency is required to provide a more detailed justification for rescinding a policy than what would suffice for a new policy. This may be true ''when, for example, [the] new policy rests upon factual findings that contradict those which underlay its prior policy.'' *Id.* at 515. HHS believes its justification for this repeal is far more detailed and comprehensive than what was provided for the Final Rules' promulgation. For example, HHS has described its current experience with the rule (*see* Section IV.F.2.e.) and has explained in detail the specific reasons why this repeal is appropriate.

Regardless, because the Final Rules were grounded mainly in policy and political justifications rather than factual findings, the Department does not believe the ''more detailed justification'' standard applies. For example, the preambles to the Final Rules cited: the previous Administration's regulatory reform initiative; generalized policy views that the additional procedures were favorable because they would increase accountability, transparency, and fairness; and two Executive orders that have since been revoked. For the most part, the preambles to the proposed Guidance rule and both Final Rules did not identify specific factual concerns that the Department sought to address through the rulemakings.[8] Indeed, one commenter in this rulemaking criticized the Guidance rule for ''fail[ing] to provide any evidence-based discussion to support its contention that the [Guidance r]ule would benefit 'the public, and, in particular, regulated parties.' '' Overall, both rules were justified mainly on policy grounds, which, in HHS's current view, overlooked serious drawbacks of the requirements. Given those high-level and cursory justifications, we believe that the justifications provided in this repeal rulemaking are more than adequate.

[8] One exception is a statement in the preamble to the Guidance rule that regulated entities have difficulty locating and identifying operative guidance documents, which HHS intended to address through the guidance repository. 85 FR 78781. However, as discussed in Section IV.D.5 above, HHS plans to maintain the guidance repository and to work towards improving it functionality, but without the automatic rescission provision and without a governing regulation.

As noted above, *State Farm* requires agencies to consider ''relevant factors.'' Some commenters identified factors that they believed HHS should have considered in its decision-making, such as asserted benefits of these rules. Although HHS is not convinced the *State Farm* standard applies, those factors are addressed individually in Section IV.F.2.e and f below.

b. Clear Error of Judgment

One commenter asserted that *State Farm* requires HHS to demonstrate how the adoption of the guidance and civil enforcement rules was ''a clear error of judgment'' in order to justify the repeal.

HHS does not agree that *State Farm* requires an agency to show that the prior policy choice was ''clear error,'' even assuming the *State Farm* standard applies here. In *State Farm,* the Supreme Court stated that in reviewing an agency's explanation for a repeal, it ''must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'' 463 U.S. at 43 (internal quotations omitted). This language requires courts to evaluate whether the repeal decision was ''clear error''; it does not require an agency to show that the prior policy was clear error. *E.g., State Farm Mut. Auto. Ins. Co.* v. *Dole,* 802 F.2d 474, 486 (D.C. Cir. 1986) (''clear error'' standard applies for a court to ''overturn agency action''). As noted elsewhere in this preamble, to justify a repeal, an agency needs to adequately explain why the new policy is permissible under the statute and that there are good reasons for its new position. *FCC* v. *Fox TV Stations, Inc.,* 556 U.S. 502, 515–16 (2009). An agency ''need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one.'' *Id.* HHS has met that standard, as discussed in the previous comment response.

Nevertheless, the Department now believes the Final Rules represent a misjudgment. The Final Rules were based on policies announced in Executive orders that this President revoked because those policies were counter to the objectives of the Biden-Harris Administration. As explained, these current objectives include using available tools of Federal administrative agencies to, among other things: confront the urgent challenges facing the Nation; equip executive departments with flexibility to use robust regulatory action to address national priorities; pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality; and protect and strengthen the ACA and make high-quality healthcare accessible and affordable for every American. Because the Final Rules place obstacles to achieving these objectives, their issuance was contrary to the best interests of the public health and welfare, and therefore represents a clear error in judgment. Moreover, these procedural regulations were issued at the tail end of one Administration to govern the procedures to be followed by the next Administration, which in itself is a regrettable misjudgment.

c. Reflection of Existing Law

Some commenters asserted that portions of the Final Rules track existing judicial precedent and questioned HHS's rationale under the APA for repealing the rules where they reflect existing law. For example, one commenter stated that HHS should maintain the definition of guidance because it matches existing law. Another commenter objected to HHS's grounds for repealing § 1.7 because, in the commenter's view, § 1.7 codifies existing law under *Christopher* v. *SmithKline Beecham Corp.,* 567 U.S. 142 (2012). One commenter stated that HHS lacked a ''satisfactory explanation'' for the rescinding the Final Rules because the rules are based on binding Federal-court precedent.

This argument is similar to the argument discussed in Section IV.F.1. above in the context of the Take Care Clause and separation-of-powers doctrine, only here the comments are relying on the APA. As explained in that comment response, HHS does not agree that the Final Rules only capture existing legal precedent. The Final Rules go beyond existing law, such as by imposing new procedures on the issuance of guidance.

For example, with respect to § 1.7, HHS continues to believe that provision is not required under settled case law. In *Christopher* v. *SmithKline Beecham Corp.,* the Supreme Court declined to give controlling deference to an agency interpretation of an ambiguous regulation that was advanced in an amicus brief, based in part on concerns about unfair surprise. Instead, the Court analyzed the interpretation under the ''*Skidmore* deference'' framework and accorded the agency's interpretation ''a measure of deference proportional to the 'thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.' '' 567 U.S. at 159 (quoting

United States v. *Mead Corp.,* 533 U.S. 218, 228 (2001)). Under this framework, the Court determined that the agency's interpretation was unpersuasive. The Court did not invalidate the interpretation on procedural grounds or state, as a matter of law, that agencies cannot announce and apply new legal standards in enforcement proceedings. Yet that is what § 1.7 provides: it bars HHS from applying standards or practices in civil enforcement proceedings that have not been ''publicly stated.'' That position is inconsistent with *SEC* v. *Chenery Corp.,* in which the Supreme Court held that agencies can use adjudicatory proceedings to announce and apply new standards of conduct. 332 U.S. 194, 203 (1947). Although the commenter suggests that *Christopher* overruled *Chenery,* the *Christopher* decision does not take on the same question or even mention *Chenery*.[9]

Insofar as there are portions of the regulations that only codify existing legal principles, this rulemaking is not intended to reflect objection to or disagreement with these principles. HHS is fully committed to complying with applicable law. Nevertheless, HHS is opting not to retain regulations seeking to codify existing precedent for several reasons. First, many of the legal principles at issue here are nuanced. HHS recognizes that there is risk in attempting to reduce these principles to regulatory language and believes that it will be difficult for the Department to ensure that its regulations fully capture the context and meaning of relevant court decisions, even with great thought and care. Second, amending rules codified in the CFR is generally time-consuming and resource-intensive. Thus, as legal precedent evolves, the regulations could become outdated and could create administrative challenges, confusion, and potential conflicts for the Department. Third, as noted in the Repeal NPRM, we see little benefit in these provisions because the APA already governs agency conduct without the need for agency regulations. 86 FR 58049. In light of these considerations, we have decided that the practical and procedural risks outweigh any benefits of attempting to codify existing legal principles, and so we have determined not to retain such regulations.

d. Reliance on Executive Orders

One commenter stated that the current Administration's Executive orders, including E.O. 13992, do not provide adequate justification for rescinding regulations, citing *California* v. *Bernhardt,* 472 F. Supp. 3d 573, 605 (N.D. Cal. 2020). In that case, the court explained that Executive orders cannot eliminate statutory mandates. *Id.*

We do not find the comment persuasive for several reasons. First, E.O. 13992 does not eliminate any statutory mandates; rather, it revokes Executive orders issued by the previous Administration and provides policy direction in the application of the Department's discretion, as noted in Section IV.F.1 above. Second, given that HHS has discretion in this area, it is entirely appropriate for the Department to cite to the policy direction set forth in the current Administration's Executive orders as part of its rationale for repealing the Final Rules. Indeed, we note that the Final Rules themselves were based on policy direction in Executive orders issued by the previous Administration. Third, as explained in this preamble and in the Repeal NPRM, HHS has reasons beyond the inconsistency with the Executive orders for repealing the Final Rules. Other reasons include that the Department no longer believes that the Final Rules will best equip it to serve its mission, no longer agrees with codifying these types of Department-wide procedures in regulation, and no longer supports a one-size-fits-all approach to guidance and civil enforcement procedures for HHS. These reasons are sufficient under relevant case law. This is particularly true where the Final Rules govern only agency processes and were based almost entirely on policy justifications, including (now-revoked) Executive orders.

e. Specific Examples

One commenter objected to HHS's harm-based rationale for repealing the Final Rules because the Repeal NPRM lacked sufficient specific examples. The commenter asserted that HHS had only ''speculate[d]'' that harms could ensue and offered ''purely hypothetical concerns.'' The commenter indicated that a ''satisfactory explanation'' under *State Farm* requires HHS to produce specific examples of harm caused by the Final Rules over the past nine months, such as examples of how the guidance processes have caused delay or details about the resources expended on guidance petitions.

HHS's concerns about the harms of these rules are not speculative or hypothetical. In the relatively short time that the Final Rules have been in effect, they have required HHS agencies to prioritize and divert resources to, for example: clearing a Medicaid guidance under the more cumbersome new processes, which took weeks longer than anticipated and delayed the timely communication of needed information to program beneficiaries; responding to petitions submitted under 45 CFR 1.5 that were ultimately found not to even satisfy the requirements for a guidance petition but nevertheless demanded significant time and effort; quickly uploading guidance *documents* into the guidance repository to avoid automatic rescission; preparing the analysis of the economic impact of certain significant guidance documents, which is especially challenging given the non-binding nature of guidance; responding to questions from stakeholders who are confused by the new guidance disclaimer language; and modifying certain civil administrative procedures even though they generally would have included notice and opportunities for engagement, because those procedures did not include the scripted process in the Civil Enforcement rule. These and other experiences have informed HHS's decision-making for this repeal.

The Department also notes that the procedures for significant guidance are modeled on procedures for issuing legislative rules, and HHS and the public are aware of the difference in time required to issue a guidance (at least prior to the Guidance rule) as compared with a legislative rule. Considering this well-established differential, we are puzzled that anyone would dispute that these significant guidance procedures will cause delay in the issuance of significant guidance.

Beyond these harms, the Repeal NPRM cited various other examples of harm, including CMS's difficulties with the guidance repository, the inconsistency between the HHS and FDA guidance requirements, and the confusion created by a new overlay of civil administrative enforcement procedures on existing procedures. 86 FR 58048, 58050, 58051. HHS also previously discussed how the Guidance rule causes confusion when it described commenters' concerns about the definition of guidance, the definition of significant guidance, and the disclaimer requirement. 85 FR 78772, 78774, 78778. Comments in this rulemaking have reiterated that confusion and the uncertainties created by the rules, among other problems.

[9] The commenter cites *ExxonMobil Pipeline Co.* v. *U.S. Department of Transportation,* 867 F.3d 564 (5th Cir. 2017), for the proposition that *Christopher* establishes that regulatory agencies cannot announce and apply new legal standards in enforcement proceedings. However, like *Christopher, ExxonMobil Pipeline* addressed unfair surprise in the context of applying deference to an agency's interpretation. *See* 867 F.3d at 573. Moreover, also like *Christopher, ExxonMobil Pipeline* does not mention *Chenery* and does not suggest that that *Christopher* overruled that case.

HHS's decision to repeal these rules is also based on a risk of significant future harm. That risk exists because the rules are susceptible to broad interpretation and multiple meanings. The Repeal NPRM gave some examples of these concerns, such as the potential for the definition of significant guidance to be construed broadly, the opaque language in the civil enforcement rule that could result in opportunistic litigation, and the possibility of overwhelming guidance petition obligations. 86 FR 58046, 58049, 58051. Indeed, although HHS stated in the preamble to the final Guidance rule that it believed there would be relatively few significant guidance documents, 85 FR 78775, we no longer think that accurately represents past practice. The risks of these harms—some of which may not yet have materialized—supply additional ''good reasons'' to eliminate these self-imposed procedural requirements.

Finally, we note that HHS does not need to demonstrate any specific harms, or even risk of harm, in order to justify the repeal of these rules. These rules govern agency procedures, and agencies are generally free to fashion their own rules of procedure in a manner that will maximize the execution of their duties. At most, HHS must show that the decision is permissible under the statute and that there are good reasons for it. *FCC* v. *Fox TV Stations, Inc.,* 556 U.S. at 515–16. HHS has cited a range of good reasons for this final repeal rule, as noted throughout this preamble. Given that the record for promulgation of these rules contained mainly policy justifications, without citing concrete issues that needed to be solved, HHS does not now believe that it is required to meet a higher burden, cataloging specific facts and examples, in order to justify reversal.

f. Specificity and Consistency

One commenter opined that the Repeal NPRM should have identified which existing procedural regulations comply with principles of due notice, fairness, and transparency in order to support HHS's position that the Civil Enforcement rule is not required. The commenter also asserted that HHS's position in the Repeal NPRM was contradictory because the Department both stated that its preexisting regulations provide sufficient fairness and transparency and stated that the Civil Enforcement rule may conflict with the preexisting regulations; the comment stated that the Civil Enforcement rule ''cannot simultaneously be coextensive with and in conflict with preexisting enforcement regulations.''

HHS believes that all of its preexisting procedural regulations comply with principles of due process, fairness, and transparency, and it is not aware of any information to the contrary. When the Civil Enforcement rule was issued, HHS did not identify any specific deficient processes. In fact, HHS indicated the opposite; for example, it conveyed that existing HHS procedures generally already satisfy the standards in § 1.9. 86 FR 3012. Furthermore, the comments on the Repeal NPRM, including this comment, did not identify specific procedural defects that would be solved through the Civil Enforcement rule. Based on this record, HHS is not aware that any of its preexisting procedures are problematic, and it does not agree that it now has a burden to cite and explain how each of its procedures comport with fairness and due process.

The commenter also misunderstands HHS's position in the Repeal NPRM. HHS does not consider the Civil Enforcement rule and its preexisting regulations ''coextensive,'' but does consider its preexisting regulations to comply with principles of due notice, fairness, and transparency. The preexisting regulations can comply with these principles without, for example, meeting the specific process laid out in in 45 CFR 1.9 of (1) written notice of the initial legal and factual determinations, (2) an opportunity to respond in writing, and (3) a written response from the Department upon request, each of which, under the regulation, must occur ''prior'' to the Department taking a civil enforcement action.[10] The Civil Enforcement rule itself contemplated that § 1.9 was not mandated by principles of due process; it stated that the process ''may exceed the requirements imposed by the Due Process clause of the Constitution and may impose a burden by delaying the time until HHS can take actions with legal consequence.'' [11] 86 FR 3013.

HHS's processes can vindicate the goals of due notice and fairness through methods other than the prescriptive steps and documentation required under § 1.9, such as engagement through regulatory meetings.

g. Benefit-Cost Analysis

One commenter stated that HHS failed to fully consider the benefits of the Final Rules and argued that, under the APA, HHS must weigh the costs of the repeal against its benefits. Another commenter stated that the costs of the Guidance rule outweigh its benefits but recommended that HHS summarize those costs and benefits in a designated Regulatory Impact Analysis (RIA) section.

HHS disagrees that the APA requires a benefit-cost analysis such as an RIA for rulemaking in general and more particularly for the procedural rules that are the subject of this rulemaking. We also note that nothing in 5 U.S.C. 301, which provided the statutory authority for the Final Rules as well as this repeal, requires a benefit-cost analysis. Nevertheless, HHS has considered the advantages and disadvantages of these rules and has determined that they should be repealed. In making this decision, the Department considered the benefits of the rules cited by commenters, which are addressed throughout this preamble. For example, HHS has considered that the Guidance rule requires more process for significant (and other) guidance, which may have the benefit of refining guidance to a greater extent, but also has the disadvantage of delaying, and possibly preventing, the communication of valuable information. With respect to the uniform and mandated disclaimer for guidance, HHS recognizes that there is benefit in acknowledging a document's non-binding nature but has concluded that there is greater harm in requiring one consistent disclaimer across the Department. HHS is also aware that some regulated entities would prefer for all standards and practices to be publicly stated before they are applied in civil enforcement proceedings, but has determined there is greater benefit to the public if the Department is not constrained in taking appropriate actions and positions as circumstances arise. More broadly, overall, HHS believes there is a net negative in establishing these Department-wide procedures by regulation, regardless of the merits of

[10] The preamble to the Civil Enforcement rule states that the final ''written response may be issued contemporaneous to the Department taking the action with legal consequence.'' 86 FR 3012. However, HHS is concerned that a court may not find that statement accurate or persuasive in light of the regulatory language itself, which provides that the Department ''shall provide'' the response ''prior'' to the civil enforcement action. *See, e.g., Wyo. Outdoor Council* v. *U.S. Forest Serv.,* 165 F.3d 43, 53 (D.C. Cir. 1999) (''[L]anguage in the preamble of a regulation is not controlling over the language of the regulation itself.'').

[11] The Civil Enforcement rule referred to § 1.6, rather than § 1.9, in this sentence. We now believe this was an error, and was intended to refer to § 1.9, because the rule describes the relevant provision as providing a ''process'' with ''an opportunity to respond in writing before the Department takes an action that has (potentially costly) legal consequence.'' 86 FR 3013. Section 1.6 relates to Department reliance on guidance documents and does not establish a process with an opportunity to respond in writing.

the underlying policies. However, the Department intends to retain some of the policies without the regulations, such as the guidance repository, so the associated benefits will continue. In these and other ways, HHS has balanced the pros and cons, and its determination is both reasonable and well supported.

HHS agrees with the commenter who stated that the harms of the Guidance rule outweigh its benefits. The comment noted that the Guidance rule creates costs in terms forgone health benefits, costs to regulated entities, and increased monitoring burdens on the public. Accordingly, HHS has included an assessment of the impacts of this final repeal rule in the ''Required Regulatory Analyses'' section, see Section V.A. below.

h. Consideration of Alternatives

One commenter proposed various modifications to the rules as an alternative to repeal and questioned whether HHS had adequately justified a repeal of the Final Rules in their entirety in light of these proposed alternatives. The commenter's proposed modifications include: (1) revising § 1.1 to exempt FDA from the scope of the guidance regulation; (2) revising § 1.2(a) to clarify that the definitions in that section do not apply to FDA to the extent they conflict with FDA's GGP regulations and that ''[d]ifferent definitions may be provided in Federal statutes or regulations that apply more specifically to particular programs or activities;'' (3) revising § 1.3(a)(3)(i) to require HHS and each of its components to ''prepare a template statement (or multiple template statements,[] . . .) that disclaims any binding effect,'' and until they do so, require agency components to include the disclaimer provided in the original § 1.3(a)(3)(i); (4) revising § 1.4(a)(2) to provide that guidance documents not included in the guidance repository will not be considered automatically rescinded upon the Secretary making certain findings, including that the failure to include was inadvertent, or alternatively, eliminating the automatic rescission language altogether; (5) revising § 1.5(d) to permit the Secretary to extend the deadline for the Department's response to petitions for review of guidance if they ''present a complex question that cannot reasonably be responded to within 90 business days,'' or adding a third basis for suspension of the deadline; and (6) revising § 1.7(a) to remove the requirement that, in civil enforcement actions, the Department may only apply standards or practices ''that have been publicly stated.''

HHS disagrees with the commenter that the commenter's proposed modifications to the Final Rules are better alternatives to address the concerns with the rules and that these alternatives would obviate the need to repeal the rules in their entirety. As a threshold matter, it is not clear that the Department must consider modifications to these procedural rules prior to rescinding them. Under *State Farm* and *Regents,* ''[w]hen an agency rescinds a prior policy its reasoned analysis must consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'' *DHS* v. *Regents of the Univ. of Cal.,* 140 S. Ct. 1891, 1913 (2020) (quoting *State Farm,* 463 U.S. at 51). Under this standard, an agency must give ''adequate reasons for its abandonment'' of any such alternatives. *State Farm,* 463 U.S. at 51. However, as explained in Section IV.F.2.a. above, it is not clear that the standards set forth in this precedent apply equally to rules governing agency procedures such as the Final Rules. *See Vt. Yankee,* 435 U.S. at 544 (recognizing agency autonomy to develop its own procedural rules as a ''very basic tenet of administrative law''). Moreover, the Department notes that to the extent *State Farm* and *Regents* apply to its decision to repeal these procedural rules in their entirety, those precedents make clear that an agency is ''not required to . . . 'consider all policy alternatives in reaching [its] decision' '' and is ''not compelled to explore 'every alternative device and thought conceivable by the mind of man.' '' *Regents,* 140 S. Ct. at 1914 (first quoting *State Farm,* 463 U.S. at 51; then quoting *Vt. Yankee Nuclear Power Corp.* v. *Natural Res. Def. Council, Inc.,* 425 U.S. 519, 551 (1978)); *see State Farm,* 463 U.S. at 51 (''Nor do we broadly require an agency to consider all policy alternatives in reaching decision. It is true that a rulemaking cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man regardless of how uncommon or unknown that alternative may have been.'') (internal punctuation omitted).

Nevertheless, to the extent that HHS is required to consider modifications to the existing rules prior to rescinding them, HHS has satisfied that requirement. HHS has considered modifications to the Final Rules, including the commenter's proposed modifications, and has determined that any such modifications are not better than repeal for several reasons.

As explained in previous comment responses and elsewhere throughout this preamble, HHS has determined that codifying the practices and procedures set forth in the Final Rules, even if modified as the commenter suggests, is not necessary or appropriate for several reasons. As noted previously in the Repeal NPRM, neither of the Final Rules required notice-and-comment rulemaking before promulgation. *See* 86 FR 58045–46. Moreover, the Department does not find it appropriate to codify these practices and procedures regarding guidance and civil enforcement because doing so would inhibit the ability of HHS agencies to update and revise these practices and procedures as needed over time in response to a variety of factors, including changed circumstances, new priorities, public health emergencies, stakeholder input, new technology, changes in applicable legal precedent, and agency experience. Such revisions would be generally time-consuming and resource-intensive if these practices and procedures remained codified in a regulation. HHS does not believe that its finite resources are best used to undertake such efforts, especially given the limited utility of the Final Rules. The Department's desire to retain flexibility to modify practices and procedures regarding guidance and civil enforcement is consistent with Congress's objective that the APA should allow ''agencies . . . latitude in organizing their internal operations,'' *Mendoza* v. *Perez,* 754 F.3d 1002, 1023 (D.C. Cir. 2014) (internal quotation marks omitted) (recognizing this principle as a ground for Congress's exemption of agency procedural rules from the requirement to conduct notice-and-comment rulemaking); *Am. Hosp. Ass'n* v. *Bowen,* 834 F.2d 1037, 1045 (D.C. Cir. 1987) (''The reading of the [section] 553 exemptions that seems most consonant with Congress' purposes in adopting the APA is to construe them as an attempt to preserve agency flexibility in dealing with limited situations where substantive rights are not at stake.''); *see also Vt. Yankee,* 435 U.S. at 544 (''agencies should be free to fashion their own rules of procedure'').

Additionally, HHS has determined that codifying the Final Rules or any modification of them is not appropriate because implementing a one-size-fits-all approach to the practices and procedures regarding guidance and civil enforcement cannot accommodate the needs of the diverse range of HHS agencies. As explained in Section IV.A.4.b above, each of the HHS agencies serves the Department's overall mission in unique ways, often addresses different stakeholders, uses specialized

regulatory tools and existing processes for guidance and civil enforcement, and is subject to unique statutory authorities. To develop practices and procedures applicable to and appropriate for all HHS agencies, the Department would need to consider and accommodate these different stakeholders, tools, existing processes, and statutory authorities. The Department now believes that the Final Rules did not adequately address this issue. Even assuming it would be possible or practical for the Department to do so in the context of a single rulemaking, the Department does not find it appropriate to commit its limited resources to such a time-consuming and resource-intensive task. Although the commenter's proposal to exempt FDA from the Guidance rule addresses some of these concerns for one agency and one rule (the commenter does not propose to exempt FDA from the civil enforcement rule), that approach does not address the unique considerations presented by each of the other HHS agencies.

HHS has determined that the commenter's proposed modifications to the Final Rules are not preferable to repeal for other reasons, as well, including that they do not address the Department's following additional concerns regarding such provisions.

First, the commenter's proposal to revise § 1.2(a)—to exempt FDA from its definition of ''guidance document'' and acknowledge that ''[d]ifferent definitions may be found in Federal statutes'' but retain the rule's original ''guidance document'' definition—does not adequately address the Department's concerns that the ''guidance document'' definition is vague and overly broad, could lead to confusion over the type of documents subject to the rule's requirements, and could be read to encompass a range of documents not intended to serve as guidance. The commenter asserts that the definition is not vague or confusing because it is consistent with the APA's definition of a rule as well as ''definitions that have long been used by courts and agencies to define the categories of agency documents that are properly considered guidance.'' Moreover, the commenter suggests that any difficulty in interpreting § 1.2(a)'s definition of guidance is not attributable to that section's language but ''inheres in the nature of [defining] agency guidance,'' which courts have described as '' 'fuzzy' and 'enshrouded in considerable smog,' '' and that ''to the extent the Department believes further clarification is needed to explain how the definition of guidance applies to specific documents, it should provide clarity through further preamble guidance explicating how HHS understands this term.''

However, as discussed in the Section IV.F.2.c. above, the nuanced nature of determining whether an agency document constitutes guidance counsels against attempting to reduce the relevant legal principles to regulatory language and makes it difficult for the Department to ensure that any regulatory definition fully captures the context and meaning of relevant court decisions. Furthermore, the Department does not agree with the commenter's assertion that § 1.2(a)'s definition ameliorates difficulty in identifying agency guidance documents by ''adding clarifications that discuss specifically how HHS documents are likely to fit or not fit within the definition.'' The Department sees limited value in the examples provided in the definition, which primarily include legislative rules and documents that clearly fall outside the definition of guidance, *see, e.g.,* 45 CFR 1.2(a) (providing that ''guidance documents'' do not include ''rules promulgated pursuant to notice and comment under 5 U.S.C. 553,'' ''decisions of agency adjudication under 5 U.S.C. 554,'' ''legal briefs and other court filings,'' ''grant solicitations and awards,'' and ''contract solicitations and awards''), or essentially reiterate the legal principles already incorporated into the general definition, *see id.* (providing ''guidance document'' does not include ''internal guidance directed to the Department or other agencies'' *but* would include such documents if they were ''intended to have substantial future effect on the behavior of regulated parties''); *see also id.* (excluding from the definition of ''guidance document'' various ''[p]re-enforcement rulings'' *but* acknowledging that ''[i]f, however, . . . the content of the document is designed to guide the conduct of other regulated parties, such a document would qualify as guidance'').

Second, the commenter's proposed revisions to § 1.3(a)(3)(i)—to require HHS and each of its agencies to individually ''prepare a template statement (or multiple template statements,[] . . .) that disclaims any binding effect,'' but until they do so, require them to use the disclaimer provided in the original § 1.3(a)(3)(i)—are not a better alternative to rescission of this section in its entirely. Although requiring each HHS agency to develop its own templates for guidance documents represents an improvement on the rule's original requirement that a uniform statement be used for all Department documents, it is not clear that this approach would provide each agency with enough flexibility to specify the information most appropriate to each HHS agency's stakeholders and the expected uses of each particular document or type of document. As discussed in Section IV.D.4. above, the Department believes that a flexible approach is preferable so that each HHS agency can develop an approach to help ensure that the statement is as clear and useful as possible, informed by the unique considerations applicable to that agency and using the regulatory tools it deems best suited to the task. Although FDA's GGP regulation contains a requirement cited by the commenter as a model, neither the FD&C Act nor FDA's GGP regulation codify the wording of the disclaimer statement; rather they broadly require that FDA guidance documents indicate the non-binding nature of the document. *See* 21 U.S.C. 371(h)(2) and 21 CFR 10.115(i)(1)(iv). The Department does not find it necessary or appropriate to promulgate a regulatory requirement that all agency components undertake such an effort, given the numerous demands on the Department's finite resources, the unique considerations presented by the various guidance documents issued by each of the Department's components, and existing law establishing the non-binding effect of guidance documents regardless of inclusion of a disclaimer of legal effect.

Additionally, the Department rejects the commenter's proposal to require HHS agencies, pending their adoption of a template, to include in all guidance documents § 1.3(a)(3)(i)'s original disclaimer statement, given the Department's determination that the original disclaimer statement is not appropriate for inclusion across the diverse range of guidance documents issued by agency components. The commenter asserts that the rule's original disclaimer statement is an appropriate fit for all Department guidance documents because it ''accurately and clearly restates core principles of administrative rulemaking applicable to all agencies,'' namely, that ''guidance may not carry 'the force and effect of law.' '' However, as explained in Section IV.D.4. above, the Department sees little utility in issuing a regulation to require a disclaimer that simply seeks to capture a current understanding of principles established by the APA, and any attempt to do so incurs the risk of confusion to the extent that the language does not fully capture

the context and meaning of relevant court decisions.

Third, the commenter's proposed revisions to § 1.4(a)(2)—to provide that guidance documents not included in the guidance repository will not be considered automatically rescinded if the Secretary makes certain findings—also does not present an adequate alternative. This proposed process for averting or reversing inadvertent rescissions would create additional burdens for the Department because it would require the Secretary to make specific, narrow and undefined findings about each rescission that: ''[t]he guidance document was omitted from the guidance repository inadvertently due to a technological or human error;'' ''[r]egulated parties had fair notice of the guidance document during the period it did not appear in the guidance repository;'' and ''[t]he guidance document was added to the guidance repository promptly after the Department learned of its inadvertent omission.'' Moreover, providing the possibility that the Secretary could proactively prevent rescission by making certain findings will not prevent automatic rescission from happening inadvertently. And, as discussed in Section IV.D.5, automatic rescission due to inadvertent exclusion would create additional burdens on stakeholders by causing unnecessary confusion about which guidance documents have been rescinded, superseded, or otherwise become obsolete. Furthermore, this proposed alternative for reinstating automatically rescinded guidance would likely exacerbate stakeholder confusion because the effectiveness of guidance could flip back and forth depending on technical glitches with the website and whether the Secretary has been able to address them.

The commenter proposed, as an alternative revision to § 1.4, to retain § 1.4's requirement to establish and maintain a guidance document repository but provide that failure to include a guidance document in the repository would not be grounds for treating the guidance document as rescinded. We agree with the proposal to maintain a centralized repository and eliminate the automatic rescission provision. However, we conclude that it is unnecessary and unhelpful to retain the codified regulation. Removing the automatic rescission language in § 1.4 would leave only the requirement that the Department maintain the guidance repository along with certain specifications for the repository. As discussed in Section IV.D.5, the Department intends to retain the guidance repository and to improve the utility of the repository based on stakeholders' input and other developments, such as new technology. We see no benefit in directing the Department's efforts with a codified regulation.

Fourth, the commenter's proposed revisions to § 1.5(d) are also not a preferable alternative to rescission. Although permitting the Secretary to extend the deadline for the Department's responses to petitions that present a ''complex question that cannot reasonably be responded to within 90 business days,'' or adding additional bases for tolling the deadline, may in some ways alleviate the Department's concerns regarding its ability to respond to such petitions in such a short timeframe, these proposed mitigation measures do not sufficiently address the unnecessary diversion of resources to this new petition pathway. The commenter does not address the Department's concerns regarding the other ways in which § 1.5 is likely to strain unnecessarily the Department's resources, as discussed in Section IV.D.6., by, for example, permitting stakeholders to file, and requiring the Department to timely respond to, an indefinite number of petitions, each of which could challenge any number of guidance documents at a time or challenge the same guidance document multiple times. Furthermore, requiring the Secretary to make determinations regarding whether individual petitions present a ''complex question'' and whether the Department ''cannot reasonably . . . respond[ ] . . . within 90 business days,'' or whether a basis for tolling exists, would create an additional burden on the Department's finite resources.

Moreover, the commenter does not explain why such burdens would be justified, given the existence of other formal and informal processes by which stakeholders can communicate their views on guidance to the Department. Although the commenter asserts that these processes are not an ''equally effective and comprehensive alternative'' to § 1.5's petition process and that FDA's citizen petition process is ''largely inadequate,'' it does not provide persuasive support for such assertions. Nor does the commenter support the underlying premise that petitions regarding guidance documents should be provided a special pathway and be prioritized above other petitions as well the Department's other work. In any event, HHS need not show that the existing processes that it chooses to rely upon in the alternative are ''equally effective'' or ''comprehensive;'' rather, at most, HHS need only show that there are good reasons for abandoning § 1.5's petition process and that it believes doing so is the better approach, which it has done here. *See FCC* v. *Fox TV Stations, Inc.,* 556 U.S. at 515–16 (to justify a repeal, an agency needs to adequately explain why the new policy is permissible under the statute and that there are good reasons for its new position).

Finally, the commenter's proposed modification to § 1.7(a)—to remove the requirement that in civil enforcement actions the Department may only apply standards or practices ''that have been publicly stated''—is also inadequate compared to rescission because it addresses only one aspect of the Civil Enforcement rule. Although the commenter's proposal would remove a restriction on the Department's authority that goes beyond settled case law, *see* Section IV.F.2.c; 86 FR 58050, that limited change would not address the Department's concerns regarding other provisions of the Civil Enforcement rule. *See* Section IV.E (concerns with the Civil Enforcement rule include that the newly required procedures do not adequately account for pre-existing, agency-specific procedures regarding civil enforcement actions, may conflict with or diverge from such existing procedures, may create confusion for both HHS agencies and regulated parties, and could create unnecessary burdens that delay or prevent civil enforcement). Although the commenter asserts that the burdens the Civil Enforcement rule imposes on the Department, identified in the Repeal NPRM, are either speculative or justified by the rule's benefits, the Department disagrees. *See* Section IV.E. Moreover, the proposed revision to § 1.7(a) does not address the Department's position that the Civil Enforcement rule, including the portion of § 1.7(a) that would remain under the commenter's proposal (*i.e.,* a prohibition on standards or practices that ''cause unfair surprise''), is superfluous because the procedural regulations already established within HHS comply with principles of due notice, fairness, and transparency. Contrary to the commenter's suggestion that rescission of the rule will ''allow[ ] [the Department] to proceed with enforcement actions that cause unfair surprise'' and impose ''burdens . . . on regulated entities who are on the receiving end of such enforcement actions,'' the Department's current procedures already ensure that that the procedural rights of stakeholders are adequately protected.

In sum, to the extent that the Department must consider potential

modifications to the Guidance and Civil Enforcement rules as alternatives to their rescission, the Department has satisfied any obligation to do so by addressing the modifications proposed in the comments and providing adequate reasons for their rejection. *See State Farm,* 463 U.S. at 51.

i. Reliance Interests

One commenter asserted that HHS's consideration of reliance interests in the Repeal NPRM rule was inadequate. The commenter stated that HHS assumed there were no reliance interests due to the revocation of Executive Orders 13891 and 13892 and that ''a change in administration cannot extinguish reliance interests.'' Another commenter asserted that ''reliance interests are serious and ongoing.'' The commenter questioned HHS's belief that no serious reliance interests have accrued because, in the commenter's view, that belief was contradicted by HHS's assertion that the guidance processes were overly burdensome and resource intensive for the Department.

HHS disagrees that its analysis of reliance interests in the proposed rule was inadequate, and we have reiterated and built on that analysis in this final repeal rule. Consistent with *DHS* v. *Regents of the Univ. of Cal.,* HHS has considered whether there are significant reliance interests and has weighed those reliance interests against competing policy concerns. 140 S Ct. 1891 (2020). For example, in the preamble to the proposed rule, HHS gave reasons why it did not believe significant reliance interests have accrued but also communicated the view that, to the extent that any serious reliance interests are at stake, they are outweighed by the public interest in efficient issuance of guidance and adequate civil administrative enforcement actions. Thus, HHS stated that it was unlikely that reliance interests had accrued, but also acknowledged the possibility of reliance interests and weighed them against relevant policy considerations.

HHS has not changed its analysis of reliance interests. Although one comment stated that reliance interests are ''serious and ongoing,'' the commenter based that view on the Department's statement that the Final Rules are burdensome and resource intensive. While it is true that the Final Rules are resource-intensive in part because the public has used the processes (for example, the guidance petition process), that fact does not mean that the public has developed reliance interests. Reliance interests generally accrue through decisions made in reliance on the prior policy, such as decisions to have ''enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children,'' *Dep't of Homeland Sec.* v. *Regents of the Univ. of Cal.,* 140 S. Ct. at 1914, or business ''investment[s] incurred,'' *Solenex LLC* v. *Bernhardt,* 962 F.3d 520, 529 (D.C. Cir. 2020) (internal quotations omitted).

HHS does not believe that the public has made these types of decisions based on the Final Rules. As noted in the proposed rule and throughout this preamble, these rules govern agency procedures, so they do not on their own change the substantive requirements governing regulated entities or related property interests. Thus, it is difficult to see how the procedures or principles set forth in these rules would translate to a stakeholder making concrete changes in public or business decisions or practices that would implicate serious reliance interests.

In considering reliance, HHS also has not taken the position that a change in Administration extinguishes reliance interests. Under the facts here, the timing of the change in Administration is relevant because the Final Rules were issued at the tail end of the last Administration, and the Biden-Harris Administration immediately revoked the Executive orders that formed a key basis for the rules (EOs 13891 and 13892). Accordingly, the Final Rules were effective for only a few days or weeks before the public was put on notice that there was a change in the underlying policy. At that point, even if we were to assume for argument's sake that reliance interests accrued, the public was less likely to invest significant resources in reliance on the rules. Given that the public had little time to develop reliance interests before the change in Administration and had little reason to develop those interests after the change, in combination with the points made above, HHS does not believe that serious reliance interests have accrued.

To test its view, HHS invited the public to provide information about reliance interests adversely affected by the repeal. Other than the commenters discussed above, we did not receive any responses on this topic. No commenters provided specific examples of affected reliance interests. Instead, HHS received multiple comments discussing reliance on government programs involving guidance and stating that the Guidance rule itself undermines those interests. These facts corroborate and reinforce our analysis of reliance interests. In sum, HHS has considered whether significant reliance interests exist and has weighed those against its policy goals, and therefore has met its burden under the APA.

V. Required Regulatory Analyses

A. Executive Orders 12866 and 13563

We have examined the impacts of the final repeal rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final repeal rule is a significant regulatory action as defined by Executive Order 12866. This is consistent with the Repeal NPRM, which OMB found to be a significant regulatory action.

In both the Guidance proposed and final rules, OMB determined that the rulemaking was not an economically significant regulatory action under these EOs. 85 FR 51399; 85 FR 78784. OMB made a similar finding with respect to the Civil Enforcement rule. 86 FR 3013. The preambles to these rules maintained that the rules primarily described procedural changes that would require Department expenditures to implement. Although the preambles theorized that stakeholders might eventually benefit from greater transparencies and efficiencies from these procedural changes, the Final Rules did not identify any benefits that were likely to be immediately realized. *See* 85 FR 78784; 86 FR 3013.

In the current rulemaking, the Department is repealing the Final Rules, which were effective on January 6, 2021, and January 12, 2021. When effective, this repeal rule will restore the status quo that existed just prior to the January 2021 effective dates for the Final Rules. The Department may then take further action as needed to undo any minimal actions taken since those effective dates to implement the rules' procedural directives.

Compared to the baseline scenario under the rules on guidance, enforcement, and adjudication procedures, we identify several impacts of the final repeal rule. We anticipate that the final repeal rule will result in: reduced costs to the Department to administer the Department's programs; reduced costs associated with litigating internal procedures; and reduced costs

associated with responding to citizen petitions purported to be submitted under the Guidance rule. The sum of these cost savings attributable to the final repeal rule are very unlikely to exceed the $100 million threshold in any year. As an additional impact, we anticipate that the final repeal rule will result in benefits from reduced regulatory confusion, such as confusion from two sets of regulations governing FDA guidance practices, citizen petitions related to FDA guidance, and CMP proceedings.

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 issuing ''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 (2021) Implicit Price Deflator for the Gross Domestic Product. This final repeal rule would not result in an unfunded mandate in any year that meets or exceeds this amount.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has determined that this final repeal rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Regulatory Flexibility Act

The Department has examined the economic implications of this final repeal rule as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996 (Pub. L. 104–121), which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. The Department considers a rule to have a significant economic impact on a substantial number of small entities if it has at least a three percent impact on revenue of at least five percent of small entities.

When finalized, this repeal rule will restore the status quo just prior to the respective January 6, 2021, and January 12, 2021, effective dates of the Guidance rule and the Civil Enforcement rule, and undo changes, if any, to procedures followed by the Department during the interim period. This rule repeals two rules that the Department concluded, and the Secretary certified, would not result in a significant impact on a substantial number of small entities. Further, the Department believes that any effects associated with future regulatory actions, including any positive or negative impacts to small entities, should be attributable to those regulatory actions rather than to this repeal rule. As a result, the Department has determined, and the Secretary certifies, that this final repeal rule does not have a significant economic impact on the operations of a substantial number of small entities.

C. Executive Order 13132 (Federalism)

We have analyzed this final repeal rule in accordance with the principles set forth in E.O. 13132, ''Federalism.'' The Department has determined that this final repeal rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

HHS has analyzed this final repeal rule under Executive Order 13175, dated November 6, 2000, and has determined that this action does not have tribal implications as specified therein. This final repeal rule would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

E. National Environmental Policy Act

HHS had determined that this final repeal rule will not have a significant impact on the environment. Because the Final Rules that are being repealed established only procedures related to issuing guidance and initiating civil enforcement, this repeal is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA.

F. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, 44 U.S.C. 3501–3521; 5 CFR part 1320, appendix A.1, the Department has reviewed this final repeal rule and has determined that it does not create new collections of information.

List of Subjects in 45 CFR Part 1

Government employees, Guidance, Reporting and recordkeeping requirements.

PART 1—[REMOVED AND RESERVED]

■ For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR, subtitle A, subchapter A, by removing and reserving part 1.

Dated: July 18, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–15567 Filed 7–22–22; 8:45 am]

BILLING CODE 4150–26–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 19–126, 10–90; FCC 20–5; FR ID 96806]

Rural Digital Opportunity Fund, Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Connect America Fund contained in the Commission's *Rural Digital Opportunity Fund Order,* FCC 20–5. This document is consistent with the *Rural Digital Opportunity Fund Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: The amendments to § 54.313(e) introductory text, (e)(2) introductory text, and (e)(2)(iii), published at 85 FR 13797, March 10, 2020, are effective July 25, 2022.

FOR FURTHER INFORMATION CONTACT: Jesse Jachman, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission submitted revised information collection requirements for review and approval by OMB, as

required by the Paperwork Reduction Act (PRA) of 1995, on June 1, 2022, which were approved by OMB on July 5, 2022. The information collection requirements are contained in the Commission's *Rural Digital Opportunity Fund Order,* FCC 20–5 published at 85 FR 13797, March 10, 2020. The OMB Control Number is 3060–0986. If you have any comments on the burden estimates listed in the following, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060–0986, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on July 5, 2022, for the information collection requirements contained in 47 CFR 54.313(e) introductory text, (e)(2) introductory text, and (e)(2)(iii), published at 85 FR 13797, March 10, 2020. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0986.

The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0986.

OMB Approval Date: July 5, 2022.

OMB Expiration Date: July 31, 2025.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local, or Tribal Government.

Number of Respondents and Responses: 2,229 unique respondents; 13,804 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 50,857 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Federal Communications Commission (Commission) notes that the Universal Service Administrative Company (USAC or Administrator) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order (76 FR 73830 (Nov. 29, 2011)) and Further Notice of Proposed Rulemaking (76 FR 78384 (Dec. 16, 2011)), 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*). The Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration (77 FR 30904 (May 24, 2012)), 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order (77 FR 14297 (March 9, 2012), 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration (78 FR 3837 (Jan. 17, 2013)), 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order (78 FR 22198 (April 15, 2013), 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order (78 FR 38227 (June 26, 2013)), 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order (78 FR 32991 (June 3, 2013)), 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order (78 FR 48622 (Aug. 9, 2013)), 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration (81 FR 24282 (April 25, 2016)) and Further Notice of Proposed Rulemaking (81 FR 21511 (April 12, 2016), 31 FCC Rcd 3087 (2016); *Connect America Fund, et al.,* WC Docket No. 10–90, et al., Report and Order (81 FR 44414 (July 7, 2016)) and Further Notice of Proposed Rulemaking (81 FR 40235 (June 21, 2016)), 31 FCC Rcd 5949 (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order (81 FR 69696 (Oct. 7, 2016)) and Further Notice of Proposed Rulemaking (81 FR 69772 (Oct. 7, 2016)), 31 FCC Rcd 10139 (2016); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Order, 32 FCC Rcd 968 (2017); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order and Order on Reconsideration (84 FR 4711 (Feb. 19, 2019)) and Further Notice of Proposed Rulemaking (84 FR 2132 (Feb. 6, 2019)), 33 FCC Rcd 11893 (2018); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order (82 FR 39966 (Aug. 23, 2017)), 32 FCC Rcd 5944 (2017).

In 2019, the Commission adopted an order establishing a separate, parallel high-cost program for the U.S. territories suffering extensive infrastructure damage due to Hurricanes Irma and Maria. *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.,* WC

Docket No. 18–143, et al., Report and Order and Order on Reconsideration (84 FR 59937 (Nov. 7, 2019)), 34 FCC Rcd 9109 (2019) (*Puerto Rico and USVI Stage 2 Order*). Also, in the *2019 Supply Chain Order* (85 FR 230 (Jan. 3, 2020)), the Commission adopted a rule prohibiting the use of Universal Service Fund (USF) support, including high-cost universal service support, to purchase or obtain any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order and Order (85 FR 230 (Jan. 3, 2020)), Further Notice of Proposed Rulemaking (85 FR 277 (Jan. 3, 2020)), 34 FCC Rcd 11423, 11433, para. 26. *See also* 47 CFR 54.9.

Through several orders, the Commission has changed, modified, and eliminated certain reporting obligations for high-cost support. These changes are outlined in the following:

On January 30, 2020, the Commission adopted an order establishing the framework for the Rural Digital Opportunity Fund (RDOF), building on the successful Connect America Fund (CAF) Phase II auction. *Rural Digital Opportunity Fund; Connect America Fund,* WC Docket Nos. 19–126 and 10–90, Report and Order (85 FR 13773 (March 10, 2020)), 35 FCC Rcd 686 (2020) (*RDOF Order*). The RDOF represents the Commission's single biggest step to close the digital divide by providing up to $20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. In the *RDOF Order,* ''[t]o ensure that support recipients are meeting their deployment obligations,'' the Commission ''adopt[ed] essentially the same reporting requirements for the RDOF that the Commission adopted for the CAF Phase II auction.'' *Id.* at 712, para. 56.

In the *2020 Supply Chain Order,* the Commission adopted two additional supply chain rules associated with newly required certifications. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order (86 FR 2904 (Jan. 13, 2021)), 35 FCC Rcd 14284 (2020) (*2020 Supply Chain Order*). First, the Commission adopted a rule, 47 CFR 54.10, prohibiting the use of a Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained. Second, the Commission adopted a rule, 47 CFR 54.11, which requires each eligible telecommunications carrier receiving universal service fund support to remove and replace all covered communications equipment and services from their networks, and subsequently certify prior to receiving a funding commitment or support that it does not use covered communications equipment or services. The Commission also adopted procedures, consistent with the Secure and Trusted Communications Networks Act of 2019 (Pub. L. 116–124), to identify such covered equipment and services and publish a Covered List. That list was published March 12, 2021 and will be updated as needed.

In the *Rate Floor Repeal Order,* the Commission decided to ''eliminate the rate floor and, following a one-year period of monitoring residential retail rates, eliminate the accompanying reporting obligations after July 1, 2020.'' *Connect America Fund,* WC Docket No. 10–90, Order (84 FR 19874 (May 7, 2019)), 34 FCC Rcd 2621, 2621 para. 2 (2019) (*Rate Floor Repeal Order*); *see also* 47 CFR 54.313(h). As explained in the *Order,* the rate floor was ''[i]ntended to guard against artificial subsidization of rural end user rates significantly below the national urban average'' but, practically speaking, ''increase[d] the telephone rates of rural subscribers . . . and individuals living on Tribal lands.'' *Rate Floor Repeal Order,* 34 FCC Rcd at 2621 para. 1.

The Commission therefore revises this information collection, as well as the Form 481 and its accompanying instructions, to reflect these modified and eliminated requirements. Finally, the Commission increases the respondents associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–15585 Filed 7–22–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220720–0159]

RIN 0648–BL63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack Management Measures

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

ACTION: Final temporary rule; emergency action; request for comments.

SUMMARY: NMFS issues this final temporary rule to promulgate emergency measures, due to recently discovered circumstances that present serious conservation issues for the greater amberjack stock in the Gulf of Mexico (Gulf). As requested by the Gulf of Mexico Fishery Management Council (Council), NMFS issues this final temporary rule to reduce overfishing, conserve the resource of greater amberjack in the Gulf, and reduce the likelihood of adverse socio-economic impacts that would occur if additional reductions in harvest were required to rebuild the stock. This final temporary rule modifies the greater amberjack recreational fixed closed season for the 2022–2023 fishing year in the Gulf exclusive economic zone (EEZ) to be August 1–31, 2022, and November 1, 2022–July 31, 2023 (open September 1, 2022–October 31, 2022). The final temporary rule will be effective for 180 days unless superseded by subsequent rulemaking; however, the rule's effectiveness may be extended for an additional 186 days, pursuant to provisions in the Magnuson-Stevens Act. The purpose of this emergency action for Gulf greater amberjack is to protect the greater amberjack resources by reducing the likelihood of overfishing and helping ensure that the greater amberjack stock rebuilds within the current rebuilding time, as well as to reduce the severity of any post-season recreational accountability measure overage adjustment as a result of the recreational annual catch limit (ACL) being exceeded.

DATES: This final temporary rule is effective July 25, 2022, through January 23, 2023. Comments on the final temporary rule may be submitted through August 24, 2022.

ADDRESSES: You may submit comments on this document, identified by Federal Docket Management System (FDMS) Docket Number NOAA–NMFS–2022–0070, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0070 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Kelli O'Donnell, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A''; in the required fields if you wish to remain anonymous).

Comments received through means not specified in this rule will not be considered.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, telephone: 727–824–5305 or email: *Kelli.ODonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing and rebuild overfished stocks. At its June 2022 meeting, in accordance with Section 305(c)(3) of the Magnuson-Stevens Act, the Council requested NMFS promulgate an emergency rule to protect the greater amberjack resource, due to recently discovered circumstances which present serious conservation issues to the stock.

All weights provided in this final temporary rule, unless otherwise noted, are given in round weight.

Historical Status of the Greater Amberjack Stock

The first stock assessment for Gulf greater amberjack was completed in 2000 (*Stock assessment of Gulf of Mexico greater amberjack using data through 1998.* Turner, S.C., N.J. Cummings, and C.P. Porch. 2000. NOAA, NMFS, SEFSC. *http://sedarweb.org/docs/suar/SEDAR%202010%20GAJ%20Stock%20Assessment%20Update%20Including%20Appendices%20I-III.pdf*). That assessment showed that as of 1998, the greater amberjack stock was overfished and undergoing overfishing. Secretarial Amendment 2 established a rebuilding plan for greater amberjack that was expected to rebuild the stock within 7 years (by the end of 2009) (68 FR 39898, July 3, 2003). In 2006, Southeast Data, Assessment, and Review (SEDAR) 9 was completed and showed the greater amberjack stock was not recovering as previously projected in Secretarial Amendment 2. Instead, the stock continued to be overfished and was experiencing overfishing. The Council subsequently developed Amendment 30A to the FMP and set sector catch limits and accountability measures (AMs) to end overfishing and rebuild the stock by 2010 (73 FR 16830, March 31, 2008), which was consistent with the time frame of the original rebuilding plan implemented with Secretarial Amendment 2. In 2010, SEDAR 9 Update was completed, and it again showed the stock was overfished and was experiencing overfishing. The Council then developed Amendment 35 to the FMP, which set sector annual catch targets (ACTs), and again reduced the overfishing limit (OFL), acceptable biological catch (ABC), and sector ACLs to end overfishing and rebuild the stock (77 FR 67574, November 13, 2012). In March 2014, the SEDAR 33 benchmark stock assessment showed that greater amberjack had remained overfished and was experiencing overfishing (as of 2012) and did not meet the rebuilding timeline set by Secretarial Amendment 2. The Council then developed a framework action to the FMP to reduce the ACLs for the purpose of ending overfishing, and set a new rebuilding deadline of 2019 (80 FR 75432, December 2, 2015).

In 2016, the SEDAR 33 Update assessment was completed, and showed that the stock was still undergoing overfishing and was overfished and would not be rebuilt by 2019. In response to SEDAR 33 Update, in 2017, the Council approved two other framework actions to the FMP: the first reduced the OFL, ABC, and sector-specific ACLs and ACTs to end overfishing and set a new rebuilding plan with completion time of 2027 (82 FR 61485, December 27, 2017); while the second modified the recreational fishing year and fixed closed season (83 FR 134268, March 29, 2018).

Current Status of Greater Amberjack Stock

In October 2020, SEDAR 70 was completed and showed that the greater amberjack stock has been overfished and has been undergoing overfishing almost continuously since 1980. NMFS informed the Council of these determinations in a letter dated April 7, 2021. The Magnuson-Stevens Act specifies that measures to end overfishing and rebuild the stock must be implemented within 2 years of such notification; in this case, no later than April 7, 2023.

The Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 70 results at its January 2021 meeting, accepted the assessment as the best scientific information available, and agreed that greater amberjack was still overfished and undergoing overfishing. The SSC provided recommendations for a reduced OFL and ABC so that the stock could rebuild by 2027, the current target rebuilding time. The Council discussed the SSC's recommendations at its January 2021 meeting and instructed staff to begin work on an FMP amendment (Amendment 54) to update the rebuilding plan for greater amberjack. The Council also discussed the implications of incorporating into SEDAR 70 the updated historical recreational landings estimates that are calibrated to the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES).

The use of MRIP–FES data in SEDAR 70 had two primary effects on the results of the assessment and subsequent management actions. First, the MRIP–FES estimates of historical recreational effort and catch are substantially greater than previous

assessments. The use of MRIP–FES recreational data leads to higher estimates of historical removals for this stock. Second, the proportion of landings from the recreational sector is higher than previously thought when the allocation of the total allowable harvest between the commercial and recreational sectors was established in Amendment 30A (GMFMC 2008). Therefore, the Council requested that the SSC provide catch level recommendations for various allocation alternatives.

In preparing the requested catch level projections for SSC review, the Southeast Fishery Science Center (SEFSC) updated its projection methodology. The SEFSC also updated the recruitment estimates and biomass targets that were used to inform the original results presented at the January 2021 meeting. This information was presented to the SSC in September 2021. The SSC determined that the updates were appropriate and requested the sector allocation specific projections be presented at its November 2021 meeting. The SEFSC provided updated projections and the SSC affirmed its prior determination that greater amberjack is overfished and experiencing overfishing, and recommended new rebuilding catch limits. The Council reviewed an overview of this new information in January 2022 and more detailed alternative catch level projections in April 2022.

In April 2022, it became clear that because the recreational fishing year occurs over 2 calendar years and the reduced catch levels would not be implemented until the later part of the fishing year, more immediate action might be necessary to constrain recreational harvest while the Council works to finalize the new catch limits. Therefore, in June 2022, the Council reviewed options to modify the recreational fixed closed season to help constrain harvest to the reduced catch levels under consideration in Amendment 54.

The Council is considering management measures in Amendment 54 that would reduce catch limits consistent with the SSC's recommendation. However, because of the time needed for the Council to complete development of the amendment and for NMFS to implement the subsequent rulemaking, these measures will not likely be implemented until the spring of 2023. That projected implementation date for Amendment 54 will not align with the start of the 2022–2023 recreational fishing year, which runs August 1, 2022, through July 31, 2023. However, landings that occur during this time will be compared to the reduced 2023 ACL. Therefore, at its June 2022 meeting, the Council decided to request emergency action for the 2022–2023 greater amberjack recreational fishing year to reduce the likelihood of substantial recreational overharvest. NMFS received the Council request in a letter dated July 5, 2022. The Council did not include in its request any action related to the commercial sector because NMFS projected that the harvest by the commercial sector would not exceed any of the reduced commercial ACL or ACT alternatives under consideration in Amendment 54 prior to implementation of the amendment.

The current recreational AMs for greater amberjack were implemented through Amendment 30A to the FMP in 2008 (73 FR 16830, March 31, 2008). The AMs specify that if the recreational ACT is reached or is projected to be reached, greater amberjack fishing will be closed to the recreational sector for the remainder of the fishing year. In addition, if the ACL is exceeded, NMFS will reduce the recreational ACL and the recreational ACT by the amount of the recreational ACL overage in the prior fishing year.

Currently, recreational harvest of greater amberjack is closed from November through April and June through July. This means that harvest is permitted during the months of August through October, and the month of May. The fixed closed season, which was implemented through a framework action to the FMP in 2018 (83 FR 14202, April 3, 2018), is in place during peak spawning in the majority of the Gulf (March and April) and allows for both a fall and spring recreational season. The Council requested that NMFS modify the fixed closed season for the 2022–2023 fishing year by allowing harvest only during the months of September and October.

The current recreational ACL is 1,309,620 lb (594,034 kg) and the current recreational ACT is 1,086,985 lb (493,048 kg). Under the alternatives the Council is considering in Amendment 54, if the current recreational sector allocation of 73 percent and the current buffer between the ACL and ACT of 17 percent are retained, the reduced 2022–2023 recreational ACL and ACT would be 473,770 lb (214,899 kg) and 315,674 lb (143,187 kg), respectively, for the 2022–2023 fishing year. The current catch limits are not directly comparable to the catch limits that the Council is considering in Amendment 54 because those proposed catch limits are based on an assessment that incorporated MRIP–FES data. As explained above, MRIP–FES estimates more recreational harvest than previously thought. Thus, had MRIP–FES estimates been available when the current catch limits were put into place, the current recreational ACL and ACT would have been greater.

NMFS projects that the reduced ACT would be met by August 23, 2022. However, NMFS cannot close the recreational sector based on an ACT that has not been implemented. If the current fixed closed season was to remain in effect, NMFS projects that recreational harvest would exceed the reduced recreational ACL by approximately 948,708 lb (430,327 kg). If this were to occur, the recreational sector would be required to pay back the overage during the 2023–2024 fishing year, which would result in a complete closure. In addition, approximately 400,000 lb (181,437 kg) of the projected overage would not be paid back because NMFS does not have the authority to carry the overage adjustment forward to a second year. This could have serious conservation impacts including failure to meet the greater amberjack stock's rebuilding timeline of 2027, which could result in the need to further reduce catch levels and also could result in negative socio-economic effects in the long-term.

Council Emergency Action Request

In June 2022, the Council requested that NMFS implement an emergency rule that modifies the recreational fixed closed season for greater amberjack from November through April and June through July, to August 1 through August 31 and November through July. This would allow harvest to occur in September and October of 2022, and NMFS projects this harvest would not exceed the reduced 2022–2023 recreational ACL. However, a shift in fishing effort could occur, which makes the projections uncertain.

Although the action in this final temporary rule would likely have adverse socio-economic effects beginning in the 2022–2023 fishing year, the Council and NMFS have determined that the short-term socio-economic effects are outweighed by the need to minimize additional long-term reductions in harvest and resulting long-term adverse socio-economic effects, which may otherwise occur. If the projected recreational ACL overage occurs under the current recreational fixed closed season, the Council and NMFS expect it to reduce the biomass of the greater amberjack stock, which could prevent rebuilding of the stock by 2027.

Criteria and Justification for Emergency Action

NMFS' *Policy Guidelines for the Use of Emergency Rules* (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines require that an emergency: (1) Result from recent, unforeseen events or recently discovered circumstances; and (2) Present serious conservation or management problems in the fishery; and (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS issues this emergency rule in compliance with these guidelines to prevent serious conservation issues to the stock that would increase the probability of not meeting the rebuilding timeline of 2027.

With respect to the first criterion, the recently discovered circumstances include the new stock assessment (SEDAR 70) results that indicate the greater amberjack stock in the Gulf continues to experience overfishing and is not making adequate progress towards rebuilding, the SSC catch level recommendations presented to the Council in January 2022, and the analyses presented to the Gulf Council in April and June 2022, that indicate that harvest by the recreational sector during the 2022–2023 fishing year is expected to significantly exceed the reduced recreational ACLs that the Council is considering in Amendment 54.

The second criterion, which requires a present serious conservation or management problem in the fishery, is satisfied because the measures in this emergency rule are necessary to avoid a significant overage of the recreational ACL, which would likely require NMFS to close recreational harvest for the entire 2023–2024 recreational fishing year and negatively affect the current rebuilding timeline. If this emergency rule is not implemented, the greater amberjack stock may not rebuild as projected.

To address the third criterion, NMFS has determined that the immediate benefit of implementing the emergency rule outweighs the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process. Continued harvest at levels similar to the last 3 years' average landings would negatively affect the health of the greater amberjack stock and likely require greater long-term reductions in harvest. The 2022–2023 recreational fishing year begins on August 1, 2022. By foregoing the normal rulemaking process, this emergency rule will minimize adverse biological effects on the stock and minimize long-term adverse socio-economic effects to fishermen and fishing communities that utilize the greater amberjack resource.

Emergency Measures

This final temporary rule would modify the greater amberjack recreational fixed closed season to be August 1–31 and November 1–July 31 (open September 1–October 31) for the 2022–2023 fishing year in the Gulf EEZ. The fixed closed season will be effective for 180 days after publication in the **Federal Register**, as authorized by section 305(c) of the Magnuson-Stevens Act. This temporary final rule for emergency action could be extended for an additional 186 days, once the public has had an opportunity to comment on the rule. If the emergency action were to be extended, NMFS would respond to any public comments received on this final temporary rule in the extension temporary rule in the **Federal Register**. The Council and NMFS will continue to develop more permanent measures to reduce overfishing of greater amberjack through Amendment 54 to the FMP.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator (AA) for Fisheries, NOAA has determined that this emergency action is consistent with the Magnuson-Stevens Act, the Reef Fish FMP, and other applicable law. This action is being taken pursuant to the emergency provisions of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B). Providing prior notice and opportunity for public comment on this action would be contrary to the public interest. The greater amberjack stock in the Gulf was assessed through SEDAR 70 in 2020. The assessment indicates that the stock continues to undergo overfishing and is not making adequate progress towards rebuilding. The Council's SSC made final catch level recommendations in November 2021, which the Council reviewed in January 2022. In April 2022, the Council reviewed additional information that indicated that recreational harvest could significantly exceed the reduced recreational ACL alternatives under consideration in Amendment 54. In June 2022, the Council reviewed options for modifying the recreational fixed closed season in an effort to avoid a significant overage of those reduced recreational ACL alternatives, and voted to request that NMFS implement this emergency rule to change the recreational closed season to prohibit harvest in August 2022. NMFS received the Council's request on July 5, 2022.

This change in the recreational fixed closed season requires immediate implementation. If NMFS were to provide prior notice and comment, NMFS would be unable to implement the change by August 1, 2022, and projects recreational harvest would otherwise greatly exceed all of the 2022–2023 recreational ACLs that the Council is considering in Amendment 54. NMFS projects that no harvest would be allowed in the 2023–2024 fishing season and that the entire amount of the overharvest would not be paid back under current recreational AMs. As a result, there would be a reduction in the biomass of the greater amberjack stock and more severe long-term reductions in harvest may be required to rebuild the stock. Therefore, the new recreational fixed closed season for greater amberjack must be implemented immediately and prior notice and opportunity for public comment would be contrary to the public interest. The need to implement these measures immediately for the reasons stated above also constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of the rule.

This final temporary rule for emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing season, Greater amberjack, Gulf of Mexico, Recreational, Reef fish.

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

Dated: July 20, 2022.

Kimberly Damon-Randall,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, suspend paragraph (c) and add paragraph (h) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(h) *Seasonal closure of the recreational sector for greater amberjack.* The recreational sector for greater amberjack in or from the Gulf EEZ is closed from August 1 through August 31, and November 1 through July 31. During the closure, the bag and possession limit for greater amberjack in or from the Gulf EEZ is zero.

[FR Doc. 2022–15862 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0890; Project Identifier MCAI–2022–00391–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A300 F4–600R series airplanes. This proposed AD was prompted by a determination that the forward cargo door compartment between certain frame forks is susceptible to widespread fatigue damage (WFD). This proposed AD would complete certain mandated programs to support the airplane reaching its limit of validity (LOV) of the engineering data that support the established structural maintenance program. This proposed AD would require modifying the forward cargo compartment between certain frame forks, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 8, 2022.

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

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

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0890.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0890; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0890; Project Identifier MCAI–2022–00391–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

As described in FAA Advisory Circular 120–104 (*https://www.faa.gov/documentLibrary/media/Advisory_Circular/120-104.pdf*), several programs have been developed to support initiatives that will ensure the continued airworthiness of aging airplane structure. The last element of those initiatives is the requirement to establish an LOV of the engineering data that support the structural maintenance program under 14 CFR 26.21. This proposed AD is the result of an assessment of the previously established programs by the design approval holder (DAH) during the process of establishing

the LOV for the affected airplanes. The actions specified in this proposed AD are necessary to complete certain programs to ensure the continued airworthiness of aging airplane structure and to support an airplane reaching its LOV.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0048, dated March 18, 2022 (EASA AD 2022–0048) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A300 F4–600R series airplanes. This proposed AD was prompted by a determination that the forward cargo compartment between frames 21 through 25 forks is susceptible to WFD. This proposed AD would complete certain mandated programs to support the airplane reaching its LOV of the engineering data that support the established structural maintenance program. The FAA is issuing this AD to address this unsafe condition, which if not corrected, could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0048 specifies procedures for modifying the forward cargo compartment between frames 21 through 25 forks. The modification includes reinforcing the fastener holes through cold working and replacing all the fasteners.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0048 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0048 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0048 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0048 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0048. Service information required by EASA AD 2022–0048 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0890 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 67 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
36 work-hours × $85 per hour = $3,060	$177	$3,237	$216,879

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–0890; Project Identifier MCAI–2022–00391–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 8, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A300 F4–605R and F4–622R airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0048, dated March 18, 2022 (EASA AD 2022–0048).

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by a determination that the forward cargo door compartment between frames 21 through 25 forks is susceptible to widespread fatigue damage (WFD). The FAA is issuing this AD to address this condition, which if not corrected, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0048.

(h) Exception to EASA AD 2022–0048

The ''Remarks'' section of EASA AD 2022–0048 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(j) Related Information

(1) For EASA AD 2022–0048, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0890.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(3) For service information identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 18, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–15787 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0651; Airspace Docket No. 18–AAL–13]

RIN 2120–AA66

Amendment of Air Traffic Services (ATS) Route V–456; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing the NPRM published in the **Federal Register** on September 4, 2020, proposing to amend VHF Omnidirectional Range (VOR) Federal airway V–456 which would serve as an alternative to the Colored Federal airway Green-11 (G–11). Subsequent to the NPRM, the FAA determined during a flight check inspection that the desired altitudes along the proposed route amendment for V–456 did not meet the expected criteria and determined that the withdrawal of the proposed rule is warranted.

DATES: Effective date 0901 UTC, July 25, 2022, the proposed rule published September 4, 2020 (85 FR 55200) is withdrawn.

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:

History

The FAA published a NPRM in the **Federal Register** for Docket No. FAA–2020–0651 (85 FR 55200; September 4, 2020). The NPRM proposed to amend the VOR Federal airway V–456 and serve as an alternative to the Colored Federal airway G–11. G–11 obtained navigation guidance from the Glennallen, AK (GLA), Non-Directional Beacon (NDB) navigation aid (NAVAID) which was pending decommissioning. Subsequent to the NPRM, the FAA published a Final Rule in the **Federal Register** (85 FR 59668; September 23, 2020) removing G–11. Also subsequent to the NPRM, the FAA determined during a flight check inspection that the desired altitudes along the proposed route amendment for V–456 did not meet the expected criteria. Since the proposed new routing for V–456 offers no advantage to the present routing of the airway, the V–456 amendment will no longer be pursued.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

FAA Conclusions

The FAA has determined during a flight check inspection that the desired altitudes along the proposed route amendment for V–456 did not meet the expected criteria. Since the proposed new routing for V–456 offers no advantage to the present routing of the airway, the V–456 amendment will no longer be pursued.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

■ Accordingly, pursuant to the authority delegated to me, the NPRM published in the **Federal Register** on September 4, 2020 (85 FR 55200), FR Doc. 2020–19496, is hereby withdrawn.

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

Issued in Washington, DC, on July 19, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–15808 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0906; Airspace Docket No. 21–ASO–27]

RIN 2120–AA66

Proposed Amendment and Establishment of Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend five low altitude Area Navigation (RNAV) routes (T-routes) and establish five T-routes in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. The purpose is to enhance the efficiency of the National Airspace System (NAS) by transitioning from ground-based navigation aids to a satellite-based navigation system.

DATES: Comments must be received on or before September 8, 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–2022–0906; Airspace Docket No. 21–ASO–27 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: 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 expand the availability of RNAV in the eastern United States and improve the efficient flow of air traffic within the NAS by lessening 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–2022–0906; Airspace Docket No. 21–ASO–27) 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–2022–0906; Airspace Docket No. 21–ASO–27.'' 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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend five low altitude RNAV T-routes, and to establish five T-routes in the northeast United States to support the VOR MON Program, and the transition of the NAS from ground-based navigation aids to satellite-based navigation. The proposed route changes are described below.

T–209: T–209 extends from the EHEJO, GA, Fix, to the Colliers, SC, (IRQ) VOR and Tactical Air Navigational System (VORTAC). This proposal would delete the existing segments of the route. Instead, T–209 would be realigned to the east of its current track to overlay VOR Federal airway V–185 from the Savannah, GA (SAV), VORTAC, to the Sugarloaf, NC (SUG), VORTAC. The TBERT, SC, Waypoint (WP) would replace the Savannah VORTAC. The WANSA, SC, WP would replace the Colliers VORTAC. The HRTWL, SC, WP would replace the Greenwood, SC (GRD), VORTAC. The STYLZ, NC, WP would replace the Sugarloaf VORTAC. As amended, T–209 would extend from the TBERT, SC, WP; MILEN, GA, Fix; WANSA, SC, WP; HRTWL, SC, WP, to the STYLZ, NC, WP.

T–239: T–239 extends from the Pecan, GA (PZD), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the GOINS, MS, WP. This proposal would replace the Pecan VOR/DME with the PCANN, GA, WP. The TYGRR, AL, WP would replace the Eufaula, AL (EUF), VORTAC. The Tuskegee, AL, VOR/DME and the ADZIN, AL, Fix would be removed from the route. The following points would be removed from the route legal description because they do not mark a turn point: SHANY, GA, Fix; AYUVO, GA, Fix; AXOSE, GA, Fix; MILER, AL, Fix; KENTT, AL, Fix; SEMAN, AL, Fix; NIXBY, AL, Fix; FAYEZ, AL, Fix; KYLEE, AL, Fix: ADZIN, AL, Fix; HANDE, AL, Fix; NEGEE, AL, Fix; CORES, AL, Fix; CHOOK, AL, Fix; EXIST, AL, Fix; GANTT, MS, Fix; and ICAVY, MS, Fix. Removing these points would not affect the alignment of T–239. As amended, T–239 would extend from PCANN, GA, to GOINS, MS.

T–255: T–255 extends from the NELIE, CT, Fix to the Marthas Vineyard, MA (MVY), VOR/DME. This notice proposes to replace the Providence, RI (PVD), VORTAC with the PROVI, RI, WP. The latitude and longitude coordinates for the NELIE Fix, FALMA Fix, and the Marthas Vineyard VOR/DME would be updated to include the hundredths of a second place as is required for RNAV route descriptions.

T–292: T–292 extends from the Semmes, AL (SJI), VORTAC to the JACET, GA, WP. This proposal would replace the Semmes VORTAC in the route description with the LYNRD, AL, WP. The Brookwood, AL (OKW), VORTAC would be replaced in the route description by the DAYVS, AL, WP (located 2.41 nautical miles (NM) east of the VORTAC position). As a result, the route segment between the MOVIL, AL, Fix, and the VLKNN, AL, WP would be shifted slightly east of the current track by less than 2 NM. Additionally, the following points would be removed from the legal description because they do not mark a turn point: BURIN. AL, Fix; HAZEY, AL, Fix; YARBO, AL, Fix; JANES, AL, Fix, EUTAW, AL, Fix; MOVIL, AL, Fix; HOKES, AL, Fix; POLLL, GA, WP; and REELL, GA, WP. As amended, T–292 would extend from LYNRD, AL, to JACET, GA.

T–393: T–393 extends from the GAILS, MA, Fix to the Burlington, VT (BVT), VOR/DME. This proposal would replace the Providence, RI (PVD), VOR/DME with the PROVI, RI, WP. In addition, the following points would be removed from the route legal description because they don't mark a turn point: INNDY, MA, Fix; FOSTY, RI, Fix; GRIPE, MA, Fix; STRUM, NH, Fix; UNKER, NH, Fix; MCADM, NH, Fix; ZIECH, VT, Fix; DAVID, VT, Fix; CEVIB, VT, Fix; and POROE, VT, Fix. The amended T–393 would still extend from GAILS, MA, to Burlington, VT.

T–424: T–424 is a proposed new route that would extend from the SMRRF, TN, WP, to the DBRAH, VA, WP. The route would overlay VOR Federal airway V–16 from the Shelbyville, TN (SYI), VOR/DME to the Roanoke, VA (ROA), VOR/DME. In the description of T–424, WPs would replace the following navigation aids as indicated: The SMRRF, TN, WP replaces the Shelbyville, TN (SYI), VOR/DME; the TMPSN, TN, WP replaces the Hinch Mountain, TN (HCH), VOR/DME. The EDDDY, TN, WP replaces the Volunteer, TN (VXV), VORTAC. The HORAL, TN, WP replaces the Holston Mountain, TN (HMV), VORTAC. The DANCO, VA, WP replaces the Pulaski, VA (PSK), VORTAC. The DBRAH, VA, WP replaces the Roanoke, VA (ROA), VOR/DME.

T–426: T–426 is a proposed new route that would extend from the DANCO, VA, WP, to the MCDON, VA WP. The route would overlay VOR Federal airway V–136 from the Pulaski, VA (PSK), VORTAC, to the South Boston, VA (SBV), VORTAC. In the route description, the Pulaski VORTAC would be replaced by the DANCO WP; and the South Boston VORTAC would be replaced by the MCDON, VA, WP.

T–437: T–437 is a proposed new route that would extend from the SIROC, GA, WP, to the ZOOMS, WV, Fix. The route would overlay VOR Federal airway V–37 from the Brunswick, GA (SSI), VORTAC to the ZOOMS Fix. In the T–437 route description, the following navigation aids would be replaced by WPs as follows: The SIROC WP would replace the Brunswick, GA (SSI), VORTAC. The TBERT, SC, WP would replace the Savannah, GA (SAV), VORTAC. The DURBE, SC, WP would replace the Allendale, SC (ALD), VOR. The CAYCE, SC, WP would replace the Columbia, SC (CAE), VORTAC. The CRLNA, NC, WP would replace the Charlotte, NC (CLT), VOR/DME. The DANCO, VA, WP would replace the Pulaski, VA (PSK), VORTAC.

T–439: T–439 is a proposed new route that would extend from the PIGON, AL, Fix, to the HITMAN, TN, WP. The PIGON Fix is located approximately 36 NM northeast of the Monroeville, AL (MVC), VORTAC. The HITMAN WP is located near the Nashville, TN (BNA), VORTAC.

T–441: T–441 is a proposed new route that would extend from the TROPP, SC, WP to the PENCE, TN, WP. The TROPP WP is being used in place of the Charleston, SC (CHS), VORTAC. The PENCE WP is located 19 NM northeast of the Volunteer, TN (VXV), VORTAC. T–441 would overlay VOR Federal airway V–53 from the Charleston, SC (CHS), VORTAC, to the Sugarloaf Mountain, NC (SUG), VORTAC; and overlay VOR Federal airway V–185 from Sugar Loaf Mountain to PENCE, TN. In the route description, WPs would be used in place of navigation aids as follows: The CAYCE, SC, WP would replace the Columbia, SC (CAE), VORTAC. The BURGG, SC, WP would replace the Spartanburg, SC (SPA), VORTAC. The STYLZ, NC, WP would replace the Sugarloaf Mountain VORTAC. The PUPDG, NC WP would replace the Snowbird, TN (SOT), VORTAC.

Full route descriptions of the above T routes are listed in the amendments to part 71 set forth below.

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.

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 part 14 CFR 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–209 TBERT, SC to STYLZ, NC [Amended]

TBERT, SC	WP	(Lat. 32°08′46.76″ N, long. 081°11′57.44″ W)
MILEN, GA	FIX	(Lat. 32°54′02.88″ N, long. 081°36′33.99″ W)
WANSA, SC	WP	(Lat. 33°42′26.10″ N, long. 082°09′43.99″ W)
HRTWL, SC	WP	(Lat. 34°15′05.33″ N, long. 082°09′15.55″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)

* * * * * * *

T–239 PCANN, GA to GOINS, MS [Amended]

PCANN, GA	WP	(Lat. 31°39′18.97″ N, long. 084°17′35.80″ W)
TYGRR, AL	WP	(Lat. 31°57′01.21″ N, long. 085°07′49.13″ W)
VLKNN, AL	WP	(Lat. 33°40′12.49″ N, long. 086°53′59.42″ W)
FOGUM, AL	FIX	(Lat. 34°06′25.32″ N, long. 087°49′24.16″ W)
SWIKI, AL	WP	(Lat. 34°11′55.87″ N, long. 088°00′42.44″ W)
GOINS, MS	WP	(Lat. 34°46′12.64″ N, long. 089°29′46.81″ W)

* * * * * * *

T–255 NELIE, CT to Marthas Vineyard, MA (MVY) [Amended]

NELIE, CT	INT	(Lat. 41°56′27.64″ N, long. 72°41′18.88″ W)
PROVI, RI	WP	(Lat. 41°43′25.46″ N, long. 071°25′54.17″ W)
FALMA, RI	FIX	(Lat. 41°22′22.16″ N, long. 71°10′16.25″ W)
Marthas Vineyard, MA (MVY)	VOR/DME	(Lat. 41°23′46.37″ N, long. 70°36′45.78″ W)

* * * * * * *

T–292 LYNRD, AL to JACET, GA [Amended]

LYNRD, AL	WP	(Lat. 30°43′33.26″ N, long. 088°21′34.07″ W)
ANTUH, AL	FIX	(Lat. 31°33′10.56″ N, long. 088°25′36.47″ W)
KWANE, MS	WP	(Lat. 32°22′00.47″ N, long. 088°27′29.43″ W)
DAYVS, AL	WP	(Lat. 33°14′03.93″ N, long. 087°12′07.88″ W)
VLKNN, AL	WP	(Lat. 33°40′12.49″ N, long. 086°53′59.42″ W)
MAYES, AL	FIX	(Lat. 33°58′20.32″ N, long. 085°49′15.34″ W)
RKMRT, GA	WP	(Lat. 34°03′36.73″ N, long. 085°15′02.63″ W)
CCATT, GA	WP	(Lat. 34°16′14.97″ N, long. 084°09′05.36″ W)
TRREE, GA	WP	(Lat. 33°47′14.78″ N, long. 082°55′30.22″ W)
JACET, GA	WP	(Lat. 33°29′41.42″ N, long. 082°06′27.81″ W)

* * * * * * *

T–393 GAILS, MA to Burlington, VT (BTV) [Amended]

GAILS, MA	FIX	(Lat. 41°52′08.51″ N, long. 070°24′07.69″ W)
PROVI, RI	WP	(Lat. 41°43′25.46″ N, long. 071°25′54.17″ W)
PUTNM, CT	WP	(Lat. 41°57′19.65″ N, long. 071°50′38.76″ W)
Gardner, MA (GDM)	VOR/DME	(Lat. 42°32′45.31″ N, long. 072°03′29.48″ W)
KEYNN, NH	WP	(Lat. 42°47′39.99″ N, long. 072°17′30.35″ W)
LBNON, NH	WP	(Lat. 43°40′44.43″ N, long. 072°12′58.18″ W)
Montpelier, VT (MPV)	VOR/DME	(Lat. 44°05′07.74″ N, long. 072°26′57.76″ W)
Burlington, VT (BTV)	VOR/DME	(Lat. 44°23′49.58″ N, long. 073°10′57.48″ W)

* * * * * * *

T–424 SMRRF, TN to DBRAH, VA [New]

SMRRF, TN	WP	(Lat. 35°33′43.23″ N, long. 086°26′20.24″ W)
TMPSN, TN	WP	(Lat. 35°46′51.54″ N, long. 084°58′43.15″ W)
EDDDY, TN	WP	(Lat. 35°54′17.33″ N, long. 083°53′41.72″ W)
CRECY, TN	WP	(Lat. 35°58′52.61″ N, long. 083°38′24.36″ W)
PENCE, TN	WP	(Lat. 36°01′09.80″ N, long. 083°31′26.31″ W)
HORAL, TN	WP	(Lat. 36°26′13.99″ N, long. 082°07′46.48″ W)
DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
DBRAH, VA	WP	(Lat. 37°20′34.14″ N, long. 080°04′10.75″ W)

* * * * * * *

T–426 DANCO, VA to MCDON, VA [New]

DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
TABER, VA	WP	(Lat. 37°02′55.04″ N, long. 080°02′55.66″ W)
PIGGS, VA	FIX	(Lat. 36°56′01.81″ N, long. 079°42′40.61″ W)
DUNCE, VA	WP	(Lat. 36°50′52.00″ N, long. 079°29′18.20″ W)
MCDON, VA	WP	(Lat. 36°40′29.56″ N, long. 079°00′52.03″ W)

* * * * * * *

T–437 SIROC, OG to ZOOMS, WV [New]

SIROC, OG	WP	(Lat. 31°03′02.32″ N, long. 081°26′45.89″ W)
KELER, GA	FIX	(Lat. 31°55′07.40″ N, long. 081°11′09.14″ W)
TBERT, SC	WP	(Lat. 32°08′46.76″ N, long. 081°11′57.44″ W)
DURBE, SC	WP	(Lat. 33°00′44.75″ N, long. 081°17′32.69″ W)
CAYCE, SC	WP	(Lat. 33°51′26.13″ N, long. 081°03′14.76″ W)
CRLNA, NC	WP	(Lat. 35°12′49.48″ N, long. 080°56′57.32″ W)
DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
ZOOMS, WV	FIX	(Lat. 37°28′32.22″ N, long. 080°35′06.70″ W)

* * * * * * *

T–439 PIGON, AL to HITMN, TN [New]

PIGON, AL	FIX	(Lat. 31°33′33.58″ N, long. 086°39′51.18″ W)
PICKS, AL	FIX	(Lat. 31°47′02.35″ N, long. 086°55′03.13″ W)
RABEC, AL	WP	(Lat. 32°16′11.64″ N, long. 086°58′01.67″ W)
WALTY, AL	FIX	(Lat. 33°00′11.43″ N, long. 086°51′29.95″ W)
DAYVS, AL	WP	(Lat. 33°14′03.93″ N, long. 087°12′07.88″ W)
OAKGO, AL	FIX	(Lat. 33°27′13.10″ N, long. 087°14′11.79″ W)
NEGEE, AL	FIX	(Lat. 33°48′12.56″ N, long. 087°10′36.89″ W)
NULLS, AL	WP	(Lat. 34°02′24.50″ N, long. 086°56′17.64″ W)
HITMN, TN	WP	(Lat. 36°08′12.47″ N, long. 086°41′05.25″ W)

* * * * * * *

T–441 TROPP, SC to PENCE, TN [New]

TROPP, SC	WP	(Lat. 32°53′40.00″ N, long. 080°02′16.59″ W)
CAYCE, SC	WP	(Lat. 33°51′26.13″ N, long. 081°03′14.76″ W)
BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
MUMMI, NC	FIX	(Lat. 35°39′48.60″ N, long. 082°47′30.15″ W)
PUPDG, NC	WP	(Lat. 35°46′30.08″ N, long. 083°03′40.16″ W)
PENCE, TN	WP	(Lat. 36°01′09.80″ N, long. 083°31′26.31″ W)

* * * * *

Issued in Washington, DC, on July 18, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–15809 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 207

[Docket No. FDA–2021–N–1351]

RIN 0910–AI52

Revising the National Drug Code Format and Drug Label Barcode Requirements

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to amend our regulations governing the format of the National Drug Code (NDC). The NDC is an FDA standard for uniquely identifying drug products marketed in the United States. This action, if finalized, will standardize the format of all NDCs. Specifically, all NDCs will be required to be 12 digits in length with 3 distinct segments and 1 uniform format. The first segment is the labeler code and will be 6 digits, the second segment is the product code and will be 4 digits, and the third segment is the package code and will be 2 digits. Additionally, we are proposing to revise the drug product barcode label requirements to permit the use of other data carriers that meet certain standards.

DATES: Either electronic or written comments on the proposed rule must be submitted by November 22, 2022. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (PRA) by August 24, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 22, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–1351 for ''Revising the National Drug Code Format and Drug Label Requirements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit comments on information collection issues under the PRA: Submit comments on the information collection under the PRA to the Office of Management and Budget (OMB) at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this proposed collection is ''Revising the National Drug Code Format and Drug Label Requirements.''

FOR FURTHER INFORMATION CONTACT:

With regard to the aspects of the proposed rule pertaining to human drug products: Leyla Rahjou-Esfandiary, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2262, Silver Spring, MD 20993, 301–796–3185, *leyla.rahjou-esfandiary@fda.hhs.gov.*

With regard to the aspects of the proposed rule pertaining to human biological drug products: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm.7301, Silver Spring, MD 20993, 240–402–7911, *stephen.ripley@fda.hhs.gov.*

With regard to the aspects of the proposed rule pertaining to animal drug products: Charise Kasser, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rm. 2626, Rockville, MD 20855, 240–402–6816, *charise.kasser@fda.hhs.gov.*

With regard to the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of the Proposed Rule

FDA is proposing to modify our regulations to establish a uniform, 12-digit format for the NDC (21 CFR 207.33) that can accommodate longer NDCs once FDA begins issuing 6-digit labeler codes. FDA estimates that it will exhaust its inventory of available 5-digit labeler codes and begin assigning 6-digit labeler codes in 10–15 years. The use of a consistent, uniform format is intended to eliminate the need to convert NDCs from one of FDA's prescribed formats to a different standardized format used by other sectors of the healthcare industry (*e.g.,* healthcare providers and payors). FDA is also proposing to revise the drug barcode label requirements to allow the use of either linear or nonlinear barcodes, so long as the barcode meets the prescribed standards.

B. Summary of the Major Provisions of the Proposed Rule

Under the proposed rule, FDA would amend its regulations to adopt a uniform, 12-digit format for the NDC. As proposed, NDCs will continue to consist of three segments: the labeler code, the product code, and the package code. However, we are proposing that the labeler code be 6 digits, the product code be 4 digits, and the package code be 2 digits. To provide maximum flexibility on the type of barcode used on the label of a drug product, we are proposing to allow the use of either linear or nonlinear barcodes, so long as the barcode meets one of the prescribed standards in § 201.25 (21 CFR 201.25).

On the effective date of the final rule, FDA would begin assigning new NDCs in the uniform, 12-digit format, and existing 10-digit NDCs assigned by FDA prior to the effective date would be required to convert to the new, uniform, 12-digit NDC format. As a result, all stakeholders that use FDA-assigned NDCs would need to have systems

capable of handling the new, uniform, 12-digit NDC on the effective date of the final rule. Therefore, FDA is proposing to delay the effective date of the final rule for a period of 5 years following its publication to allow stakeholders time to develop and implement such systems.

Additionally, FDA is proposing to allow for a 3-year transition period following the effective date of the final rule. During this proposed 3-year transition period, firms that use 10-digit NDCs assigned prior to the effective date on product labeling should begin updating their labeling to replace the 10-digit NDCs with the new 12-digit NDCs by adding leading zeros to the labeler code, product code, and/or package code segments as needed, as soon as possible. However, to aid with the transition, FDA does not intend to object to continued use of such 10-digit NDCs on the labeling of products remaining in interstate commerce after the effective date during the 3-year transition period. The purpose of the transition period is to mitigate the potential costs associated with reprinting labels for these products. Therefore, during this proposed transition period, stakeholders should ensure that their systems are capable of handling both 10-digit NDCs and 12-digit NDCs.

C. Legal Authority

FDA is proposing to amend our regulations on foreign and domestic establishment registration and listing for drugs, including biological products and animal drugs. FDA's authority for this proposed rule derives from the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, *et seq.*) applicable to drugs, including biological products, and the biological product provisions of the Public Health Service Act (PHS Act) (42 U.S.C. 262, *et seq.*). In particular, the proposed rule will standardize the format of NDCs assigned under section 510(e) of the FD&C Act (21 U.S.C. 360(e)) and will aid in efficient enforcement of the FD&C Act pursuant to section 701(a) (21 U.S.C. 371(a)) and section 351(j) of the PHS Act.

D. Costs and Benefits

The proposed rule, if finalized, would require that all NDCs, including any 10-digit NDCs issued by FDA prior to the effective date, be 12 digits in length with a uniform format. Specifically, the NDC will consist of three segments: a 6-digit labeler code, a 4-digit product code, and a 2-digit package code. As a result, product labeling that includes a product's 10-digit NDC would need to be updated to convert the 10-digit NDC to the standard 12-digit format.

One expected benefit of the proposed rule, if finalized, is that the proposed standardized format would facilitate the adoption of a single NDC format by all stakeholders. Such an adoption would eliminate the need to convert NDCs from one of FDA's prescribed formats to a different standardized format used by other sectors of the healthcare industry (*e.g.,* healthcare providers and payors). Eliminating the need to convert NDCs should reduce potential errors caused by converting from the FDA-assigned NDC format to a different format used by other sectors of the healthcare industry. Standardization and adoption of a single format would also eliminate the need for additional quality control and validation by certain stakeholders, such as payors and prescribers, to ensure a drug product and its respective NDC are accurate; this is particularly important for insurance coverage and reimbursement claims. Another benefit of the proposed rule would be to avoid any potential risks to the public health from potential reductions in medication errors and risk of confusion. We do not have data to quantify these potential benefits and request comments.

The costs to industry of converting current NDC codes to the proposed format would include one-time costs of updating software systems, new training for employees, coordinating labeling updates, and reading and understanding the proposed rule. Industry, however, can incorporate any changes to existing labeling due to this proposed rule into their recurring labeling updates and avoid any relabeling costs. Some software and training costs would occur even without the proposed rule because FDA will begin issuing 6-digit labeler codes, and the current 10-digit NDC formats are not capable of accommodating 6-digit labeler codes. Our estimates, therefore, are conservative. We estimate annualized costs would be about $12.4 million ranging from $6.1 million to $19.4 million using a 7-percent discount rate over a 10-year horizon. Similarly, we estimate annualized costs would be about $10.2 million ranging from $5.1 million to $16.0 million using a 3-percent discount rate over a 10-year horizon. The present-value of the estimated costs would be $87.1 million ranging from $43.1 million to $136.3 million at both the 7-percent and 3-percent discount rates.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/ acronym	What it means
ANDA	Abbreviated New Drug Application.
BLA	Biologics License Application.
EAN/UCC	European Article Number/Uniform Code Council.
FDA	Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
GTIN–14	Global Trade Identification Number 14.
HCT/P	Human Cells, Tissues, and Cellular and Tissue-Based Product.
HIBCC	Health Industry Business Communications Council.
HHS	Department of Health and Human Services.
HIPAA	Health Insurance Portability and Accountability Act.
NDA	New Drug Application.
NDC	National Drug Code.
OMB	Office of Management and Budget.
PHS Act	Public Health Service Act.
PRA	Paperwork Reduction Act of 1995.

III. Background

A. Current Regulatory Framework and the Need for the Regulation

The NDC is an FDA standard for uniquely identifying drugs marketed in the United States. Currently, NDCs assigned by FDA contain 10 digits. As currently described in § 207.33(b) (21 CFR 207.33(b)), NDCs consist of three segments: the labeler code, the product code, and the package code. At some point in the next 10 to 15 years, NDC formatting will need to be updated to accommodate longer NDCs because new labelers are continually entering the U.S. market. In 2016, when FDA published the final rule ''Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs'' (the Registration and Listing Final Rule), the Agency stated that when it runs out of 5-digit labeler codes, it will begin assigning 6-digit labeler codes (81 FR 60169 at 60187, August 31, 2016). As a result, under existing regulations, FDA would add 2 new 11-digit NDC formats (6–3–2 and 6–4–1) to accommodate the longer labeler codes. However, FDA acknowledged that some stakeholders expressed an interest in FDA moving to a single, standard format for NDCs and announced that it planned to initiate a public discussion of future formatting options (See id.). FDA initiated the public discussion by holding a public hearing on November 5, 2018, requesting comments from stakeholders

on the impact of the transition to 6-digit labeler codes (83 FR 38666).[1]

Section 510(j) of the FD&C Act requires each person who registers an establishment under section 510(b), (c), (d) or (i) to provide FDA with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by the establishment for commercial distribution. Drug products are identified and listed using the NDC (21 CFR 207.49).

The NDC for each listed drug marketed in the United States is a unique 10-digit,[2] 3-segment number (§ 207.33(b) (21 CFR 207.33(b)). The 3 segments of the NDC include the labeler code, product code, and package code (id.). The first segment, the labeler code, is a unique 4-, 5-, or (in the future) 6-digit number assigned by FDA that identifies the manufacturer, repacker, relabeler, or private label distributor of the drug (id.). The second segment, the product code, is a 3- or 4-digit number that identifies a specific active ingredient, strength, and dosage form of a drug manufactured, repackaged, relabeled, or distributed by the labeler (id.; § 207.35(b) (21 CFR 207.35(b))). The third segment, the package code, is a 1- or 2-digit number that identifies package sizes and types (§ 207.33(b)). Different package codes differentiate between different quantitative and qualitative attributes of the product packaging (§ 207.35). Both the product and package codes are proposed by persons submitting drug listing information (see § 207.33(d)(1)). The Agency will assign a proposed NDC if it has not been used previously, is not currently in use, and has not been reserved for future assignment to a different drug (§ 207.33(d)(2)). The NDC for a given drug is currently in one of the following configurations (with each number representing the number of digits in that segment): 4–4–2, 5–3–2, or 5–4–1.

According to current regulations, labeler codes may consist of 4, 5, or 6 digits (§ 207.33(b)(1)). Currently, 5-digit labeler codes are being assigned by FDA. A 5-digit labeler code format provides FDA with 90,000 labeler codes that could be assigned to drug manufacturers and private label distributors ranging from 10,000 to 99,999. Based on current assignment rates, FDA anticipates that it will run out of 5-digit labeler codes in approximately 10 to 15 years. At that point in the future, FDA will begin assigning 6-digit labeler codes due to exhaustion of 5-digit labeler codes. Under the current regulations, moving to 6-digit labeler codes will expand the entire NDC to 11 digits and, per regulation, allow for two additional NDC configurations: 6–3–2 and 6–4–1, for a total of 5 possible NDC configurations (including the three 10-digit NDC configurations) (see § 207.33(b)(2)).

The Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104–191) contains provisions calling for the administrative simplification ''of the national standards for electronic health care transactions and code sets, unique health identifiers, and security'' [3] and specifically references the NDC. In its implementation of these rules, on August 17, 2000, the Department of Health and Human Services (HHS) published the final rule, ''Health Insurance Reform: Standards for Electronic Transactions,'' which addressed standards for electronic transactions that established NDCs as the standard medical data code set for reporting drugs and biologics in all standard transactions under HIPAA (65 FR 50312 at 50313). If a HIPAA-covered transaction includes a drug, the NDC is required to be part of the medical code data set (see 45 CFR 162.1002(a)(3)). However, in the preamble to the HIPAA regulations, HHS stated that it was adopting a uniform 11-digit format to conform with customary practice used in computer systems (65 FR 50312 at 50329). The HIPAA standard 11-digit NDC format is standardized such that the labeler code is always 5 digits, the product code is always 4 digits, and the package code always 2 digits. To convert a 10-digit NDC to an 11-digit HIPAA standard NDC, a leading zero is added to the appropriate segment to create the 11-digit configuration as defined above.

When FDA moves to a 6-digit labeler code, FDA's new 11-digit native NDC [4] configurations will have the same number of digits as required by the HIPAA standards, but they will not be in the same format. An 11-digit native NDC will have an extra labeler code digit but will be short a digit in either the product code or package code. Additionally, some of the systems that utilize HIPAA standard 11-digit NDCs [5] do not use hyphens to separate the segments which, as illustrated below, will result in some 11-digit native NDCs being indistinguishable from HIPAA standard 11-digit NDCs. Therefore, to ensure unhyphenated NDCs are distinguishable, FDA anticipates that the HIPAA standards, and other code sets that currently require 10-digit native NDCs to be converted to 11-digit NDCs, will likely need to be updated in some manner.

TABLE 1—NDC CONVERSION EXAMPLE

Native NDC format	Converted NDC format		
	10-Digit hyphenated	11-Digit converted (hyphenated)	11-Digit converted (unhyphenated)
Native 10-digit (5–3–2)	10010–001–01	10010–0001–01	10010000101
Native 11-digit (6–3–2)		100100–001–01	10010000101

FDA is proposing to adopt a single, uniform, 12-digit NDC format to avoid confusion and reduce medication errors that could result, if, as described above, FDA were to begin issuing 11-digit NDCs and the HIPAA standards, and other code sets, that require 10-digit native NDCs to be converted to 11-digit NDCs are not updated. Specifically, standardizing the NDC to one format should eliminate the need for stakeholders to constantly convert a drug's FDA-assigned NDC to a different standardized format because those stakeholders seeking a standardized format will be able to adopt FDA's new, uniform, 12-digit format. This should reduce errors caused by converting from FDA's current nonstandardized NDC format to a standardized format. Additionally, standardization should

[1] *https://www.regulations.gov/document/FDA-2018-N-2610-0001.*

[2] Under 21 CFR 207.33(b), an NDC must consist of 10 or 11 digits, divided into three segments. This FDA 11-digit NDC refers to the NDC length once the Agency starts assigning 6-digit labeler codes.

[3] See *https://www.hhs.gov/ocr/privacy/hipaa/administrative/index.html* (last accessed March 22, 2017).

[4] NDCs in the format and with the digits assigned by FDA are referred to as *native NDCs.*

[5] NDCs that contain additional digits necessary to comply with HIPAA standards are referred to as *converted NDCs.*

eliminate the need for stakeholders to use multiple versions of an NDC (*e.g.,* the FDA-assigned 10-digit NDC and the converted HIPAA standard 11-digit NDC).

Finally, using 12-digits will allow FDA to adopt a uniform NDC format without requiring extensive changes to existing 10-digit NDCs. Instead, stakeholders would only need to add leading zeros to certain segments of the existing 10-digit NDC to convert it to the new 12-digit NDC.

B. History of the Rulemaking

1. 2016 Final Rule

In 2016, FDA published the Registration and Listing Final Rule. Recognizing that FDA would run out of 5-digit labeler codes in the near future, the Registration and Listing Final Rule established two additional NDC configurations: 6–3–2 and 6–4–1, for a total of five possible NDC configurations (including the three 10-digit NDC configurations) (§ 207.33(b)(2)). At the same time, FDA acknowledged in the preamble to the Registration and Listing Final Rule that some stakeholders recommended that FDA adopt a single, standard format for NDCs instead and announced that it planned to initiate a public discussion of future formatting options (81 FR 60169 at 60187).

2. 2018 Public Hearing

On November 5, 2018, FDA began these public discussions by holding a public hearing.[6] At the public hearing, FDA outlined several proposed formatting options that FDA could adopt once it begins issuing 6-digit labeler codes. Specifically, FDA outlined the following four formatting options:

Option A: Do not revise the regulations and continue with the status quo. Under this option, FDA would continue assigning the remainder of the 5-digit labeler codes and whenever the Agency runs out of 5-digit labeler codes, start assigning 6-digit labeler codes. This would expand FDA's NDC inventory to 10 and 11 digits, resulting in 5 different configurations. FDA would use 10- and 11-digit NDCs.

Option B: Same as Option A except that FDA would stop issuing 5-digit labeler codes and start issuing 6-digit labeler codes on a specified date in the future, before FDA anticipated running out of 5-digit labeler codes. This option was intended to provide more certainty to stakeholders by establishing a designated future date on which they would need to have systems in place to handle 11-digit NDCs in either 6–4–1 or 6–3–2 format.

Option C: Adopt the hyphenated NDC 11-digit format (5–4–2 format) currently used by the payer industry and convert all current 10-digit NDCs to the hyphenated 11-digit format by adding a leading zero to the short segment of the NDC. When the supply of 5-digit labeler codes is exhausted, FDA would begin assigning 6-digit labeler codes for use in 6–3–2 and 6–4–1 formats. Although this would establish a uniform total length for all NDC codes, there would still be multiple formats. Additionally, there is the potential for an 11-digit format with a 6-digit labeler code and an 11-digit format with a 5-digit labeler code to be identical when the hyphens separating the various segments are removed.

Option D: Allow for the harmonization of NDCs between FDA and other stakeholders by adopting 12-digit NDCs in a single, uniform 6–4–2 format. Once FDA starts assigning 6-digit labeler codes, all NDCs (new and existing) would be required to be presented in a 6–4–2 format. Existing NDCs would be converted from their existing format by adding leading zeros to the short segments. This would create one standard configuration for all NDCs that can be used by all stakeholders without conversion. As an added benefit, it would provide the industry with more product or package codes.

An appropriate number of years would be necessary to adapt existing databases and structures to be able to handle the new, uniform, 12-digit NDC and for industry to adopt this as the single NDC format. Therefore, under this option, FDA would implement this change on a prespecified date that would occur before the current pool of 5-digit labeler codes is exhausted, to provide certainty and predictability to industry stakeholders, government payers, and other interested parties.

FDA received oral comments during the hearing, and written comments were submitted afterwards. Most of the comments were in favor of FDA's adoption of a single standardized format that could be used by all stakeholders. The majority of the commenters were also in favor of FDA establishing a certain date when stakeholders would be required to have systems capable of handling the new format, with many advocating for a 10-year delay. For the most part, the commenters were not in favor of options A, B, or C. Instead, in general, the commenters either favored option D, or advocated for FDA to no longer be responsible for assigning NDCs and, instead, allow for a third party to take over that role. FDA considered these comments in developing this proposed rule.

IV. Legal Authority

FDA is proposing to amend our regulations on foreign and domestic establishment registration and listing for drugs, including biological products and animal drugs. FDA's authority for this proposed rule derives from the FD&C Act applicable to drugs, including biological products and the biological product provisions of the PHS Act. In particular, this proposed rule will standardize the format of NDCs assigned under section 510(e) of the FD&C Act and will aid in efficient enforcement of the FD&C Act pursuant to sections 701(a) and 351(j) of the PHS Act.

V. Description of the Proposed Rule

A. Adoption of a Uniform 12-Digit NDC

We are proposing to replace the existing NDC formats with a uniform, 12-digit format (see proposed amendments to § 207.33(b)). Under the proposed rule, the NDC would remain a 3-segment numerical code consisting of the labeler code, the product code, and the package code. However, we are proposing to establish a uniform length for each segment to create a uniform format. Specifically, we are proposing that the labeler code would be 6 digits in length, the product code would be 4 digits in length, and the package code would be 2 digits in length (a 6–4–2 format).

The new format requirements we are proposing would not apply only to NDCs assigned after the effective date of the final rule. Instead, if finalized as proposed, all existing 10-digit NDCs would be converted to the new, uniform, 12-digit format by the addition of leading zeros to the labeler code, the product code, and/or package code segments as needed to produce the 6–4–2 format.

Before deciding to propose the new, uniform, 12-digit NDC, FDA considered not only the four options outlined above, but also several proposals submitted as comments to the public hearing docket. Although many of the comments were supportive of the uniform, 12-digit NDC, others raised concerns that this could impact the ability to use barcodes that utilize GS1's Global Trade Identification Number 14 (GTIN–14) because GTIN–14 is only capable of encoding NDCs up to 10 digits.[7] Those raising this concern suggested that FDA no longer be responsible for assigning NDCs and, instead, delegate assignment of NDCs to

[6] *https://www.regulations.gov/document/FDA-2018-N-2610-0001.*

[7] The GTIN–14 is a global numerical data structure containing 14 numbers.

third parties, similar to unique device identifiers. However, we chose not to adopt this alternative because, unlike the implementation of the unique device identifier requirements, FDA is already deeply involved in the assignment of NDCs and changing this system has the potential to cause significant disruption, particularly with the handling of a transition from FDA-assigned NDCs to a new, third-party-assigned NDC. Although there may be some disruption resulting from the implementation of a new, uniform, 12-digit NDC, FDA will be in the best position to minimize and mitigate the disruption because it would continue to be involved in the process for assigning the new 12-digit NDCs. If this responsibility were handed over to a third party, FDA would have less ability to minimize and mitigate the disruption.

One commenter suggested that FDA could retain its 10-digit NDC format after it ran out of the current lot of 5-digit labeler codes by starting to assign 5-digit, alphanumeric labeler codes. Although this would allow firms to continue using their existing 10-digit NDCs, it would not accomplish the goal of uniformity advocated by many commenters. Additionally, except for systems used for certain minimally manipulated human cells, tissues, and cellular and tissue-based products (HCT/P) under § 207.33(b)(4), it would not likely relieve many stakeholders of the requirement to update their systems to be capable of handling the new NDC format, as many current systems are unlikely to be able to handle alphanumeric NDCs. Finally, we had some concerns that the introduction of alphabetic characters into the labeler code could increase the risk of medication errors because some may misread a letter as a number. Some examples include similarity between lowercase letter ''o'' and uppercase letter ''O'' with numeral 0 (zero), or uppercase letter ''B'' with numeral 8 (eight).

After taking these and other suggestions into consideration, FDA chose to propose the uniform, 12-digit NDC format because it could be adopted by all stakeholders seeking uniformity and would not require conversion between formats in perpetuity. We recognize that during the transition period described in section V.E. below, there will still need to be some conversion between the existing 10-digit NDC formats and the new, uniform, 12-digit format. However, as noted further below, this would be temporary, and FDA intends to publish, on our website, NDCs in both formats to facilitate these conversions. We also recognize that the establishment of a new, uniform, 12-digit NDC may require changes to other standards in order for stakeholders to adopt the 12-digit NDC as a universal standard. However, it is likely that any change from the 10-digit NDC format would have required such changes, and, as FDA is running out of 5-digit labeler codes, a change is necessary.

B. Scope/Applicability

This proposed rule will affect all drug products that are required to be listed under section 510 of the FD&C Act and 21 CFR part 207. Specifically, once effective, all existing 10-digit NDCs will be required to convert to the new uniform 12-digit NDC format, and all new NDCs will be assigned in the 12-digit format.

However, FDA will still allow the following HCT/Ps, if they are minimally manipulated, to use an alternatively formatted NDC that is approved for use by the relevant Center Director: Hematopoietic stem/progenitor cells derived from peripheral and cord blood, and lymphocytes collected from peripheral blood (§ 207.33(b)(4)). HCT/Ps that do not fall within the exception set forth in § 207.33(b)(4) would be required to use the new 12-digit NDC format. This proposed rule only relates to FDA's assignment of NDCs; it does not propose any revisions to the HIPAA standard code set.

C. Implementation of New, Uniform, 12-Digit NDC

1. Issuance of New, Uniform, 12-Digit NDCs

On the effective date of the final rule (which we propose would be 5 years from publication of the final rule), FDA would no longer assign 5-digit labeler codes or 10-digit NDCs. Instead, FDA would begin only issuing 6-digit labeler codes and NDCs in the new, uniform, 12-digit format. Therefore, all drug listing files submitted on or after the effective date proposing a new NDC would be required to use the uniform, 12-digit (6–4–2) NDC format. For example, if such a proposal is submitted by a firm with a 4- or 5-digit labeler code, the firm would need to convert its labeler code to a 6-digit labeler code by adding one or two leading zeros, as appropriate, and request the new NDC in the 6–4–2 format. If the submission involves a drug that is being listed for the first time or a change to an already listed drug that requires the use of a new product code under § 207.35(b), the firm must ensure that it is requesting a unique, 12-digit NDC, including a unique, 4-digit product code. If the submission involves a request to assign a new package code for a product already listed with a 10-digit NDC, the firm would need to convert its 4- or 5-digit labeler code to a 6-digit labeler code by adding one or two leading zeros.

If the firm currently uses the 5–3–2 format, it would additionally need to convert the existing product code from a 3-digit code to a 4-digit code by adding a leading zero to achieve the 6–4–2 format. If the firm currently uses the 5–4–1 format, it would not need to convert the existing product code because it is already four digits. However, it still would need to convert its labeler code to six digits and would need to request a unique package code.

As all new NDCs will only be assigned using the new, uniform, 12-digit format starting on the effective date of the final rule, all stakeholders will need to have systems in place that are capable of handling the new, uniform, 12-digit NDCs. However, as described in more detail below in section V.E., during the 3-year transition period, FDA does not intend to object to continued use of 10-digit NDCs assigned prior to the effective date on product labels. Therefore, during this proposed transition period, stakeholders should ensure that their systems are capable of handling both 10-digit and 12-digit NDCs.

2. Converting Existing 10-Digit NDCs

To reduce the burden on registrants, FDA does not intend to require them to resubmit all of their existing drug listing files to convert the NDCs from one of the discontinued 10-digit formats to the new, uniform, 12-digit, 6–4–2 format. Instead, FDA intends to convert existing NDCs on its own, on the effective date, by adding leading zeros to the appropriate segments. Additionally, for the reasons described in more detail below regarding the transition period, FDA intends to begin publishing, on the effective date, both the 10-digit and 12-digit NDCs for those drugs with NDCs assigned prior to the effective date.

3. The Effect on Other Non-FDA NDC Formats

As mentioned above, FDA decided to propose replacing the multiple 10- and possibly 11-digit NDC formats with a new, uniform, 12-digit format, in part, because of concerns that an FDA-assigned 11-digit NDC could be identical to a HIPAA converted 11-digit NDC for a different drug if the hyphens are removed. FDA could have chosen to avoid this by replacing its 11-digit formats with a 12-digit format, while still keeping the 10-digit formats. However, this would still have required

an update to the HIPAA standard format so that it could accommodate the new FDA-assigned 12-digit format and likely still would have required at least the FDA-assigned 10-digit NDCs to be converted to a new HIPAA standard format. Although this may have reduced some of the initial burden of converting existing 10-digit NDCs to the new, uniform, 12-digit format, this approach would likely have required stakeholders to update their systems a second time and would have required ongoing conversion from FDA's NDC formats to the HIPAA standard format(s). Thus, this option would require a conversion and would also create costs, while not reducing the overall risk of medication errors. Therefore, FDA is proposing to adopt a single, uniform, 12-digit NDC format in hopes that it will be adopted as the new HIPAA standard format for NDCs, and no conversions will be necessary from FDA's NDC format to the HIPAA standard format.

In addition to impacting the HIPAA standard format, we recognize that a 12-digit NDC may impact some stakeholders who use the GTIN–14 data standard to encode FDA's 10-digit NDC in the barcode on their label because the GTIN–14 cannot accommodate a 12-digit NDC. We acknowledge that FDA's establishment of a uniform, 12-digit NDC may require the development of new data standard(s) that can enable an NDC of this length to be encoded in a data carrier such as barcodes. That is one of the considerations that went into FDA's proposal to delay the effective date of the final rule, as this would provide time for the development of new data standard(s) and any respective changes to data carriers to accommodate an NDC of this length.

Recognizing that new data standard(s) may be necessary to encode the new, uniform, 12-digit NDC into a data carrier, we propose to revise § 201.25(c) to allow the use of linear or nonlinear barcodes that meet specified standards. FDA is considering whether to further revise § 201.25(c) to accommodate potential advances in technologies and standards development by allowing the use of unspecified automatic identification and data capture formats other than linear or nonlinear barcodes in the future without the need to revise the regulation again. Therefore, we are asking stakeholders to provide comments on whether to include such flexibility.

D. Proposed Delayed Effective Date

We propose to delay the effective date of the final rule for a period of 5 years following its publication. Delaying the effective date of the final rule is intended to provide stakeholders sufficient time to update their systems to be able to handle the new, uniform 12-digit NDC format, and plan on updating their labeling during the transition period, in a way that reduces burden to them. The delay is also intended to provide sufficient time to implement the necessary corresponding changes to the HIPAA standards and data standards that can enable an NDC of this length to be encoded in a data carrier such as barcodes, as discussed above. FDA is proposing a fixed effective date relative to the publication of the final rule to provide stakeholders with certainty as to when they would need to implement systems capable of handling the new, uniform 12-digit NDC format. However, in establishing the specific effective date, FDA will need to ensure that it occurs before FDA runs out of 5-digit labeler codes. Therefore, this 5-year effective date may result in stakeholders having less time to update their systems to be able to handle the new, uniform 12-digit NDC format than if the effective date were established based on when FDA runs out of 5-digit labeler codes.

The proposed 5-year delay balances the need to give stakeholders sufficient time to update their systems and make other necessary changes to be able to handle the new, uniform 12-digit NDC format, with the need to ensure that the final rule is effective before FDA runs out of 5-digit labeler codes and needs to start issuing 6-digit labeler codes. At this time, FDA believes there are sufficient 5-digit labeler codes remaining such that FDA can delay the effective date of the final rule for a period of 5 years following its publication. However, since the time FDA began developing this proposed rule, the rate at which labeler codes are assigned has increased significantly, particularly due to an influx of requests during the COVID–19 pandemic. Therefore, recognizing the importance of providing certainty to all stakeholders regarding the date on which they will all be expected to have systems in place capable of handling the new 12-digit NDC, FDA intends to reevaluate, prior to publishing the final rule, whether sufficient 5-digit labeler codes remain to allow for a 5-year delay in the effective date. FDA may finalize a shorter delay in the effective date based on our estimation of when we anticipate running out of 5-digit labeler codes. FDA believes this approach to ensuring FDA does not run out of 5-digit labeler codes before the effective date is a better approach than either of the two following alternatives: (1) accelerating the effective date after publication of the final rule by promulgating a new rule with a shorter effective date or (2) beginning to issue 6-digit labeler codes and 11-digit NDCs before the effective date.

E. Proposed Transition Period

FDA is proposing a 3-year transition period following the effective date of the final rule during which FDA does not intend to object if drugs that were assigned a 10-digit NDC prior to the effective date continue to be labeled with the 10-digit NDC. However, if a firm includes an NDC in its labeling, we would request that the firm start labeling drugs that were assigned a 10-digit NDC with the new 12-digit NDC as soon as possible, but no later than when a firm runs out of its existing labeling inventory for the drug and orders or begins printing new labeling. At the end of the transition period (*i.e.,* 8 years after the publication of the final rule), all firms will be required to use a 12-digit NDC in listing files, and FDA will no longer exercise enforcement discretion with respect to the 12-digit NDC format requirement for all products that include the NDC on their labeling that are introduced or offered for introduction into interstate commerce. As noted above, during this transition period, FDA will continue to maintain and publish 10-digit NDCs for listed drugs, simultaneously with the converted 12-digit NDCs. However, FDA does not intend to continue publishing and maintaining the 10-digit NDCs after the end of this transition period. Therefore, FDA encourages firms to begin labeling these products with the 12-digit NDC as soon as possible after the effective date to ensure that, at the end of the transition period, there are no products labeled with an old, 10-digit NDC remaining in interstate commerce.

FDA is proposing this 3-year transition period to facilitate a smooth transition from the current 10-digit NDC formats to the new, uniform 12-digit NDC format. In light of the nature of the drug supply chain, FDA recognizes that it would be difficult for firms to immediately transition from a 10-digit NDC to a 12-digit NDC without a transition period. Specifically, if on the effective date, all drugs were required to be labeled with a 12-digit NDC and there was no enforcement discretion regarding 10-digit NDC-labeled products remaining in interstate commerce, then firms would be required to remove products labeled with the 10-digit NDC from interstate commerce and either destroy them or relabel them. As the cost to the firms would be based on the volume of product remaining on the

market with the 10-digit NDC, this could incentivize firms to minimize how much product remains on the market at the time of the transition. This could increase the risk of a drug shortage which could harm the public health.

At the same time, the coexistence of drug labeling with either the 10- or 12-digit NDC for a period of time poses its own risks to the public health. Specifically, it raises the risk of confusion, medication errors, and possibly, the risk of the introduction of illegitimate product into the market because of the confusion. In an effort to balance these risks, FDA is proposing to limit the transition period to 3 years following the effective date. FDA is proposing a 3-year transition period for two reasons. First, the expiration date of many drugs is no more than 2 years. Therefore, there should not be many drugs remaining in interstate commerce labeled with NDCs in the 10-digit format at the end of the transition period so long as firms start labeling their products with the 12-digit NDC within the first year after the effective date. Second, most firms make changes to the labeling of a human prescription drugs at least once every 3 years.[8] Therefore, even if a firm wanted to wait until the next time it implemented a labeling change before transitioning from the 10-digit to a 12-digit NDC, most firms would be able to do so within the transition period.

Additionally, FDA intends to mitigate the risk of medication error and confusion during the transition period by maintaining and publishing both the 10-digit and 12-digit NDC formats for products assigned a 10-digit NDC prior to the effective date. This will provide stakeholders with a resource to confirm the identity of the drug in the event of any confusion.

VI. Proposed Effective Date(s)

We are proposing to delay the effective date of the final rule until 5 years after its publication in the **Federal Register**. However, as discussed in section V.D above, FDA may finalize the rule with a shorter effective date to ensure it is effective before FDA runs out of 5-digit labeler codes and is required to start issuing 6-digit labeler codes.

In addition, as discussed in section V.E above, to minimize possible disruption to the distribution of products subject to this proposed rule and to minimize the burden on manufacturers and labelers, FDA is proposing to provide for a 3-year transition period following the effective date. During this transition period, firms with products that were assigned 10-digit NDCs prior to the effective date of the final rule will need to use a 12-digit NDC for all drug listings submitted to FDA and should transition to using a 12-digit NDC on labeling.

VII. Preliminary Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the one-time cost could be as much as 0.56 percent of average annual revenue for some very small stakeholders in the insurance industry, 0.45 percent of average annual revenue for some very small stakeholders in the pharmaceutical industry, and 0.02 percent of average annual revenue for some very small stakeholders in the healthcare industry, we propose to certify that the proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities.

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 $158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Costs and Benefits

This proposed rule, if finalized, would amend regulations governing the format of the NDC by standardizing the format of NDCs to be 12 digits in length. Currently FDA-assigned NDCs are 10-digits and can be in multiple formats. The NDC for each listed drug in the United States is a unique 3-segment number, where the 3 segments are the labeler code, product code, and package code. The proposed standardized NDC would consist of three segments: a 6-digit labeler code, a 4-digit product code, and a 2-digit package code. If the proposed rule is finalized, FDA-assigned 10-digit NDCs would need to be updated to convert to the uniform 12-digit format by adding leading zeros to the respective segments.

One expected benefit of the proposed rule, if finalized, is that the proposed standardized format would facilitate the adoption of a single NDC format by all stakeholders. Such an adoption would eliminate the need to convert NDCs from one of the FDA-prescribed formats to a different standardized format used by other sectors of the healthcare industry (*e.g.,* healthcare providers and payors). Eliminating the need to convert NDCs should reduce potential errors caused by converting from the FDA-assigned NDC format to a different format used by other sectors of the healthcare industry. Standardization and adoption of a single format would also eliminate the need for additional quality control and validation by certain stakeholders, such as payors and prescribers, to ensure a drug product and its respective NDC are accurate; this is particularly important for insurance coverage and reimbursement claims. Another benefit of the proposed rule would be to avoid any potential risks to the public health from potential reductions in medication errors and risk of confusion. We do not have data to quantify these potential benefits and request comments.

The costs to industry of converting current NDC codes to the proposed format would include one-time costs of updating software systems, new training for employees, coordinating labeling updates, and reading and understanding the proposed rule. Table 2 shows a summary of the quantified costs of the proposed rule. We estimate annualized costs would be about $12.4 million ranging from $6.1 million to $19.4 million using a 7-percent discount rate over a 10-year horizon. Similarly, we estimate annualized costs would be about $10.2 million ranging from $5.1 million to $16.0 million using a 3-percent discount rate over a 10-year

[8] For rates of labeling revisions for prescription drug products, see Ref. 2. For nonprescription products, see Ref. 3.

horizon. The present-value of the estimated costs would be $87.1 million ranging from $43.1 million to $136.3 million at both the 7-percent and 3-percent discount rates.

TABLE 2—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized millions/year					7 3		
Annualized Quantified					7 3		
Qualitative	Potential reductions in annual audits, billing issues, cost of software, and medication error.						
Costs:							
Annualized Monetized millions/year	$12.4 10.2	$6.1 5.1	$19.4 16.0		7 3		
Annualized Quantified					7 3		
Qualitative							
Transfers:							
Federal Annualized Monetized millions/year					7 3		
From/To	From:			To:			
Other Annualized Monetized millions/year					7 3		
From/To	From:			To:			

Effects:
State, Local or Tribal Government: No estimated effect.
Small Business: One-time cost could be no more than 0.56 percent of annual revenue for some very small stakeholders with fewer than 5 employees in the insurance industry, 0.45 percent in the pharmaceutical industry, and 0.02 percent also for some very small stakeholders in the healthcare industry.
Wages: No estimated effect.
Growth: No estimated effect.

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 4) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section of this document with an estimate of the recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Format of National Drug Code.

Description: The proposed rule would require that the respondents identified below revise the format of their NDCs and would require that some of these respondents update any of their product labeling that include the NDC to incorporate the new NDC format. For drugs subject to a new drug application (NDA) or abbreviated new drug application (ANDA), the respondent would be required to report these labeling changes through an annual report; therefore, this proposed rule affects the reporting burden associated with § 314.81(b)(2)(iii) (21 CFR 314.81(b)(2)(iii)). For biological products subject to a biologics license application (BLA), the respondents will be required to report these labeling changes through an annual report; therefore, this proposed rule affects the reporting burden associated with § 601.12(f)(3) (21 CFR 601.12(f)(3)).

Section 314.81(b)(2)(iii) requires the submission of an annual report containing a representative sample of the package labels, currently used professional labeling, patient brochures, package inserts, and a summary of labeling changes (or if no changes have been made, a statement to that effect)

since the previous report. Under this proposed rule, the change in the NDC format would result in a labeling change. We have previously estimated the reporting burden for submitting labels as currently required under § 314.81(b)(2)(iii), and OMB has approved the collection of information under OMB control number 0910–0001. We are not re-estimating these approved burdens in this rulemaking. We are only estimating the additional reporting burden associated with the submission of labeling changes associated with the 12-digit NDC format under § 314.81(b)(2)(iii). We have previously estimated the reporting burden for submitting labels as currently required under § 601.12(f)(3), and OMB has approved the collection of information under OMB control number 0910–0338. We are not re-estimating the approved burden in this proposed rule. We are only estimating the additional reporting burden associated with the submission of labeling changes associated with the 12-digit NDC format under § 601.12(f)(3).

One-time costs and annual operating and maintenance costs associated with the proposed rule are discussed in Section II.F—Costs of the Proposed Rule of the Preliminary Regulatory Impact Analysis (PRIA). However, many of these costs are not associated with the information collections subject to OMB review under the PRA but, instead, are associated with changes in their usual and customary business operations as a result of the new NDC format. Additionally, many of the costs discussed in the PRIA are incurred by firms other than the respondents described below.

To minimize recordkeeping burden that would result from implementing the proposed changes to the NDC format, we provide for 5-year delay in the effective date and a 3-year implementation period. The purpose of this phased-in implementation is to allow respondents to make the labeling change that would result from the proposed change in NDC format at the time of any periodic update that may be made during the 3-year implementation period. Based on the frequency at which drug labeling is updated, we anticipate that nearly all firms will be able to incorporate the labeling change required by this proposed rule as part of a labeling change that they intend to make unrelated to this proposed rule. Therefore, we believe that the incremental information collection burden associated with this proposed rule is likely to be de minimis. However, for purposes of this burden estimate, we have estimated the one-time burden associated with this proposed rule, assuming conservatively that all finished prescription drug products and all finished over-the-counter drug products include the NDC on the label and their label would be updated solely for the purposes of modifying the format of the NDC on their label.

Description of Respondents: Manufacturers, repackers, relabelers, drug product salvagers, and private label distributors are subject to the regulatory requirements in 21 CFR parts 201 and 207, application holders are subject to the regulatory requirements of § 314.81, and license holders are subject to the regulatory requirements of § 601.12.

We estimate the burden of the information collection as follows:

TABLE 3—ESTIMATED ONE-TIME RECORDKEEPING BURDEN [1]

Format of National Drug Code; implementing new requirements	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 201.25 (barcode labeling requirements); and part 207, subpart D (requirements for the NDC).	12,800	22.5	288,000	1	288,000
Section 314.81(b)(2)(iii) (other postmarketing reports) or § 601.12(f)(3) (changes to an approved BLA).	2,000	6	12,000	10 minutes (0.167 hours)	2,000

[1] Figures have been rounded.

We have characterized the information collection as a recordkeeping burden consistent with 44 U.S.C. 3502(13)(C), which defines the term ''recordkeeping requirement'' to include records disclosed to third parties, the Federal Government, or the public. Our estimates are based on the following assumptions:

- We assumed that all listed drug packages include the NDC format on their label and that none of the respondents would be able to include these labeling changes into other labeling changes they were making during the transition period. As the change should not require a substantial redesign, but would only require a slight change to the existing NDC format already included on the label, we assumed that each label change would take a respondent 1 hour. Based on the drug listing database, we understand that there are approximately 12,800 respondents and 288,000 listed drug packages, resulting in an estimated burden of 288,000 or 22.5 hours per respondent to change the labels for these products.
- For prescription drugs whose label changes would be reported in an annual report pursuant to § 314.81 or § 601.12(f)(3) for biological products, there are approximately 2,000 respondents that would submit reports and there are approximately 12,000 active approved applications. This means that on average each application holder will need to submit 6 annual reports (12,000 active approved applications × 1 annual report per active approved application/2000 unique application holders). Information on listed drugs indicates there are approximately 120,000 separate, identifiable product packages that that are subject to an approved ANDA, BLA, or NDA. This means that on average each separate and distinct approved application includes approximately 10 separate and distinct product packages (120,000 unique distinct product packages/12,000 unique approved applications). Section 314.81(b)(2)(iii) requires firms to submit an annual report that includes a summary of any changes in labeling since the last annual report. Similarly, § 601.12(f)(3)(i)(A) requires manufacturers of biologics to include in their annual reports editorial or similar minor labeling changes. We expect that the updating of the NDC format on a label would necessitate a simple statement in the annual report declaring that the NDC format has been updated, so we have assigned an estimate of 1 minute for such statements per label. As each annual report will include 10 such declarations (one for

each unique product package), we estimate the burden to report these changes to be approximately 10 minutes per annual report. Thus, the total reporting burden would be 2,000 hours (2,000 respondents × 6 annual reports per respondent × 10 minutes per annual report/60 minutes = 2,000 hours).

To ensure that comments on information collection are received, OMB recommends that written comments be submitted through *https://www.reginfo.gov* (see **ADDRESSES**). All comments should be identified with the title of the information collection.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the proposed rule does not contain policies that would 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. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov*. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. HIPAA for Professionals, available at *https://www.hhs.gov/ocr/privacy/hipaa/administrative/index.html* (last accessed March 22, 2021).
2. Eastern Research Group, Inc. (2003), ''The Pharmaceutical Labeling Revisions Cost Model,'' January 2, 2003, Contract No. 223–94–8031, Task Order No. 8.
3. RTI International (2015), ''2014 FDA Labeling Cost Model.''
4. FDA, Preliminary Regulatory Impact Analysis, ''Format of National Drug Code,'' available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the Food and Drug Administration proposes to amend 21 CFR parts 201 and 207 as follows:

PART 201—LABELING

■ 1. The authority citation for part 201 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. In § 201.25:
■ a. Revise the section heading;
■ b. Remove the word ''bar code'' and add the word ''barcode'' in its place; and
■ c. Revise paragraph (c)(1) introductory text.

The revisions read as follows:

§ 201.25 Barcode label requirements.

* * * * *

(c) * * *

(1) Each drug product described in paragraph (b) of this section must have a barcode that contains, at a minimum, the appropriate National Drug Code (NDC) number in a linear or nonlinear format approved by the relevant Food and Drug Administration Center Director. Approved standards include those that meet European Article Number/Uniform Code Council (EAN/UCC) or Health Industry Business Communications Council (HIBCC) standards. Additionally, the barcode must:

* * * * *

PART 207—REQUIREMENTS FOR FOREIGN AND DOMESTIC ESTABLISHMENT REGISTRATION AND LISTING FOR HUMAN DRUGS, INCLUDING DRUGS THAT ARE REGULATED UNDER A BIOLOGICS LICENSE APPLICATION, AND ANIMAL DRUGS, AND THE NATIONAL DRUG CODE

■ 3. The authority citation for part 207 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360b, 371, 374, 381, 393; 42 U.S.C. 262, 264, 271.

■ 4. In § 207.33, revise paragraph (b) to read as follows:

§ 207.33 What is the National Drug Code (NDC), how is it assigned, and what are its requirements?

* * * * *

(b) *What is the format of an NDC?* (1) Except as described in paragraph (b)(2) of this section, the NDC must consist of 12 digits, divided into three segments as follows:

(i) The first segment of the NDC is the labeler code and consists of 6 digits. The labeler code is assigned by FDA.

(ii) The second segment of the NDC is the product code and consists of 4 digits.

(iii) The third segment of the NDC is the package code and consists of 2 digits. The package code identifies the package size and type of the drug and differentiates between different quantitative and qualitative attributes of the product packaging.

(2) An alternatively formatted NDC that is approved for use by the relevant Center Director may be used for the following HCT/Ps if they are minimally manipulated: Hematopoietic stem/progenitor cells derived from peripheral and cord blood, and lymphocytes collected from peripheral blood.

* * * * *

Dated: July 11, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–15414 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN 1505–AC80

Privacy Act Regulations

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This rule proposes revisions to the Department's regulations under the Privacy Act of 1974, as amended. Treasury is revising these regulations to update certain provisions to reflect developments in Privacy Act case law and changes in the names of some of the Treasury bureaus and offices since the regulations were last updated. Additionally, the regulations are being updated to ensure compliance with requirements in the Social Security Number Fraud Prevention Act of 2017.

DATES: *Comment due date:* September 23, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.*
- *FAX:* (202) 622–3895, ATTN Ryan Law.
- *Mail:* Ryan Law, Deputy Assistant Secretary for Privacy, Transparency and Records, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Comments received by mail will be considered timely if they are postmarked on or before the comment date. The *www.regulations.gov* site will accept comments until 11:59 p.m. eastern time on the comment due date. The Department will consolidate all comments received and make them available, without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency and Records, 202–622–0930, extension 2 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Discussion

The revisions of the Privacy Act (5 U.S.C. 552a) regulations in 31 CFR part 1, subpart C, proposes changes to the language and structure of the regulations. Proposed revisions include §§ 1.20 (Purpose and scope of this subpart), 1.23 (Publication in the **Federal Register**—Notices of systems of records, general exemptions, specific exemptions, review of all systems), 1.24 (Disclosure of records to person other than the individual to whom they pertain), 1.25 (Accounting of disclosures), 1.26 (Procedures for notification and access to records pertaining to individuals—format and fees for request for access), 1.27 (Procedures for amendment of records pertaining to individuals—format, agency review and appeal from initial adverse agency determination), 1.28 (Training, rules of conduct, penalties for non-compliance), 1.32 (Collection, Use, Disclosure and Protection of Social Security numbers), 1.35 (Information forms), and 1.36 (Systems exempt in whole or in part from provisions of the Privacy Act and this part). Sections 1.20, 1.23, 1.24, 1.25, 1.26, 1.27, 1.28, 1.32, 1.35, and 1.36 all address and reflect changes to Office of Management Budget (OMB) Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act'' [81 FR 94424, December 23, 2016] in addition to the Social Security Number Fraud Prevention Act of 2017, Public Law 115–59; 42 U.S.C. 405.

The 2017 Social Security Number Fraud Prevention Act requires agencies, including Treasury, to strengthen their commitment to reducing Social Security Number collection by formalizing the circumstances under which they may be collected. This requirement is implemented through proposed § 1.32 (Collection, use, disclosure, and protection of Social Security numbers).

A number of changes would be made to the sections of the Privacy Act Regulations to account for issues that have arisen since the regulations were last updated. For example, these changes are proposed to reflect additional privacy and civil liberties responsibilities delegated to the Treasury's Assistant Secretary for Management and changes to § 1.20 would reflect the creation of the new Special Inspector General for Pandemic Recovery, and all offices reporting to such official, including immediate staff. Section 1.23 proposes modifications to reflect changes to OMB Circular A–130, ''Managing Information as a Strategic Resource.'' [81 FR 49689, July 28, 2016] Then, § 1.24 includes modifications that would correct the errors discovered in the original publication of this regulation. These modifications include the addition of language to reflect the amendment of the Privacy Act by the Debt Collection Act of 1982 (which stated the circumstances under which Federal agencies could disclose individual records to consumer reporting agencies). In §§ 1.25 and 1.26, clarifying changes would be made to correct grammatical errors.

In §§ 1.27 and 1.35 include minor proposed changes to align with the authority vested in agencies to promulgate exemptions to certain provisions in the Privacy Act. Then, § 1.28 would be updated to establish the roles and responsibilities of the Deputy Assistant Secretary for Privacy, Transparency, and Records to ensure compliance with the Senior Agency Official Privacy oversight requirements in OMB M–16–24, ''Role and Designation of Senior Agency Officials for Privacy'' in accordance with E.O. 13719, Establishment of the Federal Privacy Council.'' [81 FR 7685, February 12, 2016]

Within § 1.32, Treasury formalized the policy for the use of Social Security numbers and would add provisions to ensure compliance with the Social Security Number Fraud Prevention Act of 2017. Further, § 1.36 proposes modifications to update the Treasury systems that claim exemptions under sections (j)(2) and (k) (subsections 1–6) of the Privacy Act.

Finally, the appendices to the current regulation would be revised to reflect changes in the Treasury's organizational structure. Appendices pertaining to the Bureau of Public Debt and Financial Management Service have been deleted as these components were consolidated under the new Treasury Bureau of Fiscal Services. A new Bureau of Fiscal Services appendix (appendix G) was added to reflect this consolidation. Appendix E was added to reflect the creation of the Alcohol and Tobacco Tax and Trade Bureau (TTB). Appendices C (United States Customs Service), D (United States Secret Service), and J (Federal Law Enforcement Training Center) were deleted to reflect that these former bureaus are no longer part of Treasury.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small

organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The Privacy Act primarily affects individuals and not entities and the proposed rule would impose no duties or obligations on small entities.

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess 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. This rule is not a ''significant regulatory action'' under Executive Order 12866.

List of Subjects in 31 CFR Part 1

Privacy.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR part 1 as follows:

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

■ 2. Revise subpart C to read as follows:

Subpart C—Privacy Act

Sec.

Subpart C—Privacy Act

§ 1.20 Purpose and scope of this subpart.

(a) The regulations in this subpart are issued to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). This subpart applies to all records which are contained in systems of records maintained by the Department of the Treasury (Department or Treasury). They do not relate to those personnel records of Federal Government employees, which are under the Office of Personnel Management's (OPM) jurisdiction to the extent such records are subject to OPM regulations. This subpart applies to all Treasury components. Any reference in this subpart to the Department or its officials, employees, or records must be deemed to refer also to the components or their officials, employees, or records. This subpart sets forth the requirements applicable to Treasury employees (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors) maintaining, collecting, using, or disseminating records pertaining to individuals. They also set forth the procedures by which individuals may request notification of whether the Treasury maintains or has disclosed a record pertaining to them or may seek access to such records maintained in any nonexempt system of records, request correction of such records, appeal any initial adverse determination of any request for amendment, or seek an accounting of disclosures of such records. For the convenience of interested persons, Treasury components may reproduce the regulations in this subpart in their entirety (less any appendices not applicable to the component in question) in those titles of the Code of Federal Regulations (CFR) which normally contain regulations applicable to such components. In connection with such reproduction, and at other appropriate times, components may issue supplementary regulations applicable only to the component in question, which are consistent with the regulations in this subpart. In the event of any actual or apparent inconsistency, the Departmentwide regulations in this subpart must govern. Individuals interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see the appendices to this subpart for cross references). The head of each component is hereby also authorized to substitute other appropriate officials for those designated and correct addresses specified in the appendix to this subpart applicable to the component. For purposes of this subpart, Treasury components consist of the following offices and bureaus:

(1) The Departmental Offices, which include the offices of:

(i) The Secretary of the Treasury, including immediate staff;

(ii) The Deputy Secretary of the Treasury, including immediate staff;

(iii) The Chief of Staff, including immediate staff;

(iv) The Executive Secretary of the Treasury and all offices reporting to such official, including immediate staff;

(v) Under Secretary (International Affairs) and all offices reporting to such official, including immediate staff;

(vi) Assistant Secretary (International Economics and Development) and all offices reporting to such official, including immediate staff;

(vii) Assistant Secretary (Financial Institutions) and all offices reporting to such official, including immediate staff;

(viii) Assistant Secretary (Financial Markets) and all offices reporting to such official, including immediate staff;

(ix) Assistant Secretary (Financial Stability) and all offices reporting to such official, including immediate staff;

(x) Under Secretary (Terrorism & Financial Intelligence) and all offices reporting to such official, including immediate staff;

(xi) Assistant Secretary (Terrorist Financing) and all offices reporting to such official, including immediate staff;

(xii) Assistant Secretary (Intelligence and Analysis) and all offices reporting to such official, including immediate staff;

(xiii) General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(1)(xx) through (xxii) and (a)(2) through (8) of this section;

(xiv) Treasurer of the United States including immediate staff;

(xv) Assistant Secretary (Legislative Affairs) and all offices reporting to such official, including immediate staff;

(xvi) Assistant Secretary (Public Affairs) and all offices reporting to such official, including immediate staff;

(xvii) Assistant Secretary (Economic Policy) and all offices reporting to such official, including immediate staff;

(xviii) Assistant Secretary (Financial Markets and Investment Policy) and all offices reporting to such official, including immediate staff;

(xix) Under Secretary (Domestic Finance) and all offices reporting to such official, including immediate staff;

(xx) Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(xxi) The Treasury Inspector General for Tax Administration, and all offices reporting to such official, including immediate staff;

(xxii) The Special Inspector General for the Troubled Asset Relief Program, and all offices reporting to such official, including immediate staff; and

(xxiii) The Special Inspector General for Pandemic Recovery, and all offices reporting to such official, including immediate staff.

(2) Alcohol and Tobacco Tax and Trade Bureau.

(3) Internal Revenue Service.

(4) Office of the Comptroller of the Currency.

(5) Bureau of Engraving and Printing.

(6) United States Mint.

(7) Financial Crimes Enforcement Network.

(8) Bureau of the Fiscal Service.

(b) For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(1)(xx) through (xxiii) and (a)(2) through (8) of this section are to be considered a part of such components. Any office, which is now in existence or may after [DATE OF PUBLICATION OF FINAL RULE] be established, which is not specifically listed or known to be a component of any of those listed in paragraphs (a)(1) through (8) of this section, must be deemed a part of the Departmental Offices for the purpose of this subpart.

§ 1.21 Definitions.

(a) The term *agency* means agency as defined in 5 U.S.C. 552(e).

(b) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) The term *maintain* includes maintain, collect, use, or disseminate.

(d) The term *record* means any item, collection, or grouping of information about an individual that is maintained by the Treasury or its components. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(e) The term *system of records* means a group of any records under the control of the Treasury or any component from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) The term *statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) The term *routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) The term *component* means a Treasury bureau or office as set forth in § 1.20 and in the appendices to this subpart. (See 5 U.S.C. 552a(a).)

(i) The term *request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(j) The term *request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(k) The term *request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

(l) The term *Privacy Act* means the Privacy Act of 1974 (5 U.S.C. 552a).

§ 1.22 Requirements relating to system of records.

(a) *In general.* Subject to 5 U.S.C. 552a(j) and (k) and § 1.23(c), each component shall, in conformance with the Privacy Act:

(1) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by the statute or by Executive order of the President. (See 5 U.S.C. 552a(e)(1).)

(2) Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. (See 5 U.S.C. 552a(e)(2).)

(b) *Requests for information from individuals.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), each component of the Treasury shall inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual:

(1) The authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D); and

(4) The effects on such individual, if any, of not providing all or any part of the requested information. (See 5 U.S.C. 552a(e)(3).)

(c) *Report on new systems.* Each component of the Treasury shall provide adequate advance notice to Congress and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers. (See 5 U.S.C. 552a(o).)

(d) *Accurate and secure maintenance of records.* Each component shall:

(1) Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), maintain all records which are used in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination (see 5 U.S.C. 552a(e)(5));

(2) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to the Privacy Act (see subpart A of this part), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Department of

the Treasury purposes (see 5 U.S.C. 552a(e)(6)); and

(3) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. (See 5 U.S.C. 552a(e)(10).)

(i) System managers, with the approval of the head of their offices within a component, shall establish administrative and physical controls, consistent with Department regulations in this part, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that records other than those available to the general public under the Freedom of Information Act (5 U.S.C. 552), are protected from public view, that the area in which the records are stored is supervised during all business hours and physically secure during nonbusiness hours to prevent unauthorized personnel from obtaining access to the records. Automated systems shall comply with the security standards promulgated by the National Institute of Standards and Technology (NIST).

(ii) System managers, with the approval of the head of their offices within a component, shall adopt access restrictions to insure that access to the records is limited to those individuals within the agency who have a need to access the records in order to perform their duties. Procedures shall also be adopted to prevent accidental access to, or dissemination of, records.

(e) *Prohibition against maintenance of records concerning First Amendment rights.* No component shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment (*e.g.,* speech), unless the maintenance of such record is:

(1) Expressly authorized by statute; or

(2) Expressly authorized by the individual about whom the record is maintained; or

(3) Pertinent to and within the scope of an authorized law enforcement activity. (See 5 U.S.C. 552a(e)(7).)

(f) *Notification of disclosure under compulsory legal process.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), when records concerning an individual are subpoenaed by a Grand Jury, Court, or quasi-judicial agency, or disclosed in accordance with an ex parte court order pursuant to 26 U.S.C. 6103(i), the official served with the subpoena or court order shall make reasonable efforts to assure that notice of any disclosure is provided to the individual. Notice shall be provided within five working days of making the records available under compulsory legal process or, in the case of a Grand Jury subpoena or an ex parte order, within five days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: the date and authority to which the subpoena is, or was returnable, or the date of and court issuing the ex parte order, the name and number of the case or proceeding, and the nature of the information sought and provided. Notice of the issuance of a subpoena or an ex parte order is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) and this section, pursuant to 5 U.S.C. 552a(j) and § 1.23(c)(1), by a Notice of Exemption published in the **Federal Register**. (See 5 U.S.C. 552a(e)(8).)

(g) *Emergency disclosure.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at the last known address within 5 days of the disclosure (excluding Saturdays, Sundays, and legal public holidays). Notification shall include the following information: The nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure. (See 5 U.S.C. 552a (b)(8).)

§ 1.23 Publication in the Federal Register—Notices of systems of records, general exemptions, specific exemptions, review of all systems.

(a) *Notices of systems of records to be published in the* ***Federal Register***. (1) The Office of the Federal Register publishes a biennial compilation of all system notices (''Privacy Act Issuances''), as specified in 5 U.S.C. 552a(f). In the interim (between biennial compilations), the Department must list and provide links on its website to complete, up-to-date versions of all Treasury system of records notices (SORNs), including citations and links to all **Federal Register** notices that reflect substantial modifications to each SORN.

(2) In addition, the Department must publish in the **Federal Register** upon establishment or significant revision a notice of the existence and character of any new or significantly revised systems of records. Unless otherwise instructed, each notice must include:

(i) The system name and number, and location of the system;

(ii) The title and business address of the Treasury official who is responsible for the system of records;

(iii) Security classification, and indication of whether any information in the system is classified;

(iv) Authority for maintenance of the system, the specific authority that authorizes the maintenance of the records in the system;

(v) Purpose(s) of the system, a description of the purpose(s) for maintaining the system;

(vi) The categories of individuals on whom records are maintained in the system;

(vii) The categories of records maintained in the system;

(viii) The categories of sources of records in the system (see 5 U.S.C. 552a(e)(4));

(ix) Each routine uses of the records contained in the system, including the categories of users and the purpose of such use;

(xx) The policies and practices of the component regarding storage, retrievability, access controls, retention, and disposal of the records;

(xxi) The procedures of the component whereby an individual can be notified if the system of records contains a record pertaining to the individual, including reasonable times, places, and identification requirements;

(xxii) The procedures of the component whereby an individual can be notified on how to gain access to any record pertaining to such individual that may be contained in the system of records, and how to contest its content;

(xxiii) Exemptions promulgated for the system; and

(xxiv) History (any previously published notices).

(b) *Notice of new or modified routine uses to be published in the* ***Federal Register***. At least 30 days prior to a new use or modification of a routine use, as published under paragraph (a)(3)(iv) of this section, Treasury must publish in the **Federal Register** notice of such new or modified use of the information in the system and allow for interested persons to submit written data, views, or arguments to the components. (See 5 U.S.C. 552a(e)(11).)

(c) *Promulgation of rules exempting systems from certain requirements*—(1) *General exemptions.* In accordance with existing procedures applicable to a Treasury component's issuance of

regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e), to exempt any system of records within the component from any part of the Privacy Act and the regulations in this subpart except subsections (b) (§ 1.24, conditions of disclosure), (c)(1) (§ 1.25, keep accurate accounting of disclosures), (c)(2) (§ 1.25, retain accounting for five years or life of record), (e)(4)(A) through (F) (paragraph (a) of this section, publication of annual notice of systems of records), (e)(6) (§ 1.22(d), accuracy of records prior to dissemination), (e)(7) (§ 1.22(e), maintenance of records on First Amendment rights), (e)(9) (§ 1.28, establish rules of conduct), (e)(10) (§ 1.22(d)(3), establish safeguards for records), (e)(11) (paragraph (c) of this section, publish new intended use), and (i) (§ 1.28(c), criminal penalties) if the systems of records maintained by the component which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status;

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. (See 5 U.S.C. 552a(j).)

(2) *Specific exemptions.* In accordance with existing procedures applicable to a Treasury component's issuance of regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e), to exempt any system of records within the component from 5 U.S.C. 552a(c)(3) (§ 1.25(c)(2), accounting of certain disclosures available to the individual), (d) (§ 1.26(a), access to records), (e)(1) (§ 1.22(a)(1), maintenance of information to accomplish purposes authorized by statute or executive order only), (e)(4)(G) (paragraph (a)(7) of this section, publication of procedures for notification), (e)(4)(H) (paragraph (a)(8) of this section, publication of procedures for access and contest), (e)(4)(I) (paragraph (a)(9) of this section, publication of sources of records), and (f) (§ 1.26, promulgate rules for notification, access and contest), if the system of records is:

(i) Subject to the provisions of 5 U.S.C. 552(b)(1);

(ii) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act and paragraph (a)(1) of this section. If any individual is denied any right, privilege, or benefit that such individual would otherwise be entitled to by Federal law, or for which such individual would otherwise be eligible, as a result of the maintenance of this material, provide such material to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(iv) Required by statute to be maintained and used solely as statistical records;

(v) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(vi) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(vii) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(3) *Reasons for exemptions.* As of [EFFECTIVE DATE OF FINAL RULE], the head of the component must include in the statement required under 5 U.S.C. 553(c) the reasons why the system of records is to be exempted from a provision of the Privacy Act and this part. (See 5 U.S.C. 552a(j) and (k).)

(d) *Review and report to the Office of Management and Budget (OMB).* The Department must ensure that the following reviews are conducted:

(1) The Data Integrity Board must conduct a review of all matching programs in which the Department has participated during the calendar year and report to OMB of the following year.

(2) Each component must perform the following reviews with a frequency sufficient to ensure compliance and manage risks:

(i) Review the language of each contract that involves the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, or disposal of information and ensure that the applicable requirements in the Privacy Act and OMB policies are enforceable on the contractor and its employees consistent with the agency's authority;

(ii) Ensure that all routine uses remain appropriate and that the recipient's use of the records continues to be compatible with the purpose for which the information was collected;

(iii) Ensure that each exemption claimed for a system of records pursuant to 5 U.S.C. 552a(j) and (k) remains appropriate and necessary;

(iv) Ensure Departmental and component training practices are sufficient and that personnel understand the requirements of the Privacy Act, OMB guidance, the agency's implementing regulations and policies, and any job-specific requirements;

(v) Review all component SORNs as needed to ensure they remain accurate, up-to-date, and appropriately scoped; that all SORNs are published in the **Federal Register**; that all SORNs include the information required by OMB Circular A–108; and that all significant changes to SORNs have been reported to OMB and Congress; and

(vi) Be prepared to report to the Office of Privacy, Transparency, & Records, as part of the annual Federal Information Security Management Act (FISMA), as amended by the Federal Information

Security Modernization Act of 2014, Public Law 113–283, reporting process, the results of the reviews conducted as required by this section, including any corrective action taken to resolve problems uncovered.

§ 1.24 Disclosure of records to person other than the individual to whom they pertain.

(a) *Conditions of disclosure.* No component of Treasury is required to disclose any record which is contained in a system of records maintained by it by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, or the parent, if a minor, or legal guardian, if incompetent, of such individual, unless disclosure of the record would be:

(1) To those offices and employees of the Treasury who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552 (subpart A of this part);

(3) For a routine use as defined in 5 U.S.C. 552a(a)(7) and § 1.21(g) and as described under 5 U.S.C. 552a(e)(4)(D) and § 1.23(a)(4);

(4) To the Bureau of the Census for the purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;

(5) To a recipient who has provided the component with advance adequate written assurance that the record will be used solely as statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of the General Services Administration or the designee of such official to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if:

(i) The activity is authorized by law; and

(ii) The head of the agency or instrumentality has made a written request to the Treasury specifying the particular portion desired and the law enforcement activities for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent a matter is within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or the authorized representatives of such official, in the course of the performance of the duties of the Government Accountability Office;

(11) Pursuant to the order of a court of competent jurisdiction (see 5 U.S.C. 552a(b)); or

(12) To a consumer reporting agency in accordance with 13 U.S.C. 3711(e).

(b) [Reserved]

§ 1.25 Accounting of disclosures.

(a) *Accounting of certain disclosures.* Each component, with respect to each system of records under its control, must:

(1) Keep an accurate accounting of:

(i) The date, nature, and purpose of each disclosure of a record to any person or to an agency made under 5 U.S.C. 552a(b) and § 1.24; and

(ii) The name and address of the person to whom or agency to which the disclosure is made;

(2) Retain the accounting made under paragraph (a)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; and

(3) Inform any person or other agency about any correction or notation of dispute made by the component in accordance with 5 U.S.C. 552a(d) and § 1.28 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. (See 5 U.S.C. 552(c).)

(b) *Accounting systems.* To permit the accounting required by paragraph (a) of this section, system managers, with the approval of the head of their offices within a component, must establish or implement a system of accounting for all disclosures of records, either orally or in writing, made outside the Department of the Treasury. Accounting records must:

(1) Be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, what records concerning them have been disclosed and to whom;

(2) Provide, as a minimum, the identification of the particular record disclosed, the name and address of the person to whom or agency to which the record was disclosed, and the date, nature, and purpose of the disclosure; and

(3) Be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Records Administration or Federal Records Center for storage, in which event, the accounting pertaining to those records, unless maintained separately, must be transferred with the records themselves.

(c) *Exemptions from accounting requirements.* No accounting is required for disclosure of records:

(1) To those officers and employees of the Department of the Treasury who have a need for the record in the performance of their duties; or

(2) If disclosure would be required under 5 U.S.C. 552 and subpart A of this part.

(d) *Access to accounting by individual.* (1) Subject to paragraphs (c) and (d)(2) of this section, each component must establish {I} procedures for making the accounting required under paragraph (a) of this section available to the individual to whom the record pertains and {II} thereafter make such accounting available in accordance therewith at the request of the individual. The procedures may require the requester to provide reasonable identification. (See appendices A, B, C, D, E, F, G, H to this subpart.)

(2) Access to accounting of disclosures may be withheld from the individual named in the record only if the disclosures were:

(i) Made under 5 U.S.C. 552a (b)(7) and § 1.24(a)(7); or

(ii) Under a system of records exempted from the requirements of 5 U.S.C. 552a(c)(3) in accordance with 5 U.S.C. 552(j) or (k) and § 1.23(c). (See 5 U.S.C. 552a(c).)

§ 1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.

(a) *Procedures for notification and access.* Each component must, in accordance with the requirements of 5 U.S.C. 552a(d)(1), set forth in the appendix to this subpart applicable to such component procedures whereby an individual can be notified, in response to a request, if any system of records named by the individual contains a record pertaining to that individual. In addition, such procedures must set forth the requirements for access to such records. At a minimum, such procedures must specify the times during, and the places at which access will be afforded, together with such identification as may be required of the individual before access. (See 5 U.S.C. 552a(f)(1), (2) and (3).)

(b) *Access.* Each component, in accordance with the procedures prescribed under paragraph (a) of this section, must allow an individual, upon request, to gain access to records or to any information pertaining to such individual which is contained in a system of records. Permit the individual to review the record and have a copy made of all or any portion of the record in a comprehensible form. Also permit the individual to be accompanied by any person of the individual's choosing to review the record, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. (See 5 U.S.C. 552a(d)(1).)

(c) *Exceptions.* Neither the procedures prescribed under paragraph (a) of this section nor the requirements for access under paragraph (b) of this section apply to:

(1) Systems of records exempted pursuant to 5 U.S.C. 552a(j) and (k) and § 1.23(c);

(2) Information compiled in reasonable anticipation of a civil action or proceeding (see 5 U.S.C. 552(d)(5)); or

(3) Information pertaining to an individual which is contained in, and inseparable from, another individual's record.

(d) *Format of request.* (1) A request for notification of whether a record exists must:

(i) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained or such individual's duly authorized representative (see § 1.34);

(ii) State that it is made pursuant to the Privacy Act or the regulations in this subpart, or have ''Privacy Act Request'' written on both the request and on the envelope, if not submitted via a component-provided electronic method;

(iii) Give the name of the system or subsystem or categories of records to which access is sought, as specified in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart;

(iv) Describe the nature of the record sought, the date of the record or the period in which the record was compiled or otherwise describe the record in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort;

(v) Provide such identification of the requester as may be specified in the appropriate appendix to this subpart; and

(vi) Be addressed or delivered in person or by a component-provided electronic method to the office or officer of the component indicated for the particular system or subsystem or categories of records to which the individual seeks access, as specified in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart. As explained in appendix A to this subpart, requesters may send a written request to the Departmental Offices seeking assistance in identifying the appropriate component or in preparing a request for notification. Requesters seeking such assistance should submit a written request addressed to the Departmental Offices at the address specified in appendix A to this part.

(2) A request for access to records must, in addition to complying with paragraphs (d)(1)(i) through (vi) of this section:

(i) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them;

(ii) If a requester wants a copy of their records, they must clearly state in the request that they agree to pay the fees for duplication as ultimately determined in accordance with subpart A to this subpart (§ 1.7), unless such fees are waived under that section by the system manager or other appropriate official as indicated in the appropriate appendix to this subpart; and

(iii) Comply with any other requirement set forth in the applicable appendix to this subpart or the ''System of Records Notice'' applicable to the system in question. Any request for access which does not comply with the requirements in the preceding sentence and those set forth elsewhere in this subpart, will not be deemed subject to the time constraints of this section, unless and until amended to comply with all requirements in this subpart. Components must advise the requester of any specific deficiencies so the requester can amend the request so it can be processed. This section applies only to records maintained in a system of records that are also in the possession or control of the component. (See 5 U.S.C. 552a(d) and (f).)

(e) *Requests for records not in control of component.* (1) Treasury employees must make reasonable efforts to assist an oral requester to learn to which office or officer a written request should be sent. When the request is for a record which is not in the possession or control of any Treasury component, the requester must be advised of this fact.

(2) Where the record requested originated with a Federal agency other than Treasury or its components and was classified (*e.g.* National Defense or Intelligence Information) or otherwise restrictively endorsed (*e.g.* Office of Personnel Management records of Federal Bureau of Investigation reports) by the originating agency, and a copy is in the possession of a Treasury component, the component will refer that portion of the request to the originating agency for determination of all Privacy Act issues. In the case of a referral to another agency under this paragraph (e)(2), the component will notify the requester that such portion of the request has been so referred and that the requester may expect to hear from that agency.

(3) When information sought from a system manager or other appropriate Treasury official includes information originating with other Federal agencies that is not classified or otherwise restrictively endorsed, the system manager or other appropriate Treasury official receiving the request must consult with the originating agency prior to making a decision to disclose or withhold the record. The system manager or other appropriate Treasury official maintaining the record must decide if disclosure is required. (See 5 U.S.C. 552a(d) and (f).)

(f) *Date of receipt of request.* For purposes of this subpart, the date of receipt of a request for notification or access to records shall be the date on which the requester satisfied all the requirements of paragraph (d) of this section. Requests for notification or access to records and any separate agreement to pay for copies must be stamped or endorsed with the date the receiving office/component received all information needed to satisfy the requirements in this section. The date of receipt of the last required document will be the date of receipt of the request for the purposes of this subpart. (See 5 U.S.C. 552a(d) and (f).)

(g) *Notification of determination*—(1) *In general.* The component officers designated in the appendices to this subpart must send the requester any required notifications, including notices stating the component has responsive records and whether it will provide access to the records requested. The component will mail notification of the determination within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section. If it is not possible to respond within 30 days, the relevant component officer must inform the requester (prior

to the expiration of the 30-day timeframe), stating the reason for the delay (*e.g.,* volume of records requested, scattered location of the records, need to consult other agencies, or the difficulty of the legal issues involved) and when a response will be dispatched. (See 5 U.S.C. 552a(d) and (f).)

(2) *Granting of access.* When the component determines that the request for access will be granted and the requester seeks a copy of the responsive records, the component must furnish such copy in a form comprehensible to the requester, together with a statement of the applicable duplication fees. If the requester indicates they want to exercise their right to inspect the responsive records, the component officer designated in the relevant appendix to this subpart must promptly notify the requester in writing of the determination, including when and where the requested records may be inspected. A requester seeking to inspect such records may be accompanied by another person of their choosing. The requester seeking access must sign a form indicating that Treasury is authorized to discuss the contents of the subject record in the accompanying person's presence. If, after making the inspection, the requester requests a copy of all or a portion of the requested records and pays the applicable fees for duplication, the component must provide a copy of the records in a form comprehensible to the requester. Fees to be charged are as prescribed by subpart A to this subpart (§ 1.7). Components may charge for processing requests under the Freedom of Information Act, under the provisions of this section, or may issue their own fee schedules, which must be consistent with the OMB Guidelines. (See 5 U.S.C. 552a(d) and (f).)

(3) *Requirements for access to medical records.* When access is requested to medical records, including psychological records, the responsible official may determine that such release could have an adverse effect on the individual and that release will be made only to a physician authorized in writing to have access to such records by the individual making the request. Upon receipt of the authorization, the physician will be permitted to review the records or to receive copies of the records by mail, upon proper verification of identity. (See 5 U.S.C. 552a(f) (3).)

(4) *Denial of request.* When a component makes a determination to deny a request for notification of whether a record exists or deny access to existing responsive records (whether in whole or part or subject to conditions or exceptions), the component must notify the requester of the denial by mail in accordance with paragraph (g)(1) of this section. The letter of notification must specify the city or other location where the requested records are situated (if known), contain a statement of the reasons for not granting the request as made, set forth the name and title or position of the responsible official and advise the requester of the right to file suit in accordance with 5 U.S.C. 552a (g)(1)(B).

(5) *Prohibition against the use of 5 U.S.C. 552(b) exemptions.* A component may not invoke exemptions from disclosure under 5 U.S.C. 552(b) (subpart A to this part (§ 1.2 (c))), for the purpose of withholding from a requester any record which would otherwise be accessible to the requester under the Privacy Act and this subpart. (See 5 U.S.C. 552a(t).)

(6) *Records exempt in whole or in part.* (i) If Treasury deems it necessary to assert an exemption in response to a request for notification of the existence of or access to records, it will neither confirm nor deny the existence of the records if the records were exempted from individual access pursuant to 5 U.S.C. 552a(j) or were compiled in reasonable anticipation of a civil action or proceeding in either a court or before an administrative tribunal. If Treasury asserts such an exemption, it must advise the requester only that it has identified no records available pursuant to the Privacy Act.

(ii) Process requests from individuals for access to records which Treasury exempted from access pursuant to 5 U.S.C. 552a(k) as follows:

(A) Requests for information classified pursuant to Executive Orders 12958, 13526, or successor or prior Executive orders require the responsible Treasury component to review the information to determine whether it continues to warrant classification pursuant to an Executive order. Information which no longer warrants classification under these criteria must be declassified and made available to the individual. If the information continues to warrant classification, the component must notify the requester that the information sought is classified, that it has been reviewed and continues to warrant classification, and that Treasury exempted it from access pursuant to 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1). Classified information maintained in records Treasury exempted pursuant to 5 U.S.C. 552a(j) must be reviewed as required by this paragraph (g)(6)(ii)(A), but the response to the individual must be in the form prescribed by paragraph (g)(6)(i) of this section.

(B) Components must respond to requests for information maintained in records that Treasury exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) in the manner provided in paragraph (g)(6)(i) of this section unless the requester shows that the component has used or is using the information to deny them any right, privilege, or benefit for which they are eligible or to which they would otherwise be entitled under Federal law. If the requester makes such a showing, the component must advise the requester of the existence of the records, extract any information from the records that would identify a confidential source, or provide a summary extract of the records to the requester in a manner which protects the source to the maximum degree possible.

(C) Information a component compiled in its records as part of an employee background investigation that Treasury exempted from disclosure pursuant to 5 U.S.C. 552a(k)(5) must be made available to a requester unless the record identifies a confidential source(s). Information in the record that identifies confidential source(s) must be extracted or summarized in a manner which protects the source(s) to the maximum degree possible and the summary or extract must be provided to the requester.

(D) Testing or examination material that Treasury exempted pursuant to 5 U.S.C. 552a(k)(6) must not be made available to a requester if disclosure would compromise the objectivity or fairness of the testing or examination process but may be made available if no such compromise possibility exists. (See 5 U.S.C. 552a(d)(5), (j) and (k).)

§ 1.27 Procedures for amendment of records pertaining to individuals—format, agency review, and appeal from initial adverse agency determination.

(a) *In general.* Subject to the application of exemptions Treasury promulgated in accordance with § 1.23(c), and subject to paragraph (f) of this section, each component of the Department of the Treasury must, in conformance with 5 U.S.C. 552a(d)(2), permit an individual to request amendment of a record pertaining to such individual. Any request for amendment of records or any appeal that does not fully comply with the requirements of this section and any additional specific requirements imposed by the component in the applicable appendix to this subpart will not be deemed subject to the time constraints of paragraph (e) of this section, unless and until the request is amended to meet all requirements.

However, components will advise the requester in what respect the request or appeal is non-compliant so that it may be resubmitted or amended. (See 5 U.S.C. 552a(d) and (f).)

(b) *Form of request to amend records.* In order to be subject to the provisions of this section, a request to amend records must:

(1) Be made in writing and signed by the individual making the request, who must be the individual about whom the record is maintained, or the duly authorized representative of such individual;

(2) State that it is made under the Privacy Act or the regulations in this subpart, with ''Privacy Act Amendment Request'' written on both the request and on the envelope;

(3) Be addressed to the office or officer of the component specified for such purposes in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart for that purpose; and

(4) Reasonably describe the records which the individual believes require amendment, including, to the best of the requester's knowledge, dates of previous letters the requester sent to the component seeking access to their records and dates of letters in which the component provided notification to the requester concerning access, if any, and the individual's documentation justifying the proposed correction. (See U.S.C. 552a(d) and (f).)

(c) *Date of receipt of request.* For purposes of this subpart, the date of receipt of a request for amendment of records must be the date on which the requester satisfies all the requirements of paragraph (b) of this section. The receiving office or officer must stamp or otherwise endorse the date of receipt of the request. (See 5 U.S.C. 552a(d) and (f).)

(d) *Review of requests to amend records.* Officials responsible for review of requests to amend records pertaining to an individual, as specified in the appropriate appendix to this subpart, must:

(1) Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(2) Promptly, either—

(i) Make any correction to any portion which the individual believes, and the official agrees is not accurate, relevant, timely, or complete; or

(ii) Inform the individual of the refusal to amend the record in accordance with the individual's request, the reason for the refusal, and the name and business address of the officer designated in the applicable appendix to this subpart, as the person who is to review such refusal. (See 5 U.S.C. 552a(d) and (f).).

(e) *Administrative appeal*—(1) *In general.* Each component must permit individuals to request a review of initial decisions made under paragraph (d) of this section when an individual disagrees with a refusal to amend the record. (See 5 U.S.C. 552a(d), (f), and (g)(1).)

(2) *Form of request for administrative review of refusal to amend record.* At any time within 35 days after the date of the notification of the initial decision described in paragraph (d)(2)(ii) of this section, the requester may submit an administrative appeal from such refusal to the official specified in the notification of the initial decision and the appropriate appendix to this subpart. The appeal must:

(i) Be made in writing, stating any arguments in support thereof and be signed by the requester to whom the record pertains, or the duly authorized representative of such individual;

(ii) Be addressed and mailed or hand delivered within 35 days of the date of the initial decision to the office or officer specified in the appropriate appendix to this subpart and in the notification. (See the appendices to this subpart for the address to which appeals made by mail should be addressed.);

(iii) Be clearly marked ''Privacy Act Amendment Appeal'' on the appeal and on the envelope;

(iv) Reasonably describe the records the individual seeks to amend; and

(v) Specify the date of the initial request to amend records, and the date of the component's letter providing notification that the request was denied. (See 5 U.S.C. 552a(d) and (f).)

(3) *Date of receipt.* Promptly stamp or endorse appeals with the date of their receipt by the office to which the appeal is addressed. Such stamped or endorsed date will be deemed to be the date of receipt for all purposes of this subpart. The responsible official in the office to which the appeal was addressed must acknowledge receipt of the appeal within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of the receipt (unless the determination on appeal is dispatched in 10 days, in which case, no acknowledgement is required). The letter acknowledging receipt of the appeal must advise the requester of the date of receipt established by the foregoing and the number of days the responsible official has to decide the administrative appeal (including days included/not included in determining the deadline). (See 5 U.S.C. 552a(d) and (f).)

(4) *Review of administrative appeals from denial of requests to amend records.* Officials responsible for deciding administrative appeals from denials of requests to amend records pertaining to an individual, as specified in the appendices to this subpart must: Complete the review and notify the requester of the final agency decision within 30 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of such appeal, unless the time is extended by the head of the agency or the delegate of such official, for good cause shown. If the final agency decision is to refuse to amend the record, in whole or in part, the requester must also be advised of the reasons the appeal was denied and their right—

(i) To file a concise ''Statement of Disagreement'' (including the procedures for filing this statement) setting forth the reasons they disagree with the final agency decision; and/or

(ii) To judicial review of the final agency decision refusing to amend the record(s) (under 5 U.S.C. 552a(g)(1)(A)). (See 5 U.S.C. 552a(d), (f) and (g)(1).)

(5) *Notation on record and distribution of statements of disagreement.* The system manager is responsible, in any disclosure containing information about which an individual has filed a ''Statement of Disagreement'', occurring after the filing of the statement under paragraph (e)(4) of this section, for clearly noting any portion of the record which is disputed and providing copies of the statement and, if deemed appropriate, a concise statement of the component's reasons for not making the amendments requested to persons or other agencies to whom the disputed record has been disclosed. (See 5 U.S.C. 552a(d)(4).)

(f) *Records not subject to correction under the Privacy Act.* The following records are not subject to correction or amendment by individuals:

(1) Transcripts or written statements made under oath;

(2) Transcripts of Grand Jury proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings;

(3) Pre-sentence reports comprising the property of the courts but maintained in agency files;

(4) Records pertaining to the determination, the collection, and the payment of the Federal taxes;

(5) Records duly exempted from correction by notice published in the **Federal Register**; and

(6) Records compiled in reasonable anticipation of a civil action or proceeding.

§ 1.28 Training, rules of conduct, penalties for non-compliance.

(a) *Training.* The Deputy Assistant Secretary for Privacy, Transparency, and Records must institute a Departmental training program to instruct Treasury employees and employees of Government contractors covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation, or maintenance of any system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this subpart, including the appendices thereto, and any other related regulations. Such training must provide suitable emphasis on the civil and criminal penalties imposed on the Department and the individual employees by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart. Components may supplement or supplant the departmental annual privacy awareness training to address Privacy Act issues unique to their missions. (See 5 U.S.C. 552a(e)(9).)

(b) *Rules of conduct.* In addition to the Standards of Conduct published in part O of this title, particularly 31 CFR 0.735–44, the following applies to Treasury employees (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation, or maintenance of any system of records, or in maintaining any records, for or on behalf of the Department, including any component thereof.

(1) The head of each office of a component of the Department is responsible for assuring that employees subject to such official's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no system of records is maintained without public notice.

(2) Treasury must:

(i) Collect no information about individuals for maintenance in a system of records unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(ii) Collect from individuals only that information which is relevant and necessary to perform Department functions or responsibilities, unless related to a system exempted under 5 U.S.C. 552a(j) or (k);

(iii) Collect information, to the greatest extent practicable, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(iv) Inform individuals (and third parties, if feasible) from whom information is collected of the authority and purposes for collection, the use that will be made of the information, and the effects, both legal and practical, of not furnishing the information;

(v) Neither collect, maintain, use nor disseminate information concerning an individual's mere exercise of their First Amendment rights, including: an individual's religious or political beliefs or activities; membership in associations or organizations; freedom of speech and of the press, and freedom of assembly and petition, unless:

(A) The individual expressly authorizes it (for example, volunteering relevant and necessary information to obtain a benefit or enforce a right);

(B) A statute expressly/explicitly authorizes the collection, maintenance, use or dissemination of the information (whether or not the statute specifically refers to the First Amendment); or

(C) The activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(vi) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier (to determine if actual retrieval is or will necessarily occur with some degree of regularity when the system of records becomes operational);

(vii) Disseminate outside the Department no information from a system of records without the written consent of the individual who is the subject of the records unless disclosure is authorized by one of the 12 exemptions in 5 U.S.C. 552a(b), which includes disclosure pursuant to a routine use published in a system of records notice in the **Federal Register***;*

(viii) Assure that an accounting is kept in the prescribed form of information about individuals that is maintained in a system of records and disseminated outside the Department, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 and subpart A of this part;

(ix) Collect, maintain, use, and disseminate information about individuals in a manner that ensures that no inadvertent disclosure of the information is made either within or outside the Department; and

(x) Assure that the proper Department authorities (*e.g.,* component privacy officer, legal counsel) are aware of any information in a system maintained by the Department which is not/might not be authorized under the provisions of the Privacy Act, including information on how an individual exercises their First Amendment rights, information that is/may be inaccurate, irrelevant, or so incomplete as to risk unfairness to the individual concerned if used to make adverse determinations.

(c) *Criminal penalties.* (1) The Privacy Act imposes criminal penalties on the conduct of Government officers or employees as follows: Any officer or employee of an agency (which term includes Treasury):

(i) Who by virtue of their employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section (see 5 U.S.C. 552a) or regulations in this subpart established under the Privacy Act, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it; or

(ii) Who willfully maintains a system of records without meeting the notice requirements of paragraph (e)(4) of this section (see 5 U.S.C. 552a)—shall be guilty of a misdemeanor and fined not more than $5,000.

(2) The Privacy Act also imposes a collateral criminal penalty (misdemeanor and a fine of not more than $5,000) on the conduct of any person who knowingly and willfully requests or obtains records covered by the Privacy Act from an agency under false pretenses.

(3) For the purposes of 5 U.S.C. 552a(i), the provisions of paragraph (c)(1) of this section are applicable to Government contractors and employees of such contractors who by contract, operate by or on behalf of the Treasury a system of records to accomplish a Departmental function. Such contractor and employees are considered employees of the Treasury for the purposes of 5 U.S.C. 552a(i). (See 5 U.S.C. 552a (i) and (m).)

§ 1.29 Records transferred to Federal Records Center or National Archives of the United States.

(a) *Records transferred for storage in the Federal Records Center.* Records pertaining to an identifiable individual which are transferred to the Federal Records Center in accordance with 44 U.S.C. 3103 must, for the purposes of the Privacy Act, be considered to be maintained by the component which deposited the record and must be subject to the provisions of the Privacy Act and this subpart. The Federal Records Center must not disclose such records except to Treasury or to others under rules consistent with the Privacy Act. These rules may be established by Treasury or a component. If such records are retrieved for the purpose of making a determination about an individual, Treasury or the relevant component must review them for accuracy, relevance, timeliness, and completeness.

(b) *Records transferred to the National Archives of the United States*—(1) *Records transferred to National Archives prior to September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, are deemed records maintained by the National Archives, and:

(i) Must not be subject to the Privacy Act.

(ii) Except, that a statement describing such records (modeled after 5 U.S.C. 552a(e)(4)(A) through (G)) must be published in the **Federal Register**.

(2) *Records transferred to National Archives on or after September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after September 27, 1975, must be deemed records maintained by the National Archives, and:

(i) Must not be subject to the Privacy Act.

(ii) Except, that a statement describing such records in accordance with 5 U.S.C. 552a(e)(4)(A) through (G) must be published in the **Federal Register** and rules of conduct and training in accordance with 5 U.S.C. 552(e)(9) are to be established by the National Archives. (See 5 U.S.C. 552a(e).)

§ 1.30 Application to system of records maintained by Government contractors.

When a component contracts for the operation of a system of records, to accomplish a Treasury function, the provisions of the Privacy Act and this subpart must be applied to such system. The relevant component is responsible for ensuring that the contractor complies with the contract requirements relating to privacy.

§ 1.31 Sale or rental of mailing lists.

(a) *In general.* An individual's name and address must not be sold or rented by a component unless such action is specifically authorized by law.

(b) *Withholding of names and addresses.* This section must not be construed to require the withholding of names and addresses otherwise permitted to be made public. (See 5 U.S.C. 552a(n).)

§ 1.32 Collection, use, disclosure, and protection of Social Security numbers.

(a) Treasury must only collect full Social Security numbers (SSNs) when relevant and necessary to accomplish a legally authorized purpose related to a Treasury mission. In the absence of another compelling justification for the use of the full SSN (approved by the relevant component Head and the Departmental Senior Agency Official for Privacy), Treasury must only collect and maintain full SSNs:

(1) As a unique identifier for identity verification purposes related to cyber security, law enforcement, intelligence, and/or security background investigations;

(2) When required by external entities to perform a function for or on behalf of Treasury;

(3) When collection is expressly required by statute or regulation;

(4) For statistical and other research purposes;

(5) To ensure the delivery of government benefits, privileges, and services; and

(6) When there are no reasonable, alternative means for meeting business requirements.

(b) Treasury must not display the Social Security number on the outside of any package sent by mail.

(c) Treasury must not display the Social Security number on any document sent by mail unless there are no reasonable, alternative means for meeting business requirements and masking or truncating/partially redacting the SSN are not feasible.

(d) Whenever feasible, Treasury must mask, or truncate/partially redact Social Security numbers visible to authorized Treasury/component information technology users so they only see the portion (if any) of the Social Security number required to perform their official Treasury duties.

(e) An individual must not be denied any right, benefit, or privilege provided by law by a component because of such individual's refusal to disclose their Social Security number.

(f) The provisions of paragraph (e) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute; or

(2) The disclosure of a Social Security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(g) When Treasury requests that an individual discloses their Social Security number, it must inform the individual:

(1) Whether that disclosure is mandatory or voluntary;

(2) By what statutory or other authority such number is solicited; and

(3) What uses are made of the number.

(h) Treasury must provide the information in this section in the notice discussed in § 1.28(b)(2)(iv). (See section 7 of the Privacy Act of 1974 set forth at 5 U.S.C. 552a, note.)

§ 1.34 Guardianship.

The parent or guardian of a minor or a person judicially determined to be incompetent must, in addition to establishing the identity of the minor or other person represented, establish parentage or guardianship by furnishing a copy of a birth certificate showing parentage or a court order establishing the guardianship and may thereafter, act on behalf of such individual. (See 5 U.S.C. 552a(h).)

§ 1.35 Information forms.

(a) *Review of forms.* Except for forms developed and used by components, the Deputy Assistant Secretary for Privacy, Transparency, & Records must review all forms Treasury develops and uses to collect information from and about individuals. Component heads are responsible for reviewing forms used by their component to collect information from and about individuals.

(b) *Scope of review.* The responsible officers must review each form for the purpose of eliminating any requirement for information that is not relevant and necessary to carry out an agency function and to accomplish the following objectives:

(1) To ensure that Treasury does not collect information concerning religion,

political beliefs or activities, association memberships, or the exercise of other First Amendment rights except as authorized in § 1.28(b)(2)(v);

(2) To ensure that the form on which information is collected (or a separate form that can be retained by the individual) makes clear what information the individual is required to disclose by law (and the statutory of other authority for that requirement), and what information requested is voluntary;

(3) To ensure that the form on which information is collected (or a separate form that can be retained by the individual) states clearly the principal purpose or purposes for which Treasury is collecting the information, and summarizes concisely the routine uses that will be made of the information;

(4) To ensure that the form on which information is collected (or a separate form that can be retained by the individual) clearly indicates to the individual the effect that not providing all, or part of the requested information will have on their rights, benefits, or privileges of; and

(5) To ensure that any form on which Treasury requests a Social Security number (SSN) (or a separate form that can be retained by the individual) clearly advises the individual of the statute or regulation requiring disclosure of the SSN or clearly advises the individual that disclosure is voluntary and that they will not be denied any right, benefit, or privilege if they refuse to voluntarily disclose it, and the uses that will be made of the SSN whether disclosed mandatorily or voluntarily.

(c) *Revision of forms.* The responsible officers must revise any form which does not meet the objectives specified in the Privacy Act as discussed in this section. A separate statement may be used in instances when a form does not conform. This statement will accompany a form and must include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

§ 1.36 Systems exempt in whole or in part from provisions of the Privacy Act and this part.

(a) *In general.* In accordance with 5 U.S.C. 552a(j) and (k) and § 1.23(c), Treasury hereby exempts the systems of records identified in paragraphs (c) through (o) of this section from the following provisions of the Privacy Act for the reasons indicated.

(b) *Authority.* The rules in this section are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(j) and (k) and pursuant to the authority of § 1.23(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain Treasury components have as their principal function activities pertaining to the enforcement of criminal laws. This paragraph (c) applies to the following systems of records maintained by Treasury:

(i) *Treasury-wide.*

TABLE 1 TO PARAGRAPH (c)(1)(i)

Number	Name of system
Treasury .013	Department of the Treasury Civil Rights Complaints and Compliance Review Files.

(ii) *Departmental Offices.*

TABLE 2 TO PARAGRAPH (c)(1)(ii)

Number	Name of system
DO .190	Office of Inspector General Investigations Management Information System (formerly: Investigation Data Management System).
DO .220	SIGTARP Hotline Database.
DO .221	SIGTARP Correspondence Database.
DO .222	SIGTARP Investigative MIS Database.
DO .223	SIGTARP Investigative Files Database.
DO .224	SIGTARP Audit Files Database.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Com plaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(iii) *Special Investigator for Pandemic Recovery (SIGPR).*

TABLE 3 TO PARAGRAPH (c)(1)(iii)

SIGPR .420	Audit and Evaluations Records.
SIGPR .421	Case Management System and Investigative Records.
SIGPR .423	Legal Records.

(iv) *Alcohol and Tobacco and Trade Bureau (TTB).*

TABLE 4 TO PARAGRAPH (c)(1)(iv)

Number	Name of system
TTB .003	Criminal Investigation Report System.

(v) *Office of the Comptroller of the Currency (OCC).*

TABLE 5 TO PARAGRAPH (c)(1)(v)

Number	Name of system
CC .110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .220	Notices of Proposed Changes in Employees, Officers and Directors Tracking System.
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System.

(vi) *Internal Revenue Service.*

TABLE 6 TO PARAGRAPH (c)(1)(vi)

Number	Name of system
IRS 34.022	National Background Investigations Center Management Information System (NBICMIS).
IRS 46.002	Criminal Investigation Management Information System and Case Files.
IRS 46.003	Confidential Informants, Criminal Investigation Division.
IRS 46.005	Electronic Surveillance and Monitoring Records, Criminal Investigation Division.
IRS 46.009	Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division.
IRS 46.015	Relocated Witnesses, Criminal Investigation Division.
IRS 46.016	Secret Service Details, Criminal Investigation Division.
IRS 46.022	Treasury Enforcement Communications System (TECS).
IRS 46.050	Automated Information Analysis System.
IRS 90.001	Chief Counsel Management Information System Records.
IRS 90.004	Chief Counsel Legal Processing Division Records.
IRS 90.005	Chief Counsel Library Records.

(vii) *Financial Crimes Enforcement Network.*

TABLE 7 TO PARAGRAPH (c)(1)(vii)

Number	Name of system
FinCEN .001	FinCEN Investigations and Examinations System.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (c)(1)(i) through (vii) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

(d) *Reasons for exemptions under 5 U.S.C. 552a(j)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in the paragraphs (d)(2) through (12) of this section, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to

provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest; and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informants and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informants might refuse to provide criminal investigators with valuable information unless they believe that their identities will not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (d)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department maintains in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of the Privacy Act relating to access to records, for the reasons set out in paragraph (d)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Individuals possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit individuals to take steps to avoid detection or apprehension.

(5) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of the Privacy Act relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informants by the subjects of investigations; and

(iii) Cause informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive order. The term *maintain,* as defined in 5 U.S.C. 552a(a)(3), includes *collect* and *disseminate.* The application of this provision to the systems of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) In many cases, especially in the early stages of investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(ii) Not all violations of law discovered by the Department fall

within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair the Department's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation may assert his/her constitutional right to remain silent and refuse to supply information to criminal investigators upon request.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained from the subject of a criminal investigation or other sources.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing the Department's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe are not involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines *maintain* to include *collect* and *disseminate,* application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the Department's ability to disseminate information pertaining to a possible violation of law-to-law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination because the Department may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of the Privacy Act so as to adversely affect the individual. The systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of the Privacy Act from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which the Department is exempted. Exemption from this provision will also protect the Department from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1).* (1) Under 5 U.S.C.

552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph (e) applies to the following systems of records maintained by the Department of the Treasury:

(i) *Departmental Offices.*

TABLE 8 TO PARAGRAPH (e)(1)(i)

Number	Name of system
DO .120	Records Related to Office of Foreign Assets Control Economic Sanctions.
DO .227	Committee on Foreign Investment in the United States (CFIUS) Case Management System.
DO .411	Intelligence Enterprise Files.

(ii) [Reserved]

(2) The Department of the Treasury hereby exempts the systems of records listed in paragraph (e)(1) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Orders 12958, 13526, or successor or prior Executive orders.

(g) *Specific exemptions under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is investigatory material compiled for law enforcement purposes and for the purposes of assuring the safety of individuals protected by the Department pursuant to the provisions of 18 U.S.C. 3056. This paragraph (g) applies to the following systems of records maintained by the Department of the Treasury:

(i) *Departmental Offices.*

TABLE 9 TO PARAGRAPH (g)(1)(i)

Number	Name of system
DO .120	Records Related to Office of Foreign Assets Control Economic Sanctions.
DO .144	General Counsel Litigation Referral and Reporting System.
DO .190	Office of Inspector General Investigations Management Information System (formerly: Investigation Data Management System).
DO .220	SIGTARP Hotline Database.
DO .221	SIGTARP Correspondence Database.
DO .222	SIGTARP Investigative MIS Database.
DO .223	SIGTARP Investigative Files Database.
DO .224	SIGTARP Audit Files Database.
DO .225	TARP Fraud Investigation Information System.
DO .227	Committee on Foreign Investment in the United States (CFIUS) Case Management System.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(ii) *Special Investigator for Pandemic Recovery (SIGPR).*

TABLE 10 TO PARAGRAPH (g)(1)(ii)

SIGPR .420	Audit and Evaluations Records.
SIGPR .421	Case Management System and Investigative Records.
SIGPR .423	Legal Records.

(iii) *The Alcohol and Tobacco Tax and Trade Bureau (TTB).*

TABLE 11 TO PARAGRAPH (g)(1)(iii)

Number	Name of system
TTB .001	Regulatory Enforcement Record System.

(iv) *Comptroller of the Currency.*

TABLE 12 TO PARAGRAPH (g)(1)(iv)

Number	Name of system
CC .100	Enforcement Action Report System.
CC .110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .220	Notices of Proposed Changes in Employees, Officers and Directors Tracking System.
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System.

(v) *Bureau of Engraving and Printing.*

TABLE 13 TO PARAGRAPH (g)(1)(v)

Number	Name of system
BEP .021	Investigative files.

(vi) *Internal Revenue Service.*

TABLE 14 TO PARAGRAPH (g)(1)(vi)

Number	Name of system
IRS 00.002	Correspondence File-Inquiries about Enforcement Activities.
IRS 00.007	Employee Complaint and Allegation Referral Records.
IRS 00.334	Third Party Contact Reprisal Records.
IRS 22.061	Wage and Information Returns Processing (IRP).
IRS 26.001	Acquired Property Records.
IRS 26.006	Form 2209, Courtesy Investigations.
IRS 26.008	IRS and Treasury Employee Delinquency.
IRS 26.011	Litigation Case Files.
IRS 26.012	Offer in Compromise (OIC) Files.
IRS 26.013	One-hundred Per Cent Penalty Cases.
IRS 26.016	Returns Compliance Programs (RCP).
IRS 26.019	TDA (Taxpayer Delinquent Accounts).
IRS 26.020	TDI (Taxpayer Delinquency Investigations) Files.
IRS 26.021	Transferee Files.
IRS 26.022	Delinquency Prevention Programs.
IRS 34.020	IRS Audit Trail Lead Analysis System.
IRS 34.037	IRS Audit Trail and Security Records System.
IRS 37.002	Applicant Appeal Files.
IRS 37.003	Closed Files Containing Derogatory Information about individuals' Practice before the IRS and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice.
IRS 37.004	Derogatory Information (No Action).
IRS 37.005	Present Suspensions and Disbarments Resulting from Administrative Proceeding.
IRS 37.007	Inventory.
IRS 37.009	Resigned Enrolled Agents (action pursuant to 31 CFR Section 10.55(b)).
IRS 37.011	Present Suspensions from Practice Before the Internal Revenue Service.
IRS 42.001	Examination Administrative File.
IRS 42.008	Audit Information Management System (AIMS).
IRS 42.012	Combined Case Control Files.
IRS 42.016	Classification and Examination Selection Files.
IRS 42.017	International Enforcement Program Files.
IRS 42.021	Compliance Programs and Projects Files.
IRS 42.029	Audit Underreporter Case Files.
IRS 42.030	Discriminant Function File (DIF) Appeals Case Files.
IRS 44.001	Appeals Case Files.
IRS 46.050	Automated Information Analysis System.
IRS 48.001	Disclosure Records.
IRS 49.001	Collateral and Information Requests System.
IRS 49.002	Component Authority and Index Card Microfilm Retrieval System.
IRS 49.007	Overseas Compliance Projects System.
IRS 60.000	Employee Protection System Records.
IRS 90.002	Chief Counsel Disclosure Litigation Division Case Files.
IRS 90.004	Chief Counsel General Legal Services Case Files.
IRS 90.005	Chief Counsel General Litigation Case Files.
IRS 90.009	Chief Counsel Field Case Service Files.
IRS 90.010	Digest Room Files Containing Briefs, Legal Opinions, Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws.

TABLE 14 TO PARAGRAPH (g)(1)(vi)—Continued

Number	Name of system
IRS 90.013	Legal case files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Enforcement Litigation) and (technical).
IRS 90.016	Counsel Automated Tracking System (CATS).

(vii) *U.S. Mint.*

TABLE 15 TO PARAGRAPH (g)(1)(vii)

Number	Name of system
Mint .008	Employee Background Investigations Files.

(viii) *Bureau of the Fiscal Service.*

TABLE 16 TO PARAGRAPH (g)(1)(viii)

Number	Name of system
FS .009	Delegations and Designations of Authority for Disbursing Functions.

(ix) *Financial Crimes Enforcement Network.*

TABLE 17 TO PARAGRAPH (g)(1)(ix)

Number	Name of system
FinCEN .001	FinCEN Database.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (g)(1)(i) through (ix) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(h) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of the Department of the Treasury and of law enforcement agencies outside the Department to make effective use of information maintained by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Individuals possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their illegal activities and could inform them of the general nature of that information.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their detection or apprehension;

(B) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension; and

(C) Using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning non-criminal acts to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informants and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informants might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those undercover officers, persons, or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (h)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of the Privacy Act relating to access to records, these provisions should not apply to the systems of records for the reasons set out in paragraph (h)(2) of this section.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. The term *maintain,* as defined in 5 U.S.C. 552a(a)(3), includes *collect* and *disseminate.* The application of this provision to the system of records could impair the Department's ability to collect, utilize and disseminate valuable law enforcement information.

(i) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(ii) Not all violations of law discovered by the Department analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in paragraphs (h)(5)(i) through (vi) of this section, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to complete or continue investigations or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informants by the subjects of investigations; and

(iii) Cause informants to refuse to give full information to investigators for fear of having their identities as sources disclosed.

(i) *Specific exemptions under 5 U.S.C. 552a(k)(4).* (1) Under 5 U.S.C. 552a(k)(4), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is required by statute to be maintained and used solely as statistical records. This paragraph (i) applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(4).

(i) *Internal Revenue Service.*

TABLE 18 TO PARAGRAPH (i)(1)(i)

Number	Name of system
IRS 70.001	Individual Income Tax Returns, Statistics of Income.

(ii) [Reserved]

(2) The Department hereby exempts the system of records listed in paragraph (i)(1) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(4): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(3) The system of records is maintained under 26 U.S.C. 6108,

which requires that the Secretary or his delegate prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.

(j) *Reasons for exemptions under 5 U.S.C. 552a(k)(4).* The reason for exempting the system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

(k) *Specific exemptions under 5 U.S.C. 552a(k)(5).* (1) Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus, to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act. This paragraph (j) applies to the following systems of records maintained by the Department or one of its bureaus:

(i) *Departmental Offices.*

TABLE 19 TO PARAGRAPH (k)(1)(i)

Number	Name of system
DO .004	Personnel Security System.
DO .306	TIGTA Recruiting and Placement Records.

(ii) *Internal Revenue Service.*

TABLE 20 TO PARAGRAPH (k)(1)(ii)

Number	Name of system
IRS 34.021	Personnel Security Investigations.
IRS 34.022	Automated Background Investigations System (ABIS).
IRS 90.006	Chief Counsel Human Resources and Administrative Records.

(2) The Department hereby exempts the systems of records listed in paragraphs (k)(1)(i) and (ii) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(l) *Reasons for exemptions under 5 U.S.C. 552a(k)(5).* (1) The sections of 5 U.S.C. 552a from which the systems of records are exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a(j)(2) or (k)(2) is hereby claimed.

(m) *Exemption under 5 U.S.C. 552a(k)(6).* (1) Under 5 U.S.C. 552a(k)(6), the head of any agency may promulgate rules to exempt any system of records that is testing, or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process. This paragraph (m) applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(6).

(i) *Departmental Offices.*

TABLE 21 TO PARAGRAPH (m)(1)(i)

Number	Name of system
DO .306	TIGTA Recruiting and Placement Records.

(ii) [Reserved]

(2) The Department hereby exempts the system of records listed in paragraph (m)(1) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(6): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C.

552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(n) *Reasons for exemptions under 5 U.S.C. 552a(k)(6).* The reason for exempting the system of records is that disclosure of the material in the system would compromise the objectivity or fairness of the examination process.

(o) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

Appendix A to Subpart C of Part 1—Departmental Offices

1. *In general.* This appendix applies to the Departmental Offices as defined in this subpart, § 1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with whom ''Statement of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Departmental Offices, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. This information is contained in the appropriate system notice in the ''Privacy Act Issuances'', published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records should be addressed to: Privacy Act Request, DO, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Requests may also be submitted: on the Treasury/FOIA portal, which can be found at: *https://home.treasury.gov/footer/freedom-of-information-act/submit-a-request;* or by email at *FOIA@treasury.gov.*

3. *Requests for amendments of records.* Initial determinations under § 1.27(a) through (d) with respect to requests to amend records for records maintained by the Departmental Offices will be made by the head of the organization or unit having immediate custody of the records or the delegate of such official. Requests for amendment of records should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send these requests should be addressed to: Privacy Act Amendment Request, DO, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under § 1.27(e) with respect to records of the Departmental Offices, including extensions of time on appeal, will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, Special Inspector General for Troubled Assets Relief Program, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records, or the delegate of such official, as limited by 5 U.S.C. 552a(d)(2) and (3). Appeals made by mail should be addressed as indicated in the letter of initial decision or to: Privacy Act Amendment Request, DO, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

5. *Statements of disagreement.* ''Statements of Disagreement'' as described in § 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such official and shall be delivered to the following location: General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required to be published by the Office of the Federal Register in the publication entitled ''Privacy Act Issuances'', as specified in 5 U.S.C. 552a(f). Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 and section 8 of this appendix, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Departmental Offices on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single official document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(iii) Notwithstanding paragraphs 8(i) and (ii) of this section, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iv) Notwithstanding paragraph 8(i), (ii), or (iii) of this section, a designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

Appendix B to Subpart C of Part 1—Internal Revenue Service

1. *Purpose.* The purpose of this section is to set forth the procedures that have been established by the Internal Revenue Service for individuals to exercise their rights under the Privacy Act (Pub. L. 93–579, 88 Stat. 1896) with respect to systems of records maintained by the Internal Revenue Service, including the Office of the Chief Counsel. The procedures contained in this section are to be promulgated under the authority of 5 U.S.C. 552a(f). The procedures contained in this section relate to the following:

(a) The procedures whereby an individual can be notified in response to a request if a system of records named by the individual contains a record pertaining to such individual (5 U.S.C. 552a(f)(1)).

(b) The procedures governing reasonable times, places, and requirements for identifying an individual who requests a record of information pertaining to such individual before the Internal Revenue Service will make the record or information available to the individual (5 U.S.C. 552a(f)(2)).

(c) The procedures for the disclosure to an individual upon a request of a record of information pertaining to such individual, including special procedures for the disclosure to an individual of medical records, including psychological records (5 U.S.C. 552a (f)(3)).

(d) The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Internal Revenue Service of an initial adverse agency determination, and for whatever additional means may be necessary for individuals to be able to exercise fully their right under the Privacy Act (5 U.S.C. 552a (f)(4)).

Any individual seeking to determine whether a system of records maintained by

any office of the Internal Revenue Service contains a record or information pertaining to such individual, or seeking access to, or amendment of, such a record, must comply fully with the applicable procedure contained in section 3 or 4 of this appendix before the Internal Revenue Service will act on the request. Neither the notification and access (or accounting of disclosures) procedures under section 3 of this appendix nor the amendment procedures under section 4 of this appendix are applicable to:

(i) Systems of records exempted pursuant to 5 U.S.C. 552a(j) and (k);

(ii) Information compiled in reasonable anticipation of a civil action or proceeding (see 5 U.S.C. 552a(d)(5)); or

(iii) Information pertaining to an individual which is contained in, and inseparable from, another individual's record.

2. *Access to and amendment of tax records.* The provisions of the Privacy Act may not be used by an individual to amend or correct any tax record. The determination of liability for taxes imposed by the Internal Revenue Service Code, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes are governed by the provisions of the Internal Revenue Service Code and by the procedural rules of the Internal Revenue Service. These provisions set forth the established procedures governing the determination of liability for tax, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes. In addition, these provisions set forth the procedures (including procedures for judicial review) for resolving disputes between taxpayers and the Internal Revenue Service involving the amount of tax owed, or the payment or collection of such tax. These procedures are the exclusive means available to an individual to contest the amount of any liability for tax or the payment or collection thereof. See, for example, 26 CFR 601.103 for summary of general tax procedures. Individuals are advised that Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act. Where, on the other hand, an individual desires information or records not in connection with an investigation, audit, or collection activity, the individual may follow these procedures.

3. *Procedures for access to records*—(a) *In general.* This paragraph sets forth the procedure whereby an individual can be notified in response to a request if a system of records named by the individual which is maintained by the Internal Revenue Service contains a record pertaining to such individual. In addition, this paragraph sets forth the procedure for the disclosure to an individual upon a request of a record or information pertaining to such individual, including the procedures for verifying the identity of the individual before the Internal Revenue Service will make a record available, and the procedure for requesting an accounting of disclosures of such records. An individual seeking to determine whether a particular system of records contains a record or records pertaining to such individual and seeking access to such records (or seeking an accounting of disclosures of such records) shall make a request for notification and access (or a request for an accounting of disclosures) in accordance with the rules provided in paragraph 3(b) of this section.

(b) *Form of request for notification and access or request for an accounting of disclosures.* (i) A request for notification and access (or request for an accounting of disclosures) shall be made in writing and shall be signed by the person making the request.

(ii) Such request shall be clearly marked, ''Request for notification and access,'' or ''Request for accounting of disclosures.''

(iii) Such a request shall contain a statement that it is being made under the provisions of the Privacy Act.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's Social Security number. In the case of a record maintained in the name of two or more individuals (*e.g.,* husband and wife), the request shall contain the names, addresses, and Social Security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the particular system of records (as set forth in the Notice of Systems) for which the individual is seeking notification and access (or an accounting of disclosures), and the title and business address of the official designated in the access section for the particular system (as set forth in the Notice of Systems). In the case of two or more systems of records which are under the control of the same designated official at the same systems location, a single request may be made for such systems. In the case of two or more systems of records which are not in the control of the same designated official at the same systems location, a separate request must be made for each such system.

(vi) If an individual wishes to limit a request for notification and access to a particular record or records, the request should identify the particular record. In the absence of a statement to the contrary, a request for notification and access for a particular system of records shall be considered to be limited to records which are currently maintained by the designated official at the systems location specified in the request.

(vii) If such request is seeking notification and access to material maintained in a system of records which is exempt from disclosure and access under 5 U.S.C. 552a(k)(2), the individual making the request must establish that such individual has been denied a right, privilege, or benefit that such individual would otherwise be entitled to under Federal law as a result of the maintenance of such material.

(viii) Such request shall state whether the individual wishes to inspect the record in person, or desires to have a copy made and furnished without first inspecting it. If the individual desires to have a copy made, the request must include an agreement to pay the fee for duplication ultimately determined to be due. If the individual does not wish to inspect a record, but merely wishes to be notified whether a particular system or records contains a record pertaining to such individual, the request should so state.

(c) *Time and place for making a request.* A request for notification and access to records under the Privacy Act (or a request for accounting of disclosures) shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records for which the individual is seeking notification and access (or an accounting of disclosures). The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(d) *Sample request for notification and access to records.* The following are sample requests for notification and access to records which will satisfy the requirements of this paragraph:

Request for Notification and Access to Records by Mail

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the Privacy Act of 1974 that the following system of records be examined and that I be furnished with a copy of any record (or a specified record) contained therein pertaining to me. I agree that I will pay the fees ultimately determined to be due for duplication of such record. I have enclosed the necessary information.

System Name:
System Location:
Designated Official:
John Doe

Request for Notification and Access to Records in Person

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the provisions of the Privacy Act of 1974, that the following system of records be examined and that I be granted access in person to inspect any record (or a specified record) contained therein pertaining to me. I have enclosed the necessary identification.

System Name:
System Location:
Designated Official:
John Doe

(e) *Processing a request for notification and access to records or a request for an accounting of disclosures.* (i) If a request for notification and access (or request for an accounting of disclosures) omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised of the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for notification and access (or a request for an accounting of disclosures), to a particular system of records by the designated official for such system, a determination will be made as to whether the particular system of records is exempt from the notification and access provisions of the Privacy Act, and if such system is not exempt, whether it does or does not contain a record pertaining to the individual making the request. If a determination cannot be made within 30 days, the individual will be notified of the delay, the reasons therefor, and the approximate time required to make a determination. If it is determined by the designated official that the particular system of records is exempt from the notification and access provisions of the Privacy Act, the individual making the request will be notified of the provisions of the Privacy Act under which the exemption is claimed. On the other hand, if it is determined by the designated official that the particular system of records is not exempted from the notification and access provisions of the Privacy Act and that such system contains a record pertaining to the individual making the request, the individual will be notified of the time and place where inspection may be made. If an individual has not requested that access be granted to inspect the record in person, but merely requests that a copy of the record be furnished, or if it is determined by the designated official that the granting of access to inspect a record in person is not feasible in a particular case, then the designated official will furnish a copy of the record with the notification, or if a copy cannot be furnished at such time, a statement indicating the approximate time such copy will be furnished. If the request is for an accounting of disclosures from a system of records which is not exempt from the accounting of disclosure provisions of the Privacy Act, the individual will be furnished with an accounting of such disclosures.

(f) *Granting of access.* Normally, an individual will be granted access to inspect a record in person within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt for a request for notification and access by the designated official. If access cannot be granted within 30 days, the notification will state the reasons for the delay and the approximate time such access will be granted. An individual wishing to inspect a record may be accompanied by another person of his choosing. Both the individual seeking access and the individual accompanying him may be required to sign a form supplied by the Internal Revenue Service (IRS) indicating that the Service is authorized to disclose or discuss the contents of the record in the presence of both individuals. See 26 CFR 601.502 for requirements to be met by taxpayer's representatives in order to discuss the contents of any tax records.

(g) *Medical records.* When access is requested to medical records (including psychological records), the designated official may determine that release of such records will be made only to a physician designated by the individual to have access to such records.

(h) *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the IRS on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding paragraph 3(h)(i) and (ii) of this section, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iv) Notwithstanding paragraph 3(h)(i), (ii), or (iii) of this section, a designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

(i) *Fees.* The fee for costs required of the IRS in copying records pursuant to this paragraph is $0.15 per page. However, no fee will be charged if the aggregate costs required of the IRS in copying records is less than $3.00. If an individual who has requested access to inspect a record in person is denied such access by the designated official because it would not be feasible in a particular case, copies of such record will be furnished to the individual without payment of the fees otherwise required under this paragraph. If the IRS estimates that the total fees for costs incurred in complying with a request for copies of records will amount to $50 or more, the individual making the request may be required to enter into a contract for the payment of the actual fees with respect to the request before the Service will furnish the copies requested. Payment of fees for copies of records should be made by check or money order payable to the Internal Revenue Service.

4. *Procedures for amendment of records*—(a) *In general.* This paragraph sets forth the procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to such individual, for making a determination on the request, for making an appeal within the IRS of an initial adverse determination, and for judicial review of a final determination.

(b) *Amendment of record.* Under 5 U.S.C. 552a(d)(2), an individual who has been granted access to a record pertaining to such individual may, after inspecting the record, request that the record be amended to make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete. An individual may seek to amend a record in accordance with the rules provided in paragraph (2) of this section.

(c) *Form of request for amendment of record.* (i) A request for amendment of a record shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked ''Request for amendment of record.''

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's Social Security number. In the case of a record maintained in the name of two or more individuals (*e.g.,* husband and wife), the request shall contain the names, addresses, and Social Security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the official designated in the access section for such system (as set forth in the Notice of Systems).

(vi) Such request shall specify the particular record in the system which the individual is seeking to amend.

(vii) Such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(d) *Time and place for making request.* A request to amend a record under the Privacy Act shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records. The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(e) *Processing a request for amendment of a record.* (i) Within 10 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, the individual will be sent a written acknowledgement that will state that the request has been received, that action is being taken thereon, and that the individual will be notified within 30 days (not including

Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the requested amendments will or will not be made. If a request for amendment of a record omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised on the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, a determination will be made as to whether to grant the request in whole or part. The individual will then be notified in writing of the determination. If a determination cannot be made within 30 days, the individual will be notified in writing within such time of the reasons for the delay and the approximate time required to make a determination. If it is determined by the designated official that the request will be granted, the requested changes will be made in the record and the individual will be notified of the changes. In addition, to the extent an accounting was maintained, all prior recipients of such record will be notified of the changes. Upon request, an individual will be furnished with a copy of the record, as amended, subject to the payment of the appropriate fees. On the other hand, if it is determined by the designated official that the request, or any portion thereof, will not be granted, the individual will be notified in writing of the adverse determination. The notification of an adverse determination will set forth the reasons for refusal to amend the record. In addition, the notification will contain a statement informing the individual of such individual's right to request an independent review of the adverse determination by a reviewing officer in the national office of the IRS and the procedures for requesting such a review.

(f) *Administrative review of adverse determination.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with the refusal of the agency to amend a record may, within 35 days of being notified of the adverse determination, request an independent review of such refusal by a reviewing officer in the national office of the IRS. The reviewing officer for the IRS is the Commission of Internal Revenue, the Deputy Commissioner, or an Assistant Commissioner. In the case of an adverse determination relating to a system of records maintained by the Office of General Counsel for the IRS, the reviewing officer is the Chief Counsel or his delegate. An individual seeking a review of an adverse determination shall make a request for review in accordance with the rules provided in paragraphs (g) and (h) of this section.

(g) *Form of request for review.* (i) A request for review of an adverse determination shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked ''Request for review of adverse determination''.

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's Social Security number as an essential means of accessing the system, the request must include the individual's Social Security number. In the case of a record maintained in the name of two or more individuals (*e.g.,* husband and wife), the request shall contain the names, addresses, and Social Security numbers (if necessary) of both individuals.

(v) Such request shall specify the particular record which the individual is seeking to amend, the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the designated official for such system (as set forth in the Notice of Systems).

(vi) Such request shall include the date of the initial request for amendment of the record, and the date of the letter notifying the individual of the initial adverse determination with respect to such request.

(vii) such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(h) *Time and place for making the request.* A request for review of an adverse determination under the Privacy Act shall be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. A request for review of an adverse determination will be promptly referred by the Director, Office of Disclosure to the appropriate reviewing officer for his review and final determination.

(i) *Processing a request for review of adverse determination.* Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for review of an adverse determination by the appropriate reviewing officer, the reviewing officer will review the initial adverse determination, make a final determination whether to grant the request to amend the record in whole or in part, and notify the individual in writing of the final determination. If a final determination cannot be made within 30 days, the Commissioner of Internal Revenue may extend such 30-day period. The individual will be notified in writing within the 30-day period of the cause for the delay and the approximate time required to make a final determination. If it is determined by the reviewing officer that the request to amend the record will be granted, the reviewing officer will cause the requested changes to be made and the individual will be so notified. Upon request, an individual will be furnished with a copy of the record as amended subject to the payment of appropriate fees. On the other hand, if it is determined by the reviewing officer that the request to amend the record, or any portion thereof, will not be granted, the individual will be notified in writing of the final adverse determination. The notification of a final adverse determination will set forth the reasons for the refusal of the reviewing officer to amend the record. The notification shall include a statement informing the individual of the right to submit a concise statement for insertion in the record setting forth the reasons for the disagreement with the refusal of the reviewing officer to amend the record. In addition, the notification will contain a statement informing the individual of the right to seek judicial review by a United States district court of a final adverse determination.

(j) *Statement of disagreement.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with a final adverse determination not to amend a record subject to amendment under the Privacy Act may submit a concise statement for insertion in the record setting forth the reasons for disagreement with the refusal of the reviewing officer to amend the record. A statement of disagreement should be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. The Director, Office of Disclosure will forward the statement of disagreement to the appropriate designated official who will cause the statement to be inserted in the individual's record. Any such statement will be available to anyone to whom the record is subsequently disclosed, and the prior recipients of the record will be provided with a copy of the statement of disagreement, to the extent an accounting of disclosures was maintained.

(k) *Judicial review.* If, after a review and final determination on a request to amend a record by the appropriate reviewing officer, the individual is notified that the request will not be granted, or if, after the expiration of 30 days (not including Sundays, Saturdays, and legal public holidays) from the receipt of such request by the Director, Disclosure Operations Division, action is not taken thereon in accordance with the requirements of paragraph (i) of this section, an individual may commence an action within the time prescribed by law in a U.S. District Court pursuant to 5 U.S.C. 552a(g)(1). The statute authorizes an action only against the agency. With respect to records maintained by the IRS, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the IRS must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue NW, Washington, DC 20224. The district court will determine the matter de novo.

5. *Records transferred to Federal Records Centers.* Records transferred to the Administrator of General Services for storage in a Federal Records Center are not used by the Internal Revenue Service in making any determination about any individual while stored at such location and therefore are not subject to the provisions of 5 U.S.C. 552a(e)(5) during such time.

Appendix C to Subpart C of Part 1—Alcohol and Tobacco Tax and Trade Bureau

1. *In general.* This appendix applies to the Alcohol and Tobacco Tax and Trade Bureau. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(3), (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determination under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Alcohol and Tobacco Tax and Trade Bureau, will be made by the Director, Regulations and Rulings Division, or the delegate of such officer. Requests may be mailed or delivered in person to: Privacy Act Request, Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Requests may also be faxed to 202–453–2331.

3. *Requests for amendment of record.* Initial determinations under § 1.27(a) through (d) with respect to requests to amend records maintained by the Alcohol and Tobacco Tax and Trade Bureau will be made by the Director, Regulations and Rulings Division. Requests for amendment of records may be mailed or delivered in person to: Privacy Act Request, Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Requests may also be faxed to 202–453–2331. The Bureau will process a faxed request when the request meets the identity verification requirements outlined in paragraph 4(a) of this appendix.

4. *Verification of identity.* (a) In addition to the requirements specified in § 1.26(d), each request for notification, access or amendment of records made by mail or fax shall contain the requesting individual's date and place of birth and a statement signed by the requester asserting his or her identity and stipulating that the requester understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is a misdemeanor and punishable by a fine of up to $5,000 provided, that the Alcohol and Tobacco Tax and Trade Bureau may require a signed notarized statement verifying the identity of the requester.

(b) Individuals making requests in person will be required to exhibit at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent, shall in addition to establishing the identity of the minor or other person he represents as required in paragraphs 4(a) and (b) of this section, establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage (or other satisfactory documentation) or a court order establishing the guardianship.

5. *Request for physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the records may be inspected. The inspection of records will be made at the Alcohol and Tobacco Tax and Trade Bureau Field Office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the field office or other facility where the disclosure is made. A person of the requester's own choosing may accompany the requester provided the requester furnishes a written statement authorizing the disclosure of the requester's record in the accompanying person's presence. The record inspection will be made in the presence of a representative of the Bureau. Following the inspection of the record, the individual will acknowledge in writing the fact that he or she had an opportunity to inspect the requested record.

6. *Requests for copies of records without prior physical inspection.* Upon determining that an individual's request for copies of his or her records without prior physical inspection is to be granted, the requester shall be notified in writing of the determination, and the location and time for his or her receipt of the requested copies. The copies will be made available at the Alcohol and Tobacco Tax and Trade Bureau field office or other facility located nearest to the residence of the individual making the request unless the individual requests that the documents be sent by mail. Copies shall be received by the requester during the regular business hours of the field office or other facility where the disclosure is made. Transfer of the copies to the individual shall be conditioned upon payment of copying costs and his presentation of at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester. Following the receipt of the copies in person, the individual will acknowledge receipt in writing.

7. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under § 1.27(e) with respect to records of the Alcohol and Tobacco Tax and Trade Bureau, including extensions of time on appeal, will be made by the Administrator or the delegate of such officer. Appeals should be addressed to, or delivered in person to: Privacy Act Amendment Appeal, Administrator, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

8. *Statements of disagreement.* ''Statements of Disagreement'' as described in § 1.27(e)(4) shall be filed with the official signing the notification within 35 days of the date of such notification and should be limited to one page.

9. *Service of process.* Service of process will be received by the Administrator of the Alcohol and Tobacco Tax and Trade Bureau or the delegate of such official and shall be delivered to the following location: Administrator, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005, Attention: Chief Counsel.

10. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for each pertinent system.

Appendix D to Subpart C of Part 1—Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing. It sets forth specific notification and access procedures with respect to particular systems of records including identification requirements, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Engraving and Printing, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. Requests for access to records contained within a particular system of records should be submitted to the address indicated for that system in the access section of the notices published by the Office of the Federal Register in ''Privacy Act Issuances.'' Requests for information and specific guidance should be addressed to: Privacy Act Request,

Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

3. *Requests for amendment of records.* Initial determination under § 1.27(a) through (d), whether to grant request to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to: Privacy Act Amendment Request, Disclosure Officer (Executive Assistant to the Director), Bureau of Engraving and Printing, Room 104–18M, Washington, DC 20228.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel of the Bureau of Engraving and Printing and shall be delivered to the following location: Chief Counsel, Bureau of Engraving and Printing, Room 109–M, 14th and C Streets SW, Washington, DC 20228.

7. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of the following identification requirements before action will be taken by the Bureau of Engraving and Printing on any such request:

(i) An individual appearing in person may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a credit card).

(ii) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding paragraphs 7(i) and (ii) of this section, an individual who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iv) Notwithstanding paragraph 7(i), (ii), or (iii) of this section, the Executive Assistant or other designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

8. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 522a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix E to Subpart C of Part 1—Bureau of the Fiscal Service

1. *In general.* This appendix applies to the Bureau of the Fiscal Service. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of the Fiscal Service, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed to the system manager identified in the Bureau of the Fiscal Service system of records notice (SORN) which is published in the **Federal Register**.

See the applicable Bureau of the Fiscal Service system of records notice (SORN) for details.

3. *Requests for amendment of records.* Initial determination under § 1.27(a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to the system manager identified in the Bureau of the Fiscal Service SORN which is published in the **Federal Register**.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of the Fiscal Service will be made by the Commissioner or the delegate of such official. Appeals made by mail should be addressed to the system manager identified in the Bureau of the Fiscal Service SORN which is published in the **Federal Register**.

See the applicable Bureau of the Fiscal Service SORN for details.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Commissioner, Bureau of the Fiscal Service or the delegate of such official and shall be delivered to the following location: Office of the Chief Counsel, Bureau of the Fiscal Service Attn: Chief Counsel, 401 14th St SW Washington, DC 20227.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix F to Subpart C of Part 1—United States Mint

1. *In general.* This appendix applies to the United States Mint. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed,

the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the United States Mint will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests should be directed to the Superintendent or Officer in charge of the facility in which the records are located or to the Chief, Administrative Programs Division. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Chief, Administrative Programs Division, United States Mint, Judiciary Square Building, 633 3rd Street NW, Washington, DC 20220.

3. *Requests for amendment of records.* Initial determination under § 1.27(a) through (d), whether to grant requests to amend records will be made by the head of the Mint installation having immediate custody of the records or the delegated official. Requests should be mailed or delivered personally to: Privacy Act Amendment Request, Freedom of Information and Privacy Acts Officer, United States Mint, Judiciary Square Building, 633 3rd Street, Washington, DC 20220.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27 including extensions of time on appeal, with respect to records of the United States Mint will be made by the Director of the Mint or the delegate of the Director. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, United States Mint, Judiciary Square Building, 633 3rd Street NW, Washington, DC 20220.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Director of the Mint and shall be delivered to the following location: Director of the Mint, Judiciary Square Building, 633 3rd Street NW, Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix G to Subpart C of Part 1—Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26 whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Comptroller of the Currency will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of that official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published biennially by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

3. *Requests for amendment of records.* Initial determinations under § 1.27(a) through (d) whether to grant requests to amend records will be made by the Comptroller's delegate or the head of the organizational unit having immediate custody of the records or the delegate of that official. Requests for amendment shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal, with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller of the Currency or the Comptroller's delegate. Appeals shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the OCC's Director of Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process shall be delivered to the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix H to Subpart C of Part 1—Financial Crimes Enforcement Network

1. *In general.* This appendix applies to the Financial Crimes Enforcement Network (FinCEN). It sets forth specific notification and access procedures with respect to particular systems of records, and identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published biennially by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for FinCEN will be made by the Freedom of Information/Privacy Act Officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

3. *Requests for amendments of records.* Initial determinations under § 1.27(a) through (d) whether to grant requests to amend records maintained by FinCEN will be made by the Freedom of Information/Privacy Act Officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. *Verification of Identity.* An individual seeking notification or access to records, or

seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of the following identification requirements before action will be taken by FinCEN on any such request:

(i) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(ii) Notwithstanding paragraph 4(i) of this section, an individual may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iii) Notwithstanding paragraphs 4(i) and (ii) of this section, the Freedom of Information Act/Privacy Act Officer or other designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

5. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be addressed to: Privacy Act Amendment Appeal, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

6. *Statements of Disagreement.* ''Statements of Disagreement'' as described in § 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

7. *Service of Process.* Service of process will be received by the Chief Counsel of FinCEN and shall be delivered to the following location: Office of Chief Counsel, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

8. *Biennial notice of systems of records.* The biennial notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances.'' Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 and section 4 of this appendix are indicated in the notice for the pertinent system.

Date: May 21, 2022.

Ryan Law,

Deputy Assistant Secretary, Office of Privacy, Transparency, and Records.

Editorial Note: This document was received for publication by the Office of the Federal Register on June 17, 2002.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 70

[EPA–R04–OAR–2021–0363; FRL–10016–01–R4]

Air Plan and Operating Permit Program Approval; TN; Electronic Notice (e-Notice) Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Tennessee State Implementation Plan (SIP) and the Tennessee title V operating permit program (title V) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Division of Air Pollution Control on March 23, 2021, and supplemented on July 1, 2022. These changes address the public notice rule provisions for the New Source Review (NSR) and title V programs of the Clean Air Act (CAA or Act) by providing for electronic notice (e-notice) and removing the mandatory requirement to provide public notice of a draft air permit in a newspaper. EPA is proposing to approve these changes as they are consistent with the CAA and implementing Federal regulations.

DATES: Comments must be received on or before August 24, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0363 at *www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, EPA finalized revised public notice provisions for the NSR, title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule revisions removed the mandatory requirement to provide public notice of permitting actions through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and title V rules, such as Tennessee's EPA-approved permitting programs. Permitting authorities are not required to adopt e-notice. Nothing in the revised rules prevents a permitting authority with an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. For permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use ''a consistent noticing method'' for all permit notices under the specific permitting program. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit for the duration of the public comment period.

EPA anticipates that e-notice, which is already being practiced by many permitting authorities, will enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently and will provide cost savings over newspaper publication. EPA further anticipates that e-access will expand

access to permit-related documents. A full description of the e-notice and e-access provisions are contained in EPA's October 18, 2016 rulemaking notice. *See* 81 FR 71613.

EPA is proposing to approve changes to Rule 1200–03–09–.01, *Construction Permits*; and Rule 1200–03–09–.02, *Operating Permits,* of Chapter 1200–03–09, *Construction and Operating Permits* submitted by the State of Tennessee on March 23, 2021,[1] related to NSR, and title V permits. These changes seek to establish a revised method of publication of public notices for public hearings and public comment periods and change how documents related to permit proceedings will be available for public inspection.

II. EPA's Analysis of Tennessee's Submittal

The SIP and title V program revisions change Chapter 1200–03–09, *Construction and Operating Permits,* to allow e-notice for TDEC's minor NSR, Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and title V regulations at Rules 1200–03–09–.01, *Construction Permits*; and 1200–03–09–.02, *Operating Permits.*[2] In this proposed action, EPA is proposing to approve the following changes to Rules 1200–03–09–.01 and 1200–03–09–.02.

Rule 1200–03–09–.01(1) *Application for Construction Permit* applies to construction permits in general, including minor source construction permits, and subparagraph (h) is revised to change the monthly public notification method for permit applications from newspaper to e-notice on the Department's website and specify that comments must be submitted via U.S. mail or email. While this is a generally applicable construction permitting rule, where other program rules, such as for the major source programs—PSD, NNSR, and title V, have more specific requirements, those requirements listed in their respective paragraphs of 1200–03–09–.01 and 1200–03–09–.02 apply.

The State's PSD program at Rule 1200–03–09–.01(4), *Prevention of Significant Air Quality Deterioration,* is revised to provide for e-notice. First, subparagraph (a)7(vi) is revised to provide e-notice on the Department's website rather than newspaper notification whenever the Technical Secretary of the Air Pollution Control Board of the State of Tennessee rescinds a permit. Next, subparagraph (l)2(iii) is revised to provide e-notice on the Department's website rather than newspaper notification of permit applications, preliminary determinations, and expected increment consumption for PSD permitting actions. This subparagraph is further updated to require the Department to post notice of public comment, draft permits, information on how to access the administrative record for the draft permit, and how to request and/or attend a public hearing on the draft permit on the Department's website for the duration of the comment period. As described above, posting draft permits on a designated website is required for consistency under 40 CFR 51.166(q)(2)(iii), when e-notice is provided.

The State's NNSR requirements are at Rule 1200–03–09–.01(5), *Growth Policy,* and subparagraph (b)2(viii)(III) is revised to provide e-notice on the Department's website rather than newspaper notification whenever the Technical Secretary of the Air Pollution Control Board of the State of Tennessee rescinds a permit. Next, subparagraph (b)3(i)(III) is revised to provide e-notice of information submitted by applicants and the Technical Secretary's analysis of the effect on air quality. The e-notice will be available on the Department's website for the duration of the comment period and includes draft permits, information on how to access the administrative record for the draft permit, and how to request and/or attend a public hearing on the draft permit. Similar to PSD requirements, posting draft permits on a designated website is required for consistency under 40 CFR 51.165(i)(1), when e-notice is provided. This subparagraph is also updated to provide further notice in newspapers of general circulation in the area where the source is located at the applicant's expense, if deemed necessary by the Technical Secretary.

The State's title V requirements are at Rule 1200–03–09–.02(11), *Major Stationary Source Operating Permits,* and subparagraph (f)8.(i)(I) is revised to provide for e-notice on the Department's website of permit proceedings that require public notice, including initial permit issuance, significant modifications and renewals. The SIP's FESOP provisions are found at Rule 1200–03–09–.02(11)(a), which provide an option for sources to limit their potential to emit such that they are below the major source applicability threshold. In order to exercise this option, Rule 1200–03–09–.02(11)(a) states that the permit shall be subjected to the opportunity for comment and hearing by EPA, affected states, and the public consistent with this paragraph. Thus, the FESOP permits must be public noticed consistent with the requirements at Rule 1200–03–09–.02(11)(f)8, which is revised to include e-notice.[3]

Furthermore, in accordance with 40 CFR 70.7(h)(1), Rule 1200–03–09–.02(11)(f)8.(i)(I) is updated to require the Department post draft title V permits on the Department's website for the duration of the public comment period. As described above, posting draft permits on a designated website is required for consistency under the Federal rules, when e-notice is provided.

The State is replacing the public notice method for the aforementioned permit programs from newspaper publication to website notification as well as providing for e-access to draft permits. These methods of public notification and availability are consistent with the public participation requirements for permits under 40 CFR 51.161, 51.166(q), 51.165(i), and 70.7 and the criteria for FESOP programs (see 54 FR 27274 (June 28, 1989)).

In addition, this SIP submission contains minor textual changes to provide clarity and greater consistency. The textual revisions include: changing ''publication of'' to ''date of'', adding ''permit'' before referencing recissions, clarifying that the public must be notified of the degree of increment consumption that is expected from both the proposed source construction and modification, and changing ''Sub part'' to ''subpart''.

EPA is proposing to approve these revisions because the revisions are consistent with the SIP revision requirements of CAA section 110, the title V program revision requirements of 40 CFR 70.4, and EPA's permitting requirements for public participation.

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

[1] In a letter dated July 1, 2022, TDEC clarifies that it is requesting approval of revisions to its title V program as well as to the SIP to provide for e-notice.

[2] As discussed in more detail in the description of changes to the title V program below, the revisions to the public participation provisions would also change the State's public participation method to e-notice for the SIP-approved Federal enforceable state operating permits (FESOPs) program.

[3] The changes to Rule 1200–03–09.–02(11)(f)8.(i)(I) discussed in this notice apply to FESOPs; however, this specific provision is not approved into the SIP and is not being proposed for incorporation into the SIP. For purposes of FESOPs, only Rule 1200–03–09–.02(11)(a) is approved into the SIP. *See* EPA's final approval of Tennessee's FESOP program at 62 FR 6724 (February 13, 1997) for more information on this program and associated public notice requirements.

requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Rule 1200–03–09–.01, *Construction Permits,* state effective January 21, 2021, into the Tennessee SIP.[4] The proposed incorporation includes minor textual changes, establishes a revised means of publication for public notices for public hearing and public comment periods, and changes how documents related to permit proceedings will be available for permit proceedings. 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 is proposing to approve the changes to Chapter 1200–03–09, *Construction and Operating Permits;* Rule 1200–03–09–.01, *Construction Permits* of the Tennessee SIP; and Rule 1200–03–09–.02, *Operating Permits,* of the Tennessee title V program, as submitted on March 23, 2021, and supplemented on July 1, 2022 for the reasons stated above.

V. Statutory and Executive Order Reviews

In reviewing SIP and title V submissions, EPA's role is to approve such submissions, provided that they meet the criteria under the CAA, and EPA's implementing regulations. 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 1955 (Pub. L. 104–4);
- Does not have Federalism implications as specified in the 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 any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

Furthermore, the proposed rules regarding title V operating permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these proposed rules impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

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

Dated: July 19, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–15817 Filed 7–22–22; 8:45 am]

BILLING CODE 6560–50–P

[4] EPA is not proposing to incorporate the January 21, 2021, state effective version of: 1200–03–09–.01(1)(a); 1200–03–09–.01(1)(d); 1200–03–09–.01(1)(f); 1200–03–09–.01(1)(j); 1200–03–09–.01(4)(b)24(XVII); 1200–03–09–.01(4)(b)29; 1200–03–09–.01(4)(b)47(i)(IV); 1200–03–09–.01(4)(j)3; 1200–03–09–.01(4)(k); 1200–03–09–.01(5)(b)1(x)(VII); the $PM_{2.5}$ annual and 24-hour averaging time as part of subparagraph 1200–03–09–.01(5)(b)(1)(xix); 1200–03–09–.01(5)(b)2(iii)(II). These provisions are either not approved into the SIP or the January 21, 2021, version of the rule contains language changes that are not before EPA for approval into the SIP. If EPA finalizes this action, the Agency will update the SIP table at 40 CFR 52.2220(c) to reflect these exceptions.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 220720–0158]

RIN 0648–BK86

Seafood Import Procedures and Certification of Admissibility

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS intends to revise regulations concerning the Certification of Admissibility (COA) program used to allow entry of certain fish or fish products otherwise subject to trade restrictions. Specifically, NMFS is considering automating the submission of COA information through use of the Automated Commercial Environment (ACE) managed by U.S. Customs and Border Protection (CBP). Such automated processing may require the submission of additional data elements. Prior to drafting a proposed rule, NMFS is issuing this advance notice of proposed rulemaking requesting input from stakeholders and interested parties on the reporting and recordkeeping burden of the certification of admissibility, on the procedures for using certification in the entry filing process, and on ways to reduce the reporting burden and expedite release of admissible shipments through use of the ACE single window portal. Based on comments received and NMFS' overall assessment of concerns raised, NMFS will consider these concerns in developing the proposed rule to revise and automate the submission of COA information.

DATES: Written comments must be received on or before August 24, 2022.

ADDRESSES: Written comments on this action, identified by NOAA–NMFS–

2022–0057, may be submitted by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0057 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements expected to be addressed in the proposed rule may be submitted to the Office of International Affairs, Trade, and Commerce.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service (phone: 301–427–8350; or email: *christopher.rogers@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

NMFS is developing a proposed rule to revise regulations concerning the Certification of Admissibility (COA) used to allow entry of fish or fish products that are otherwise subject to trade restrictions. These program revisions will include automated entry filing of information required to establish admissibility of the shipment. As noted in the ''specific questions'' below, currently, NMFS uses paper format COAs that require signatures.

Several statutes, including the Marine Mammal Protection Act (MMPA) and the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), contain provisions that authorize imposition of trade restrictions on certain fish products depending on the conditions of harvest or production. While NMFS has authority under MMPA and Moratorium Protection Act implementing regulations to impose trade restrictions to target problematic activity, the regulations also allow for entry of some fish and fish products harvested from fishing activity that is not a source of concern.

For example, under the MMPA, fisheries that export to the United States must have marine mammal bycatch mitigation measures comparable in effectiveness to those required in U.S. fisheries (see 16 U.S.C. 1371(a)(2) and 50 CFR 216.24(h)). NMFS makes comparability findings on the basis of individual commercial fishing technologies/methods. In this manner, a nation harvesting tuna in a hook-and-line fishery with minimal interactions with marine mammals may receive a comparability finding for that fishery, but might not receive such a finding for a gillnet fishery that causes serious injury and/or mortality to marine mammals in excess of U.S. standards.

In such a case, tuna from the hook-and-line fishery of that nation would be admissible but tuna from the gillnet fishery would be prohibited. NMFS would specify to CBP that tuna from the nation is prohibited by listing the harmonized tariff schedule (HTS) codes applicable to the restricted fish product and the country of origin applicable to the restriction. Entries filed with the specified combination (HTS x country) would be rejected in the CBP Automated Commercial Environment (ACE). However, if the exporter provides to the U.S. importer a COA validated by officials of the harvesting nation to document that the tuna was harvested in the hook fishery, the importer can file that information in ACE to gain entry (see: 50 CFR 216.24(h)(9)(iii)).

Similarly, the Moratorium Protection Act contains provisions to negatively certify nations for problematic activity in their fisheries (*e.g.,* illegal, unreported or unregulated fishing; excessive bycatch of protected species; unsustainable fishing for sharks) (see: 16 U.S.C. 1826j, 1826k and 50 CFR 300.202, 203, 204). Negatively certified nations are subject to trade restrictions for products harvested in the fisheries of concern. However, the statute authorizes alternative procedures to exclude fish and fish products by allowing entry on a shipment by shipment or vessel specific basis (see: 16 U.S.C. 1826j(d)(2), 16 U.S.C. 1826k(c)(4) and 50 CFR 300.207, 208, 209). In the case of trade restrictions, NMFS would notify CBP of the applicable HTS codes and country of origin, but note that the importer could submit a COA validated by the exporting nation to document that the fish was not harvested in the fishery or by the vessel subject to trade restrictions (see 50 CFR 300.207, 208, 209).

To date, NMFS has applied a COA requirement in one situation. Under MMPA authority, certain fishery products from Mexico that were harvested by specified fishing gear in the Upper Gulf of California are subject to trade restrictions (see 85 FR 13626, March 9, 2020). However, those fish products are admissible, when documented by Mexico via the COA as having been harvested in other fishing areas outside the Upper Gulf of California or with other fishing gear not subject to the import restriction. See this NMFS website for detailed information on the current trade restrictions and provisions for use of the COA to file entries: *https://www.fisheries.noaa.gov/foreign/marine-mammal-protection/seafood-import-restrictions*.

NMFS intends to revise the MMPA and Moratorium Protection Act regulations to automate the submission of COAs. This would continue to facilitate enforcement of trade restrictions while also reducing the reporting and record keeping burden on the trade community. To this end, NMFS is working with CBP to automate the process in ACE for applying fish product trade restrictions including situations when entry is allowed through use of the COA. CBP will develop functionality within the ACE portal to allow NMFS to specify trade restrictions for particular fish products harvested by and/or exported from specific nations. NMFS would also specify when those products may be entered with a COA documenting that the fish products were harvested by a method or in a location not subject to the specified trade restriction. In some instances, this will require additional information from the foreign exporter that would be filed in ACE by the U.S. importer (*e.g.,* fishing area and fishing gear).

NMFS seeks comment on the COA provisions from the trade community affected by the current MMPA trade restrictions on certain fish products from Mexico. NMFS also seeks comment from exporters, importers, and customs brokers of fish or fish products who are subject to reporting requirements at entry through the ACE portal. In addition, NMFS seeks comments from software developers who develop programs for trade community computer systems to interface with ACE.

Specific questions for which NMFS seeks include:

What are the relative differences in time and cost burden of reporting an entry that requires a COA in paper format (document image submission) relative to electronic filing of a message set that includes COA data elements? What is the impact on entry filing if the COA process is automated in ACE?

What supporting documents are available to importers and could be submitted through ACE at entry filing to validate information from the COA (*e.g.,* shipping manifest, commercial invoice)?

Currently, the COA regulations require a signature of the importer of record attesting to the contents of the shipment relative to the description of fish provided by the foreign nation exporter. This attestation can only be made post-release so a corrected entry summary is required to resubmit the COA image file with the importer signature via the ACE Document Image System (DIS). What are the cost and time burdens associated with the corrected entry summary? Are there other more efficient means by which NMFS can collect the importer attestation?

What is the time frame needed for software development and testing prior to implementing automated entry processes for products that could be admitted when filed with a COA message set or COA image files? What is the scope of programming requirements for customs brokers so that new COA entry filing software is not needed for each specific trade restriction that might be imposed (*i.e.,* adjustment for a new restriction defined by HTS code + exporting nation)?

Should NMFS seek to develop an electronic version of the COA so that a foreign exporter could enter the required information online in a NMFS system and the U.S. importer could gain secure access to the individual shipment information for the purposes of transferring that information to ACE via the entry filing process?

NMFS is also interested in any additional comments or suggestions for improving the implementation of the Certification of Admissibility provisions pursuant to regulations issued under 50 CFR parts 216 and 300.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1372(a)(2); 16 U.S.C. 1826j(d)(2); 16 U.S.C. 1826k(c)(4).

Dated: July 20, 2022.

Kimberly Damon-Randall,

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

[FR Doc. 2022–15865 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 141
Monday, July 25, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 24, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: 7 CFR part 215—Special Milk Program for Children.

OMB Control Number: 0584–0005

Summary of Collection: Section 3 of the Child Nutrition Act (CNA) (Pub. L. 89–642, as amended; 42 U.S.C. 1772) authorizes the Special Milk Program (SMP) for Children. It provides for appropriation of such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a food service program authorized under the CNA. Section 10 of the CNA requires the Secretary of Agriculture to ''prescribe such regulations as the Secretary may deem necessary to carry out this Act'' and pursuant to that provision, the Secretary has issued 7 CFR part 215 which contains the policies and procedures for the administration and operation of the SMP. For this revision, the nonprofit childcare and nursery schools, which were originally classified as State, Local, or Tribal respondents, have been reclassified as Business respondents. This reclassification, however, does not impact the reporting or recordkeeping burden for this collection, which remains unchanged from the last renewal.

Need and Use of the Information: This is a revision of the currently approved information collection. This is an ongoing collection that contains both mandatory and required to obtain or retain benefit requirements. The SMP is administered at the State, school food authority (SFA), and child care institution, such as nonprofit childcare and nursery schools, levels. In accordance with the regulations, State and local operators are required to collect information concerning the operation of the program including the submission of applications and agreements, submission and payment of claims, and the maintenance of records. Without this information FNS would not be able to reimburse schools and institutions in a timely manner to allow them to properly administer the program. In addition, data reporting would be delayed and the timely monitoring of program funding and program trends would be affected. If the recordkeeping activities were not conducted, FNS would be unable to provide adequate oversight of the SMP operators and State agencies.

Description of Respondents: State, Local, and Tribal Government and Non-Profit Institutions.

Number of Respondents: 3,499.

Frequency of Responses: Recordkeeping; Reporting: On Occasion, Monthly, and Annually.

Total Burden Hours: 13,325.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–15818 Filed 7–22–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 24, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/*

public/do/PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Cooperative State-Federal Brucellosis Eradication Program.

OMB Control Number: 0579–0047.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. Disease prevention and disease surveillance are the most effective methods for maintaining a healthy animal population and for enhancing the United States' ability to compete in the world market of animal and animal product trade. The Veterinary Services (VS) unit of the USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to protect the health of the U.S. livestock population. Brucellosis is an infectious disease of animals and humans caused by bacteria of the genus *Brucella.* The continued presence of brucellosis in a herd seriously threatens the health, welfare, and economic viability of the livestock industry. There is no economically feasible treatment for brucellosis in livestock. The Cooperative State-Federal Brucellosis Eradication Program is a national program to eliminate this serious disease of livestock. APHIS will collect information using various forms and methods.

Need and Use of the Information: APHIS will use the information collected via various forms and methods to demonstrate that program requirements are being met for State and herd status and to demonstrate that program-allowed activities, such as testing vaccinating, and movement, are being conducted in accordance with the regulations and program rules. Without the information, APHIS would not be able to conduct an effective brucellosis surveillance, control, and eradication program. Consequently, brucellosis would likely spread to areas of the United States that are currently classified free of the disease, which could have a potentially devastating effect on U.S. livestock markets and trade.

Description of Respondents: Business; State, Local or Tribal Government.

Number of Respondents: 87,974.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly.

Total Burden Hours: 247,325.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–15811 Filed 7–22–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 24, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Technical Assistance for Specialty Crops Program.

OMB Control Number: 0551–0038.

Summary of Collection: The Technical Assistance for Specialty Crops (TASC) program was authorized by Section 3205 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). Regulations governing the program appear at 7 CFR part 1487. Section 3205 provides that the Secretary of Agriculture shall establish a program to address unique barriers that prohibit or threaten the export of U.S. specialty crops. The program was reauthorized by the Agricultural Improvement Act of 2018 (section 3201), which became effective on December 20, 2018. The Foreign Agricultural Service (FAS) will administer the program for the Commodity Credit Corporation.

Need and Use of the Information: FAS collects data for fund allocation, program management, planning and evaluation. FAS will collect information from applicants desiring to receive grants under the program to determine the viability of requests for funds. The program could not be implemented without the submission of project proposals, which provide the necessary information upon which funding decisions are based.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Federal Government.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 1,250.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–15838 Filed 7–22–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–80–2022]

Approval of Subzone Status, Dantzler Trade, Inc., Toa Baja, Puerto Rico

On May 12, 2022, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Puerto Rico Industrial Development Company,

grantee of FTZ 7, requesting subzone status subject to the existing activation limit of FTZ 7, on behalf of Dantzler Trade, Inc., in Toa Baja, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 30173, May 18, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 7S was approved on July 20, 2022, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 7's 2,000-acre activation limit.

Dated: July 20, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–15849 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Amended Trade Mission Dates and Application Deadlines for the U.S. ICT and Energy Efficiency Trade Mission to the Western Balkans and Amended Conference Location for the Trade Mission to Central America in Conjunction With Trade Americas—Business Opportunities in Central America Conference

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is making amendments to the following upcoming trade missions that were previously announced and published in the **Federal Register**, including U.S. ICT and Energy Efficiency Trade Mission to the Western Balkans, originally scheduled from October 23–28, 2022, is adjusted to October 31–November 4, 2022. The application deadline is extended to September 15, 2022; and Trade Mission to Central America in Conjunction with Trade Americas—Business Opportunities in Central America Conference, the conference location has changed to San Jose, Costa Rica, from Guatemala City, Guatemala.

FOR FURTHER INFORMATION CONTACT: Delia Valdivia, Senior International Trade Specialist, U.S. Commercial Service—Los Angeles (West), CA, *delia.valdivia@trade.gov,* Tel: 310–235–7203.

SUPPLEMENTARY INFORMATION: Amendments to Revise the Trade Mission Dates and Deadlines for Submitting Applications as Applicable.

Background

U.S. ICT and Energy Efficiency Trade Mission to the Western Balkans

The International Trade Administration has determined that to allow for optimal execution of recruitment and event scheduling for the mission, the dates of the mission are postponed from October 23–28, 2022 to October 30–November 4, 2022. As a result of the shift of the event dates the application deadline is revised to September 15, 2022. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the 87 FR 15367 (March 18, 2022). The applicants selected will be notified as soon as possible. The proposed schedule is updated as follows:

PROPOSED TIMETABLE

Sunday, October 30, 2022	• Trade Mission participants arrive in Belgrade, Serbia.
Monday, October 31, 2022	• Morning briefing with U.S. Embassy officials and Ambassador Hill. • B2G meetings with President and Prime Minister. • Networking Lunch with AmCham Serbia Board of Governors. • B2G meetings with Ministry of Finance. • Reception hosted by Ambassador Hill.
Tuesday, November 1, 2022	• B2B and B2G Meetings for Mission Delegates in Serbia. • Western Balkan 6 Regional Business Plenary Event. • Regional B2B Matchmaking/Meetings. • Western Balkan 6 Regional Networking Reception.
Wednesday, November 2, 2022	• Morning flight to Podgorica, Montenegro. • Briefing with U.S. Embassy officials and Ambassador Reinke. • B2G Meetings. • Networking Lunch with AmCham Montenegro. • Government and Business Roundtable. • Reception hosted by Ambassador Reinke.
Thursday, November 3, 2022	• Senior level B2G Meetings for Mission Delegates in Podgorica. • B2B or B2G Business Roundtable Lunch. • B2B Matchmaking. • Networking B2B Reception.
Friday, November 4, 2022	• B2B and B2G Meetings. • End of Mission briefing. • Departure for the United States.

Contact

Embassy Belgrade/U.S. Commercial Service in Serbia

Rachel Duran, Senior Commercial Officer, 381117064072, *Rachel.Duran@trade.gov*

Boris Popovski, Senior Commercial Specialist, 381113064752, *Boris.Popovski@trade.gov*

Gordana Barac, Commercial Specialist, 381117064000, *Gordana.Barac@trade.gov*

Department of Commerce (Global Teams and U.S. Field)

Molly Ho, Global Technology Team Leader, U.S. Commercial Service Denver, Colorado, (303) 889–9789, *Molly.Ho@trade.gov*

Danielle Caltabiano, Global Energy Team Leader, U.S. Commercial Service Houston, Texas, (281) 228–5655, *Danielle.Caltabiano@trade.gov*

Department of Commerce HQ

Nathan Bradley, Western Balkan Desk Officer, Office of Central and Southeast Europe, (202)-482–2188, *Nathan.Bradley@trade.gov*

Kyle Johnson, Information Technologies Team Lead, Office of Health & Information Technologies, (202)-482–3013, *Kyle.Johnson@trade.gov*

Elise Reysbergen, ICT International Trade Specialist, Office of Health & Information Technologies, 202–482–3416, *Elise.Reysbergen@trade.gov*

Cary Ingram, Senior Telecommunications International Trade Specialist, Office of Health & Information Technologies, (202) 482–2872, *Cary.Ingram@trade.gov*

Andrew Moyseowicz, Senior Electric Utility Industry International Trade Specialist, Office of Energy and Environmental Industries, (202) 482–0188, *Andrew.Moyseowicz@trade.gov*

Trade Mission to Central America in Conjunction With Trade Americas—Business Opportunities in Central America Conference

It has been determined that to allow for optimal execution of recruitment and event scheduling for the mission, that the location of the mission launch is modified from Guatemala City, Guatemala to San Jose, Costa Rica. The U.S. Department of Commerce will continue to review applications submitted and make selection decisions on a rolling basis in accordance with the original Notice published at 87 FR 2130 (January 13, 2022). The U.S. Department of Commerce will continue to review applications submitted according to the deadline set at 87 FR 9317 (February 18, 2022) and make selection decisions on a rolling basis in accordance with the original Notice published at 87 FR 2130 (January 13, 2022). The applicants selected will be notified as soon as possible. The schedule for the updated mission launch location as follows*:

PROPOSED TIMETABLE

Saturday, August 20, 2022	Travel Day/Arrival in San Jose, Costa Rica. Optional Local Tour.
Sunday, August 21, 2022	San Jose, Costa Rica. Afternoon: Registration, U.S. Embassy Officer Consultations and Market Briefing. Evening: Networking Reception.
Monday, August 22, 2022	San Jose, Costa Rica. Morning: Registration and Trade Americas—Business Opportunities in Central America Conference. Afternoon: U.S. Embassy Officer Consultations and Workshops. Evening: Networking Reception.
Optional	
Tuesday–Friday, August 23–26, 2022	Travel and Business-to-Business Meetings in (choice of up to two markets): Option (A) Costa Rica. Option (B) Guatemala. Option (C) El Salvador. Option (D) Belize Option (E) Honduras. Option (F) Panama.
Saturday, August 27, 2022	Travel Day. Return to the U.S.

* **Note:** The final schedule of meetings, events, and site visits will depend on the availability of host government and business officials, specific goals of mission participants, flight availability and ground transportation options.

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2022–15857 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2020–2021; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** of July 7, 2022 in which Commerce issued the final results of the 2020–2021 administrative review of the antidumping order on certain frozen warmwater shrimp from India. This notice incorrectly spelled the name of one company listed in Appendix II.

DATES: Applicable July 25, 2022.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 7, 2022, in FR Doc 2022–14419, on page 40505, in the third column, correct the company name ''Kay Exports'' to ''Kay Kay Exports.''

Background

On July 7, 2022, Commerce published in the **Federal Register** the *Final Results.*[1] We incorrectly listed the company ''Kay Kay Exports'' as ''Kay Exports'' in Appendix II.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: July 19, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2022–15850 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 40503 (July 7, 2022) (*Final Results*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–833]

Citric Acid and Certain Citrate Salts From Thailand: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that sales of citric acid and certain citrate salts (citric acid) from Thailand have not been made at less than normal value by COFCO Biochemical (Thailand) Co., Ltd. (COFCO) or Sunshine Biotech International Co., Ltd. (Sunshine) during the period of review (POR), July 1, 2020, through June 30, 2021.

DATES: Applicable July 25, 2022.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–0012, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2021, Commerce published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results.*[2] This review covers two respondents: COFCO and Sunshine. No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results.* Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The scope of the *Order* includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.

The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of the Review

We determine that the following weighted-average dumping margins exist for the respondents for the POR, July 1, 2020, through June 30, 2021:

Exporter or producer	Weighted-average dumping margin (percent)
COFCO Biochemical (Thailand) Co., Ltd	0.00
Sunshine Biotech International Co., Ltd	0.00

Disclosure and Public Comment

As noted above, Commerce received no comments on its *Preliminary Results.* As a result, we have not modified our analysis, and will not issue a decision memorandum to accompany this **Federal Register** notice. Further, because we have not changed our calculations since the *Preliminary Results,* there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results. We are adopting the *Preliminary Results* as the final results.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the importer's sales in accordance with 19 CFR 351.212(b)(1).

Where the respondent's weighted-average dumping margin is either zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[4]

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 for estimated antidumping duties will be effective for all shipments of subject merchandise entered, or

[1] *See Citric Acid and Certain Citrate Salts from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 20820 (April 8, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Preliminary Results,* 87 FR at 20821.

[3] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Antidumping Duty Orders,* 83 FR 35214, 35215 (July 25, 2018) (*Order*).

[4] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to each company's weighted-average dumping margin established in the final results of this administrative review (except if that rate is *de minimis,* in which situation the cash deposit rate will be zero); (2) for merchandise exported by a producer or exporter not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior complete segment of this proceeding, the cash deposit rate will be the company-specific rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 11.25 percent,[5] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[5] *See Order.*

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 15, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–15847 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC178]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of determination for a Tribal Resource Management Plan.

SUMMARY: Notice is hereby given that the NMFS made a determination on the Tribal Resource Management Plan (Tribal Plan) submitted by the Northwest Indian Fisheries Commission (NWIFC) on behalf of the Northwest Indian Tribes; the submission fulfills the Tribes' obligations under the protective regulations promulgated for Puget Sound (PS) Chinook salmon, Hood Canal summer-run (HCS) chum salmon, PS steelhead, and Southern (S) eulachon under the Endangered Species Act (ESA). The Tribal Plan describes research and assessment activities that may affect listed PS Chinook salmon, HCS chum salmon, PS steelhead, and S eulachon in Washington State. The research included in the Tribal plan is intended to increase knowledge of species listed under the ESA and to help guide management and conservation efforts. NMFS completed a proposed evaluation of how well the Tribal Plan fulfills ESA criteria, and the Secretary of Commerce (Secretary) made the proposed evaluation available for public comment.

FOR FURTHER INFORMATION CONTACT: Shivonne Nesbit, Portland, OR (Ph: 503–231–6741, email: *shivonne.nesbit@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Puget Sound (PS).

Chum salmon (*O. keta*): Threatened Hood Canal Summer-run (HCS).

Steelhead (*O. mykiss*): Threatened (PS).

Eulachon (*Thaleichthys pacificus*): Threatened southern distinct population segment (SDPS).

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) rule (70 FR 37160; June 28, 2005) states that the ESA section 9 take prohibitions do not apply to Tribal Plans that will not appreciably reduce the likelihood of survival and recovery for the listed species.

Summary of Comments Received

NMFS published notice of its proposed evaluation on the Tribal Plan April 11, 2022 (84 FR 33062). The proposed evaluation was available for public review and comment for 30 days. No comments were received.

The Tribal Plan

The NWIFC—through the Bureau of Indian Affairs and on behalf of the Northwest Indian Tribes—submitted a Tribal Plan for scientific research and assessment activities within the range of the PS Chinook salmon, HCS chum salmon, PS steelhead, and SDPS eulachon. The Northwest Indian Tribes conduct, independently and in cooperation with other agencies, a variety of research and assessment projects. These projects provide the technical basis for managing fisheries and conserving and restoring salmon stocks and their habitat. The need for an improved understanding of salmonid survival in the freshwater and early marine life stages drives much of the current research. The Tribal Plan includes implementation, monitoring, and evaluation procedures designed to ensure that the research is consistent with the objectives of the ESA. The research activities described in the Tribal Plan would take place over a 5 year period starting in 2022.

As 50 CFR 223.209 requires, the Secretary must determine whether the activities proposed in the Tribal Plan would appreciably reduce the likelihood of survival and recovery for PS Chinook salmon, HCS chum salmon, PS steelhead, and SDPS eulachon. NMFS' final determination is that the Tribal Plan will not appreciably reduce the listed species' likelihood of survival

and recovery. This determination is consistent with NMFS' obligation to conserve listed species under the ESA and to meet trust obligations to Indian Tribes. The Tribal Plan would sufficiently conserve the listed species and therefore take prohibitions would not apply to the research activities governed by the Tribal Plan.

Dated: July 20, 2022.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–15861 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC115]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to New England Wind, Phase 1 Park City Wind Marine Site Characterization Surveys

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

ACTION: Notice; Issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Park City Wind, LLC (Park City Wind) to incidentally harass marine mammals during marine site characterization surveys offshore of Massachusetts south through Long Island, New York.

DATES: This Authorization is effective from September 1, 2022 through August 31, 2023.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, 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/action/incidental-take-authorization-park-city-wind-llc-new-england-wind-project-phase-1-marine.* 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.

Summary of Request

On December 17, 2021, NMFS received a request from Park City Wind for an IHA to take marine mammals incidental to marine site characterization surveys in waters offshore of Massachusetts south through Long Island, New York. The application was deemed adequate and complete on March 25, 2022. On May 27 2022, NMFS published a proposed IHA for public comment (87 FR 32123). Park City Wind's request is for take of 16 species of marine mammals, by Level B harassment only. Neither Park City Wind nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Planned Activity

Overview

Park City Wind surveys are phase 1 of the New England Wind project located in the BOEM Lease Area OCS–A0534. The New England Wind project is comprised of Phase 1 Park City Wind and Phase 2 Commonwealth Wind (CW), along with associated offshore and onshore cabling, onshore substations, and onshore operations and maintenance (O&M) facilities (Figure1). Phase 2 is not part of this application. As part of its overall marine site characterization survey operations, Park City Wind plans to conduct high-resolution geophysical (HRG) surveys in the Lease Area.

The purpose of the marine site characterization surveys are to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of a planned offshore wind facility development area. Underwater sound resulting from Park City Wind's planned site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

Park City Wind anticipates that HRG survey activities will occur on approximately 636 ''vessel days,'' with an assumed daily survey distance of 80 km per vessel. This schedule is based on up to 24-hour operations. Each day that a vessel surveys up to approximately 80 kilometers (km) within 24 hours will count as a single survey day, *e.g.,* two survey vessels operating on the same day will count as two survey days. The use of concurrently surveying vessels will facilitate completion of all 636 vessel days within one year. Park City Wind plans to begin survey activities upon receipt of an IHA and continue for up to one year (though the actual duration will likely be shorter, because Park City Wind intends to use up to 3 vessels concurrently). Park City Wind and NMFS calculated the number of active sound source days by dividing the total survey trackline (50,880 km) by the approximate survey distance per day (80 km) anticipated to be achieved.

Specific Geographic Region

HRG survey activities are planned to occur in both Federal offshore waters (including Lease Area OCS–A 0534) and along potential offshore export cable corridors (OECC) in both Federal and State nearshore waters of Massachusetts, Rhode Island, Connecticut, and New York. The planned survey will be active within the area illustrated in Figure 1. Water depths in the lease area range from about 35 to 60 meters (m) (115 to 197 feet (ft)). Water depths along the

potential OECCs range from 2.5 m to >35 m (8 to >115 ft).

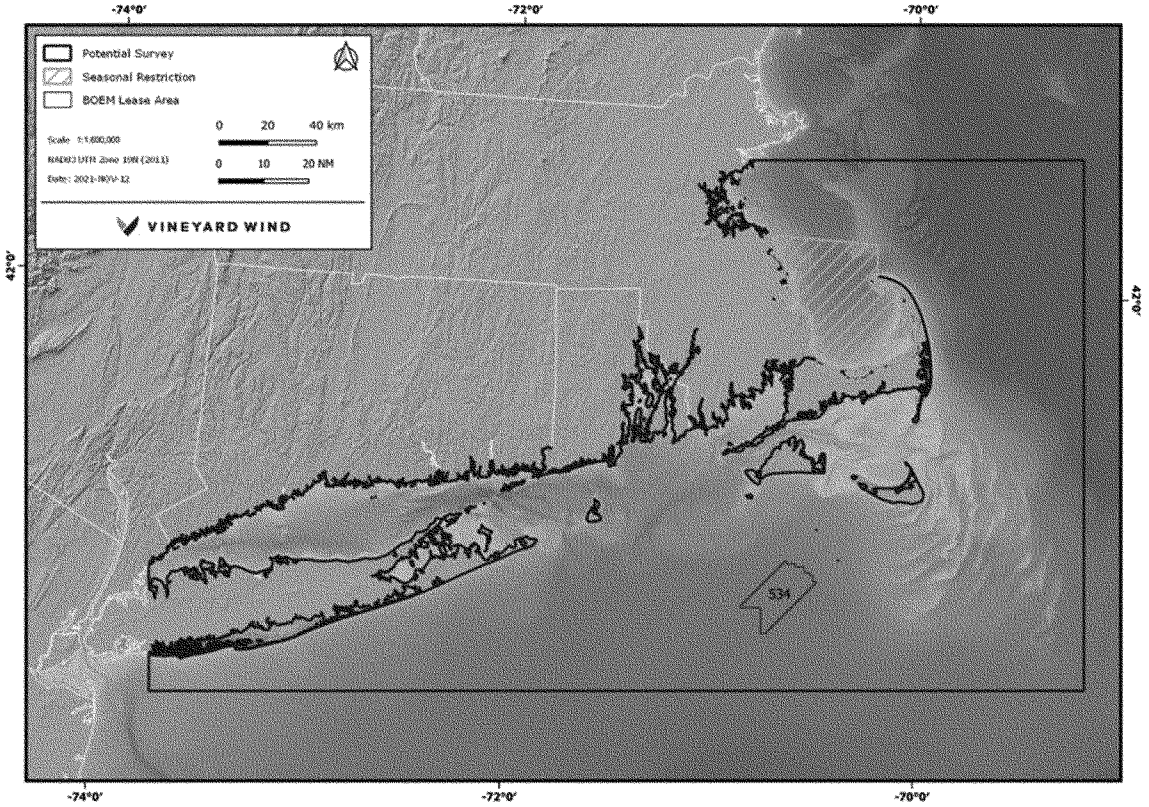

Figure 1 –HRG survey area.

Detailed Description of Specific Activity

Park City Wind plans to conduct HRG survey operations, which may include single and multibeam depth sounding, seafloor imaging, and shallow and medium penetration sub-bottom profiling. The HRG surveys may be conducted using any or all of the following equipment types: side scan sonar, multibeam echosounder, magnetometers and gradiometers, parametric sub-bottom profiler (SBP), compressed high intensity radar pulse (CHIRP) SBP, boomers, or sparkers. Vessels will generally conduct survey effort at a transit speed of approximately 4 knots (kn; 2.1 meters per sec, m/s), which equates to 110 km per 24-hr period. However, based on past survey experience (*i.e.,* knowledge of typical daily downtime due to weather, system malfunctions, etc.), Park City Wind assumes 80 km as the average distance surveyed per 24 hours. On this basis (and as mentioned previously), a total of 636 survey days are expected.

To facilitate completion of all 636 survey days across the survey area within one year, Park City Wind plans to use multiple vessels to acquire the HRG survey data. Up to three HRG vessels are planned to operate concurrently within the survey area. HRG survey activities will be conducted by vessels that can accomplish the survey goals in specific survey areas. Each vessel will maintain both the required course and a survey speed required to cover approximately 80 km (43 nm) per day during line acquisition, with consideration to weather delays, equipment maintenance, and crew availability.

Acoustic sources planned for use during the HRG survey activities include the following (operating frequencies are presented in hertz (Hz) and kilohertz (kHz):

- Shallow penetration non-impulsive, non-parametric sub-bottom profilers (*i.e.,* CHIRP SBPs) are used to map the near-surface stratigraphy (top 0 to 5 m (0 to 16 feet (ft))) of sediment below seabed). A CHIRP system emits sonar pulses that increase in frequency from about 2 to 20 kHz over time. The frequency range can be adjusted to meet project variables. Rather than being towed, these sources are typically mounted on a pole or the hull of the vessel, reducing the likelihood that an animal will be exposed to the signal; and,
- Medium penetration, impulsive sources (*i.e.,* boomers and sparker) are used to map deeper subsurface stratigraphy. A boomer is a broadband source operating in the 3.5 Hz to 10 kHz frequency range. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz that can penetrate several hundred meters into the seafloor. These sources are typically towed behind the vessel.

Operation of the following survey equipment types is not expected to present reasonable risk of marine mammal take, and will not be discussed further beyond the brief summaries provided below.

- Non-impulsive, parametric SBPs are used for providing high density data in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–100 kHz). The narrow beamwidth

significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater. These sources are typically mounted on the hull of the vessel or deployed from a side pole rather than towed behind the vessel.

- Ultra-short baseline (USBL) positioning systems are used to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and a transponder (or beacon) necessary to produce the acoustic profile. It is a two-component system with a pole-mounted transceiver and one or several transponders mounted on other survey equipment. USBLs are expected to produce extremely small acoustic propagation distances in their typical operating configuration.
- Single and Multibeam echosounders (MBESs) are used to determine water depths and general bottom topography. The MBESs all have operating frequencies > 180 kHz and are therefore outside the general hearing range of marine mammals.
- Side scan sonar (SSS) is used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The SSSs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals.

HRG survey activities will occur in discrete segments corresponding to the following general areas:

- Lease Area OCS–A 0534—Inclusive of potential wind turbine generator (WTG) locations, electrical service platform (ESP) location(s), and inter-array cable corridors; and
- OECC route—One or more potential OECC routes through Federal and State waters located within the Potential Survey Area from northern Massachusetts to Long Island as shown in Figure 1.

The maximum survey area has been selected to provide operational flexibility and to cover the possibility of multiple landfall locations associated with the OECC. Track line spacing for HRG survey activities will align with BOEM Guidelines for Providing Archaeological and Historic Property Information pursuant to 30 CFR part 585 (March 2017) and for Providing Geophysical, Geotechnical, and Geohazard Information pursuant to 30 CFR part 585 (July 2015) (BOEM 2015). Surveys are planned to support standard geophysical, geotechnical, and geohazard investigations as well as potential unexploded ordnance (UXO) and benthic habitat studies.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

Equipment	System	Frequency (kHz)	Beam width (°)	Pulse duration (ms)	Repetition rate (Hz)	In-Beam		Correction (dB)	Out-of-Beam	
						Source level (dB re 1 µPa m)	Peak source level (dB re 1 µPa m)		Source level (dB re 1 µPa m)	Peak source level (dB re 1 µPa m)
Shallow subbottom profiler.	EdgeTech Chirp 216	2–16	65	2	3.75	178	182	−8.1	169.9	173.9
Deep seismic profiler	Applied Acoustics AA251 Boomer.	0.2–15	180	0.8	2	205	212	0.0	205.0	212.0
	GeoMarine Geo Spark 2000 (400 tip).	0.05–3	180	3.4	1	203	213	0.0	203.0	213.0

Note: Edge Tech Chirp 512i used as proxy source for Edge Tech 216, as Chirp 512i has similar operation settings as Chirp 216. SIG ELC 820 Sparker used as proxy for GeoMarine Geo Spark 2000 (400 tip), as SIG ELC 820 has similar operation settings as Geo Spark 2000. See Crocker and Fratantonio (2016) and Appendix A of Park City Wind's application for more information.
dB—decibel, RMS—Root mean square, 1 µPa—1 microPascal.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Park City Wind was published in the **Federal Register** on May 27, 2022 (87 FR 32123). That notice described, in detail, Park City Wind's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

NMFS received letters from two environmental non-governmental organizations (eNGOs) (Oceana, Inc. and Clean Ocean Action (COA)). All comments, and NMFS' responses, are provided below, and the letters are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-park-city-wind-llc-new-england-wind-project-phase-1-marine*). Please review the letters for full details regarding the comments and underlying justification.

Comment 1: Oceana objects to NMFS' renewal process regarding the extension of any one-year IHA with a truncated 15-day public comment period, and suggested an additional 30-day public comment period is necessary for any renewal request. In addition, they state that IHA renewal must be sure to use the most recent and best available science.

Response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464; October 2, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

In particular, we emphasize that any Renewal IHA does ultimately have a 30-day public comment period, and in fact, each Renewal IHA is made available for a total 45-day public comment period. The notice of the proposed IHA published in the **Federal Register** on May 27, 2022 (87 FR 32123) made clear that NMFS was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey. As detailed in the **Federal Register** notice for the proposed IHA and on the

agency's website, any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA. NMFS' analysis of the anticipated impacts on marine mammals caused by the applicant's activities covers both the Initial IHA period and the possibility of a one-year renewal. Therefore a member of the public considering commenting on a proposed Initial IHA also knows exactly what activities (or subset of activities) would be included in a proposed Renewal IHA, the potential impacts of those activities, the maximum amount and type of take that could be caused by those activities, the mitigation and monitoring measures that would be required, and the basis for the agency's negligible impact determinations, least practicable adverse impact findings, small numbers findings, and (if applicable) the no unmitigable adverse impact on subsistence use finding—all the information needed to provide complete and meaningful comments on a possible renewal at the time of considering the proposed Initial IHA. Reviewers have the information needed to meaningfully comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period, which includes NMFS' direct notice to anyone who commented on the proposed Initial IHA, provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'', as Congress intended.

In reference to Oceana's comment requiring the renewal process use most recent and best available science, see comment 2 for further discussion on NMFS use of most recent and best available science.

Comment 2: Oceana stated that NMFS must utilize the best available science, and suggested that NMFS has not done so, specifically referencing information regarding the North Atlantic right whale (NARW) such as updated population estimates, habitat usage in the survey area, and seasonality information. Oceana specifically asserted that NMFS is a steward of the remaining NARWs that swim along our coasts and, as the agency responsible for their recovery, should ensure that the authorization is based on the best scientific information available and that strong protections are in place before approving this or any proposed activity that may take, harass, or cause stress to NARWs.

Response: NMFS agrees that the best available science should be used for assessing NARW when analyzing whether or not to authorize incidental takes. NMFS considered the best available science regarding both recent habitat usage patterns for the study area and up-to-date seasonality information in the notice of the proposed IHA, including consideration of existing BIAs and densities provided by Roberts *et al.* (2021). While the commenter has suggested that NMFS consider best available information for recent habitat usage patterns and seasonality, it has not offered any additional information which it suggests should be considered best available information in place of what NMFS considered in its notice of proposed IHA (87 FR 32123; May 27, 2022).

Lastly, as we stated in the notice of proposed IHA (87 FR 32123; May 27, 2022), any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area compared to the overall migratory route leading to foraging habitat (which is not affected by the specified activity). Comparatively, the survey area is small (approximately 18,177 km^2 total area) compared to the size of the NARW migratory BIA (269,448 km^2). Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 3: Oceana noted that chronic stressors are an emerging concern for NARW conservation and recovery, and stated that chronic stress may result in energetic effects for NARWs. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of NARWs, as disturbance responses in NARWs could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

Response: NMFS agrees with Oceana that both acute and chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, *etc.* impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking.

However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Park City Wind will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARW, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the

potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS' negligible impact analyses. Because NARWs generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor compared with the survey area (the overlap between the BIA and the proposed survey area will cover approximately 18,177 km² total area of the 269,448 km² BIA). Thus, the transitory nature of NARWs at this location means it is unlikely for any exposure to cause chronic effects, as Park City Wind's planned survey area and ensonified zones are much smaller than the overall migratory corridor. As such, NMFS does not expect acute or cumulative stress to be a detrimental factor to NARWs from Park City Wind's described survey activities.

Comment 4: Oceana and COA asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and NARWs in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for a separate ''cumulative effects'' analysis of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Park City Wind was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated that (1) we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) reasonably foreseeable cumulative effects would also be considered under section 7 of the Endangered Species Act (ESA) for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island. Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Park City Wind have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Park City Wind's IHA, which included consideration of extraordinary circumstances.

For ESA-listed species, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562; July 7, 2017, 85 FR 21198; April 16, 2020 and 86 FR 26465; May 10, 2021), which are similar to those planned by Park City Wind under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually *and* cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this Biological Opinion remains valid.

Comment 5: Oceana suggests that Protected Species Observers (PSOs) complement their survey efforts using additional technologies, such as infrared detection devices when in low-light conditions.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to utilize a thermal (infrared) device during low-light conditions was included in the proposed **Federal Register** notice. That requirement is included as a requirement of the issued IHA.

Comment 6: Oceana recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 kn (5.14 m/s) at all times with no exceptions due to the risk of vessel strikes to NARWs and other large whales.

Response: While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Park City Wind's activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. The required mitigation measures, all of which were included in the proposed IHA and are now required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any Seasonal Management Area (SMA), Dynamic Management Area (DMA) or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement

that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn (18.5 km/hr) or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the vessel strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys for which IHAs were issued from NMFS during the survey activities themselves or while transiting to and from survey sites.

Comment 7: Oceana suggests that NMFS require vessels to maintain a separation distance of at least 500 m from NARW at all times.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m from NARWs at all times was included in the proposed **Federal Register** notice and was included as a requirement in the issued IHA.

Comment 8: Oceana recommended that the IHA should require all vessels supporting site characterization be equipped with and use Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

Response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and use Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, those activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by Park City Wind, with the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 9: Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

Response: NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of Park City Wind, the vessel operators, the lead PSO, and any other relevant designees of Park City Wind operating under the authority of this IHA. The IHA also states that Park City Wind must ensure that the vessel operator and other relevant vessel personnel, including the Protected Species Observer (PSO) team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 10: Oceana stated that the IHA must include a requirement for all phases of the site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies. Oceana recommended requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

Response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that address Oceana's recommendations. Park City Wind is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. This final monitoring report is then made available to the public on NMFS website.

Further, the draft IHA and final IHA stipulate that if a NARW is observed at any time by any survey vessels, during surveys or during vessel transit, Park City Wind must immediately report sighting information to the NMFS NARW Sighting Advisory System within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. Park City Wind may also report the sighting to the U.S. Coast Guard. Additionally, Park City Wind must report any discoveries of injured or dead marine mammals to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. This includes entangled animals. All reports and associated data submitted to NMFS are included on the website for public inspection.

Comment 11: Oceana recommends a shutdown requirement if a NARW or other ESA-listed species is detected in the clearance zone as well as a publicly available explanation of any exemptions as to why the applicant would not be able to shut down in these situations.

Response: There are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (87 FR 32123; May 27, 2022), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Exclusion Zone while geophysical survey equipment is operational. Oceana mentions an exemption to the shutdown for human safety, however,

there is no exemption for the shutdown requirement for NARW, ESA-listed species, or any other species.

Park City Wind is required to implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within an clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species). If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones.

In regards to reporting, Park City Wind must notify NMFS if a NARW is observed at any time by any survey vessels during surveys or during vessel transit. Additionally, Park City Wind is required to report the relevant survey activity information, such as such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. We note that if a NARW is detected within the Exclusion Zone before a shutdown is implemented, the NARW and its distance from the sound source, including if it is within the Level B harassment zone, would be reported in Park City Wind's final monitoring report and made publicly available on NMFS' website. Park City Wind is required to immediately notify NMFS of any sightings of NARWs and report upon survey activity information. NMFS believes that these requirements address the commenter's concerns.

Comment 12: Oceana recommended that when HRG surveys are allowed to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

Response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (87 FR 32123; May 27, 2022) and this final IHA a stipulation that when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. Operators should ramp up sources to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period must occur prior to the start of ramp-up (or initiation of source use if ramp-up is not technically feasible). NMFS notes that ramp-up is not required for short periods where acoustic sources were shut down (*i.e.,* less than 30 minutes) if PSOs have maintained constant visual observation and no detections of marine mammals occurred within the applicable Exclusion Zones.

Comment 13: Oceana recommended increasing the Exclusion Zone to 1,000m for NARWs with requirements for HRG survey vessels to use PSOs and Passive Acoustic Monitoring (PAM) to establish and monitor these zones.

Response: NMFS notes that the 500 m Exclusion Zone for NARWs exceeds the modeled distance to the largest 160 dB Level B harassment isopleth (178 m during sparker use) by a conservative margin to be extra cautious. Commenters do not provide a compelling rationale for why the Exclusion Zone should be even larger. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a precautionary NARW Exclusion Zone that is larger (500 m) than the conservatively estimated largest harassment zone (178 m), NMFS has determined that the Exclusion Zone is appropriate.

Regarding the use of acoustic monitoring to implement the exclusion zones, NMFS does not anticipate that acoustic monitoring would be effective for a variety of reasons discussed below and therefore has not required it in this IHA. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

The commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes, nor does NMFS agree that this measure is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 µPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.* 2012; McKenna *et al.* 2012; Rolland *et al.* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 178 m); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species

vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for NARWs and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. NMFS has previously provided discussions on why PAM isn't a required monitoring measure during HRG survey IHAs in past **Federal Register** notices (see 86 FR 21289, April 22, 2021 and 87 FR 13975, March 11, 2022 for examples).

Comment 14: Oceana states that the IHA must include conditions for the survey activities that will avoid adverse effects on NARWs in and around the survey site and minimize and mitigate the effects that cannot be avoided.

Response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks, and NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on NARWs in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals.

Comment 15: COA is concerned regarding the number of species that could be impacted by the activities, as well as a lack of baseline data being available for harbor seals in the area. In addition, COA has stated that NMFS did not adequately account for the severity of effects of activities on common dolphins.

Response: We appreciate the concern expressed by COA. NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. Based on information found in the scientific literature, as well as based on density models developed by Duke University, all marine mammal species included in the proposed **Federal Register** notice have some likelihood of occurring in Park City Winds' survey areas. Furthermore, the MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future.

Regarding the lack of baseline information cited by COA, with specific concern pointed out for harbor seals, NMFS doesn't expect this activity to have any impacts on animals in New Jersey waters, as Park City Wind's survey activities are not located off of New Jersey.

Comment 16: COA asserts that Level A harassment may occur, and that this was not accounted for in the proposed Notice.

Response: NMFS acknowledges the concerns brought up by the commenters regarding the potential for Level A harassment of NARW. However, no Level A harassment is expected to result, even in the absence of mitigation, given the characteristics of the sources planned for use. This is additionally supported by the required mitigation and very small estimated Level A harassment zones described in NMFS's **Federal Register** notice (87 FR 32123, May 27, 2022). Furthermore, the commenters do not provide any support for the apparent contention that Level A harassment is a potential outcome of these activities. As discussed in the notice of proposed IHA, NMFS considers this category of survey operations to be near de minimis, with the potential for Level A harassment for NARW and any species to be discountable.

Comment 17: COA does not agree with NMFS' negligible impact determination for NARWs and states that NMFS provides an inaccurate characterization of impacts to NARW.

Response: NMFS disagrees with the COA's position regarding the negligible impact analysis, and they do not provide a reasoned basis for finding that the effects of the specified activity would be greater than negligible on NARW. The Negligible Impact Analysis and Determination section of the proposed IHA (87 FR 32123) provides a detailed qualitative discussion supporting NMFS' determination that any anticipated impacts from this action would be negligible. The section contains a number of factors that were considered by NMFS based on the best available scientific data and why we concluded that impacts resulting from the specified activity are not reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

With specific regard to NARW, we note that take is authorized for only a very small percentage of the right whale population (see Table 5). However, the numbers of potential incidents of take or animals taken are only part of an assessment and are not, alone, decisively indicative of the degree of impact. In order to adequately evaluate the effects of noise exposure at the population level, the total number of take incidents must be further interpreted in context of relevant biological and population parameters and other biological, environmental, and anthropogenic factors and in a spatially and temporally explicit manner. The effects to individuals of a ''take'' are not necessarily equal. Some take events represent exposures that only just exceed a Level B harassment threshold, which would be expected to result in lower-level impacts, while other exposures occur at higher received levels and would typically be expected to have comparatively greater potential impacts on an individual. Further, responses to similar received levels may result in significantly different impacts on an individual dependent upon the context of the exposure or the status of the individuals (*e.g.,* if it occurred in an area and time where concentrated feeding was occurring, or to individuals weakened by other effects). In this case, NMFS reiterates that no such higher level takes are expected to occur. The maximum anticipated Level B harassment zone is 178 m, a distance smaller than the precautionary shutdown zone of 500 m. To the extent that any exposure of NARW does occur, it would be expected to result in lower-level impacts that are unlikely to result in significant or long-lasting impacts to the exposed individual and, given the relatively small amount of exposures expected to occur, it is unlikely that these exposures would result in population-level impacts. NMFS

acknowledges that impacts of a similar degree on a proportion of the individuals in a stock may have differing impacts to the stock based on its status, *i.e.,* smaller stocks may be less able to absorb deaths or reproductive suppression and maintain similar growth rates as larger stocks. However, even given the precarious status of the NARW, the low-level nature of the impacts expected to occur from this action and the small number of individuals affected supports NMFS' determination that population-level impacts will not occur. The commenters provide no substantive reasoning to contradict this finding, and do not support their assertions of effects greater than NMFS has assumed may occur.

Comment 18: COA asserted that NMFS is overestimating the population abundance for NARW.

Response: NMFS agrees that the most up to date population estimate should be used for assessing NARW abundance estimates. The revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding NARW, including the information cited by the commenters. However, NMFS relies on the SAR. Recently, NMFS updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*), as COA mentioned. We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change the estimated take of North Atlantic right whales or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Park City Wind's survey activities.

NMFS further notes that the MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS' determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model.

Lastly, as we stated previously and in the notice of proposed IHA (87 FR 32123; May 27, 2022), any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area compared to the overall migratory route and foraging habitat (which is not affected by the specified activity). The survey area is small (approximately 18,177 km^2 total area) compared to the size of the NARW migratory BIA (269,448 km^2). Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 19: Oceana states that Park City Wind's activities will increase vessel traffic in and around the project area and that the IHA must include a vessel traffic plan to minimize the effects of increased vessel traffic.

Response: NMFS disagrees with Oceana's statement that the IHA must require a vessel traffic plan. During HRG surveys there are no service vessels required. NMFS agrees that a vessel plan may be potentially appropriate for project construction, but it is not needed for marine site characterization surveys.

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. NMFS fully considered all of this information, and we refer the reader to those descriptions, incorporated here by reference. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *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' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and will be authorized for this activity, 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. 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' SARs). While no serious injury or 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' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock's range. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the draft 2021 SARs (Hayes *et al.,* 2021), available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

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 Balaenidae:						
North Atlantic right whale [4]	*Eubalaena glacialis*	Western North Atlantic (WNA)	E/D; Y	368 (0; 364; 2019)	0.7	7.7
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,393 (0.15; 1,375; 2016)	22	58
Fin whale	*Balaenoptera physalus*	WNA	E/D; Y	6,802 (0.24; 5,573; 2016)	11	2.35
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016)	6.2	1.2
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Blue whale	*Balaenoptera musculus*	WNA	E/D; Y	Unknown (unknown; 402; 2019).	0.8	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D; Y	4,349 (0.28;3,451; 2016)	3.9	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	WNA	-/-; N	39,215 (0.30; 30,627; 2016)	306	29
Short finned pilot whale	*Globicephala macrorhynchus*	WNA	-/-; N	28,924 (0.24; 23,637; 2016)	236	136
Bottlenose dolphin	*Tursiops truncatus*	WNA Offshore	-/-; N	62,851 (0.23; 51,914; 2016)	519	28
		WNA Northern Migratory Coastal.	-/D;Y	6,639 (0.41, 4,759, 2016)	48	12.2–21.5
Common dolphin	*Delphinus delphis*	WNA	-/-; N	172,974 (0.21; 145,216; 2016).	1,452	390
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	WNA	-/-; N	93,233 (0.71; 54,443; 2016)	544	27
Atlantic spotted dolphin	*Stenella frontalis*	WNA	-/-; N	39,921 (0.27; 32,032; 2016)	320	0
Risso's dolphin	*Grampus griseus*	WNA	-/-; N	35,215 (0.19; 30,051; 2016)	303	54.3
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [5]	*Halichoerus grypus*	WNA	-/-; N	27,300 (0.22; 22,785, 2029)	1,458	4,453
Harbor seal	*Phoca vitulina*	WNA	-/-; N	61,336 (0.08; 57,637, 2020)	1,729	339

[1] 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 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.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

[5] NMFS' gray seal stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 450,000. The annual M/SI value given is for the total stock.

A detailed description of the species likely to be affected by Park City Wind's activities, including information regarding population trends and threats, and local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 32123, May 27, 2022). Since that time, we are not aware of any changes in the status of these species and stocks or other relevant new information; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for those descriptions.

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. 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, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). 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. Sixteen marine mammal species (14 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the survey activities. Please refer to Table 2. Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seven are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the deployed acoustic sources have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHA (87 FR 32123; May 27, 2022) included a discussion of the effects of anthropogenic noise, ship strike, stress, and potential impacts on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice for that information.

Estimated Take

This section provides the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

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 will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* pre-start clearance and shutdown measures), discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

For acoustic impacts, 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 factors can contribute to a basic calculation to provide an initial prediction of potential 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 take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur Permanent Threshold Shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—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 or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 µPa (rms) for the impulsive sources (*i.e.,* boomers, sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRP SBPs) evaluated here for Park City Wind's planned activity.

Level A harassment—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). For more information, see NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Park City Wind's planned activity includes the use of impulsive (*i.e.,* sparkers and boomers) and non-impulsive (*e.g.,* CHIRP SBP) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources planned for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Park City Wind's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. Maximum estimated Level A harassment isopleths were less than 4 m for all sources and hearing groups with the exception of an estimated 53 m zone calculated for high-frequency cetaceans during use of the Boomer, respectively. Park City Wind did not request authorization of take by Level A harassment, and no take by Level A harassment is authorized by NMFS.

Ensonified Area

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the surveys and the source parameters associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Park City Wind that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics AA251 Boomer will produce the largest Level B harassment isopleth (178 m). Estimated Level B harassment isopleths for all sources evaluated here are provided in Table 4. Although Park City Wind does not expect to use the AA251 Boomer source on all planned survey days, it assumes, for purposes of analysis, that the boomer sources will be used on all survey days and across all hours within a given survey day. This is a conservative approach, as the actual sources used on individual survey days, or during a portion of a survey day, may produce smaller distances to the Level B harassment isopleth.

TABLE 4—DISTANCES TO LEVEL B HARASSMENT THRESHOLD

[160 dB rms]

Equipment	System	Frequency (kHz)	Beam width (°)	Source level (dB re 1 μPa m)	Level B harassment horizontal impact distance (m)
Shallow subbottom profiler	EdgeTech Chirp 216	2–16	65	178	4
Deep seismic profiler	Applied Acoustics AA251 Boomer	0.2–15	180	205	178
	GeoMarine Geo Spark 2000 (400 tip).	0.05–3	180	203	141

Marine Mammal Occurrence

In this section, NMFS provides information about the presence, density, or group dynamics of marine mammals that informs the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2021) represent the best available information regarding marine mammal densities in the survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018, 2021) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *seamap.env.duke.edu/models/Duke-EC/.*

Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016, 2017, 2018, 2021). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys. Those data provide abundance estimates for species or species guilds within 10 km x 10 km grid cells (100 km^2), or in the case of NARW densities within 5 km x 5 km grid cells, on a monthly or annual basis, depending on the species. Using geographic information system (GIS) (ESRI 2017), the survey area and the NARW SMA polygons were used to select grid cells from the Roberts *et al.* (2016; 2017; 2018; 2021) data that contain the most recent monthly or annual estimates for each species for the

months of May through December. For the months of January through April, only the survey area polygon was used to select density grid cells since it excludes waters within Cape Cod Bay where no surveys will occur from January 1 through May 15. The average monthly abundance for each species was calculated as the mean value of all grid cells within the survey area and then converted to density (individuals/km^2) by dividing by 100 km^2. Finally, an average annual density was calculated by taking the mean across all 12 months for each species (see Table 8 of the application).

The estimated monthly density of seals provided in Roberts *et al.* (2018) includes all seal species present in the region as a single guild. To split the resulting ''seal'' density-based exposure estimate by species, the estimate was multiplied by the proportion of the combined abundance attributable to each species. Specifically, the SAR abundance estimates (Hayes *et al.* 2021) were summed for the two species (gray seal = 27,300, harbor seal = 61,336; total = 88,636) and the total divided by the estimate for each species to get the proportion of the total for each species (gray seal = 0.308; harbor seal = 0.692). The total estimated exposure from the ''seal'' density provide by Roberts *et al.* (2018) was then multiplied by these proportions to get the species specific exposure estimates.

Densities from each of the selected density blocks were averaged for each month available to provide monthly density estimates for each species (when available based on the temporal resolution of the model products), along with the average annual density. Please see Tables 8 and 9 of Park City Wind's application for density values used in the exposure estimation process. Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated (see Table 10 of the application).

Take Calculation Estimation

Here NMFS describes how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that will result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 178 m distance associated with the boomer) to the Level B harassment criterion and the estimated trackline distance traveled per day by a given survey vessel (*i.e.,* 80 km) was used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel. This distance was multiplied by two times the average daily survey distance (80 km) and the area of a circle with radius 178 m was added to the result to calculate the daily ZOI (28.6 km^2). The daily ZOI was then multiplied by the total number of expected survey days (636) to estimate the total ZOI for the surveys (18,177 km^2).

Potential Level B harassment exposures are estimated by multiplying the average annual density of each species within either the Lease Area or potential ECR area by the total ZOI for the planned surveys. Those results are shown in Table 5.

The larger of the two estimates from the approaches described above: density-based exposure estimates or mean group size was then selected as the authorized take as shown in Table 5. In cases where the calculations resulted in a non-integer, the result was rounded up to the nearest whole number since it is not logical to request a partial take. Additionally, based on observational data collected during prior HRG surveys in this area, the density of common dolphins predicted by the Roberts *et al.* (2018) model does not appear to adequately reflect the number of dolphins that may be encountered during the planned surveys. Data collected by PSOs on survey vessels operating in 2020–2021 showed an average of approximately 16 common dolphins may be observed within 200 m of a vessel (the approximate Level B harassment distance) per survey day. Multiplying the anticipated 636 survey days by 16 common dolphins per day results in a potential estimated take of 10,176 common dolphins so this has been used as the requested take of common dolphins shown in Table 5.

For the ''seal'' guild in the Roberts *et al.* (2018) densities, the exposure estimate was split by species using the relative abundance for the two species to produce the species-specific requested take.

For Bottlenose dolphins, the offshore morphotype inhabits the outer continental slope and shelf edge regions from Georges Bank to the Florida Keys, while the coastal morphotype is continuously distributed along the Atlantic Coast from south of New York to the Florida Peninsula (Hayes *et al.* 2020)). Offshore common bottlenose dolphin sightings occur from Cape Hatteras to the eastern end of Georges Bank (Kenney 1990). The western North Atlantic offshore stock is distributed primarily along the OCS and continental slope, from Georges Bank to Cape Hatteras during spring and summer (CeTAP 1982). Bottlenose dolphins encountered in the survey area will likely belong to the Western North Atlantic Offshore stock, so all takes are being requested from this stock. However, it is possible that a few animals encountered during the surveys could be from the North Atlantic Northern Migratory Coastal stock, but chance of occurrence is low, and no take from this species is authorized. Similarly, based on the distributions described in Hayes *et al.* (2020, 2021b), pilot whale sightings in the Lease Area will most likely be long-finned pilot whales, so all pilot whale takes being requested are for long-finned pilot whales.

For NARWs, the implementation of a 500 m acoustic shutdown zone and the 500 m vessel separation distance identified in the vessel strike avoidance measures means that the likelihood of an exposure to received sound levels greater than 160 dB SPLrms is very low. As a precautionary measure, takes by Level B harassment are requested for the survey.

TABLE 5—TAKES BY LEVEL B HARASSMENT AND PERCENTAGES OF EACH SPECIES OR STOCK ABUNDANCE

Taxonomic group	Common name	Stock (NEST) [a]	Density based exposures	Mean group size	Take by Level B harassment	Percent of stock
Cetacean (Mysticete)	NARW	Western Atlantic Stock (368)	29	2.4	30	8.2.
	Blue whale	Western North Atlantic Stock (402).	0	1.0	1	Less than 1 percent.
	Fin whale	Western North Atlantic Stock (6,802).	59	1.8	60	Less than 1 percent.
	Sei whale	Nova Scotia Stock (6,292)	5	1.6	5	Less than 1 percent.
	Minke whale	Canadian East Coastal Stock (21,968).	37	1.2	37	Less than 1 percent.

TABLE 5—TAKES BY LEVEL B HARASSMENT AND PERCENTAGES OF EACH SPECIES OR STOCK ABUNDANCE—Continued

Taxonomic group	Common name	Stock (NEST) [a]	Density based exposures	Mean group size	Take by Level B harassment	Percent of stock
	Humpback whale	West Indies DPS (1,396)	45	2.0	46	3.3.
Cetacean (Odontocete)	Sperm whale	North Atlantic Stock (4,349)	2	1.5	5	Less than 1 percent.
	Atlantic white-sided dolphin	Western North Atlantic Stock (93,233).	1,014	27.9	1,014	Less than 2 percent.
	Atlantic spotted dolphin	Western North Atlantic Stock (39,921).	4	29.0	29	Less than 1 percent.
	Common bottlenose dolphin	Western North Atlantic Offshore Stock (62,851).	398	7.8	399	Less than 1 percent.
	Long-finned pilot whale	Western North Atlantic Stock (68,139).	86	8.4	86	Less than 1 percent.
	Risso's dolphin	Western North Atlantic Stock (35,215).	4	5.4	30	Less than 1 percent.
	Common dolphin (short-beaked)	Western North Atlantic Stock (172,974).	1,081	34.9	10,176	5.9.
	Harbor porpoise	Western North Atlantic Stock (95,543).	759	2.7	759	Less than 1 percent.
Pinniped (Phocid)	Gray seal	Western North Atlantic Stock (27,300).	399	0.4	400	Less than 2 percent.
	Harbor seal	Western North Atlantic Stock (61,336).	897	1.0	897	Less than 2 percent.

[a] Source—(Hayes *et al.* 2021).

Rare Species

Species considered to be rare or not expected to occur in the area were not included in the previous exposure estimates because the densities would be too low to provide meaningful density-based exposures. Nonetheless, species considered to be rare are occasionally encountered. For example, white-beaked dolphins were recorded in both 2019 and 2020 during HRG surveys in this area (Vineyard-Wind 2019, 2020) with the sighting of White-beaked dolphins in 2019 consisting of 30 animals. Other rare species encountered in the survey area during previous HRG surveys include false killer whale in 2019 (five individuals) and 2021 (one individual) (Vineyard-Wind 2019, 2021) and orca (killer whale) in 2022 (two individuals; data not yet submitted). When species not listed in an IHA are encountered and may be taken, it is necessary to cease survey operations to avoid unauthorized take. To avoid this potential disruption to survey operations, Park City Wind is requesting and NMFS is proposing take by Level B harassment for these three rare species based on the largest number of individuals observed within one year: 30 white-beaked dolphins, 5 false killer whales, and 2 killer whales.

The take numbers shown in Table 5 are those requested by Park City Wind. NMFS concurs with the requested take numbers and proposes to authorize them. Previous monitoring data compiled by Park City Wind (available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-marine-site-characterization-surveys-offshore-new*) suggests that the take numbers for authorization are sufficient.

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, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). 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, NMFS considers 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, and impact on operations.

Mitigation for Marine Mammals and Their Habitat

NMFS has prescribed the following mitigation measures to be implemented during Park City Wind's marine site characterization surveys. Pursuant to section 7 of the ESA, Park City Wind will also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, 7, and 8) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Shutdown Zones and Level B Harassment Zone

Marine mammal shutdown zones (SZs) will be established around the HRG survey equipment and monitored by PSOs:

- 500-m SZ for NARWs
- 100-m SZ for all other marine mammals

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated

requirements will be included in the site-specific training provided to the survey team.

Pre-Start Clearance

Marine mammal clearance zones (CZs) will be established around the HRG survey equipment and monitored by PSOs:

- 500-m CZ for all ESA-listed marine mammals; and
- 100-m CZ for all other marine mammals

Park City Wind will implement a 30-minute pre-start clearance period prior to initiation of ramp-up of specified HRG equipment. During this period, CZs will be monitored by PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective CZ. If a marine mammal is observed within its CZ during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective CZ or until an additional time has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjustment of energy levels at the start or restart of survey activities. The ramp-up procedure will be used at the beginning of HRG survey activities to provide additional protection to marine mammals in or near the Survey Area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. Operators should ramp up sources to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period must occur prior to the start of ramp-up (or initiation of source use if ramp-up is not technically feasible). Ramp-up activities will be delayed if a marine mammal(s) enters its respective CZ. Ramp-up will continue if the animal has been observed exiting its respective CZ or until an additional period has elapsed with no additional sightings (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Activation of survey equipment through ramp-up procedures is prohibited when visual observation of the pre-start clearance/shutdown zone is not expected to be effective using the appropriate visual technology (*i.e.,* during inclement conditions such as heavy rain or fog).

Shutdown Procedures

An immediate shutdown of the specified HRG survey equipment will be required if a marine mammal is sighted entering or within its respective SZ, subject to certain limited exceptions. The vessel operator must comply immediately with any call for shutdown by the PSO. Any disagreement between the PSO and vessel operator will be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective SZ or until an additional time has elapsed (*i.e.,* 15 minutes for harbor porpoise, 30 minutes for all other species).

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the applicable Level B harassment zone (178 m) (Table 4), shutdown will occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective SZs. If the acoustic source is shut down for a period longer than 30 minutes, then pre-start clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement will be waived for pinnipeds and for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops.* Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped detected in the shutdown zone and belongs to a genus other than those specified.

Shutdown, pre-start clearance, and ramp-up procedures will not be required during HRG survey operations using only non-impulsive sources (*e.g.,* echosounders), except for non-parametric sub-bottom profilers (*e.g.,* CHIRP SBPs).

Vessel Strike Avoidance

Park City Wind must ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a NARW, other whale (defined in this context as sperm whales or baleen whales other than NARWs), or other marine mammal.
- Members of the monitoring team will consult NMFS' NARW reporting system and Whale Alert at the start of every PSO shift, for situational awareness regarding the presence of NARWs throughout the Survey Area, and for the establishment of Slow Zones (including visual-detection-triggered DMAs and acoustically-triggered slow zones) within or near the Survey Area.
- All survey vessels, regardless of size, must observe a 10-kn (5.14 m/s) speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes, including SMAs and DMAs when in effect;
- All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 kn (5.14 m/s) or less at all times;
- All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- All vessels must maintain a minimum separation distance of 500 m

from North Atlantic right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10 knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.

- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 100 m from all non-ESA listed whales,
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Seasonal Restrictions

Park City Wind proposes to refrain from conducting survey activities using HRG equipment operating at or below 180 kHz from January 1 through May 15 within the NARW SMA in Cape Cod Bay.

Crew Training

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

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 while conducting the activities. 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 will 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); and,
- Mitigation and monitoring effectiveness.

Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Park City Wind will employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters. Section 5 of the draft IHA contains further details regarding PSO approval.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including shutdown zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established shutdown zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations and during periods of poor visibility. The PSO(s) will ensure 360° visual coverage around the vessel from the most appropriate observation posts and will conduct visual observations using binoculars and/or night vision goggles, infrared cameras and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours

between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals will be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to shutdown zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology will be used. Position data will be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs will also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey will be relayed to the PSO team. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov,* and *ITP.Potlock@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-start clearance survey, ramp-up, shutdown, end of operations, etc.).

If a marine mammal is sighted, the following information will be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Park City Wind must immediately report sighting information to the NMFS NARW Sighting Advisory System: (866) 755–6622. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Park City Wind personnel discover an injured or dead marine mammal, Park City Wind will report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report will include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Park City Wind will report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report will include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;

- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

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, our analysis applies to all the species listed in Table 5 given that NMFS expects the anticipated effects of the survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the NARW—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality will occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes will be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant decrease in viability for the affected individuals, and thus will not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations and the estimated size of the Level A harassment zones.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 178 m. Although this distance is assumed for all survey activity in estimating take numbers authorized and evaluated here, other survey activity will involve use of acoustic sources with a reduced acoustic harassment zone producing expected effects of particularly low(er) severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the survey area. However, there are BIAs for large whales, which overlap with the survey area. As discussed earlier in this document, there are two BIAs for feeding fin whales that flank the survey area, a BIA for feeding humpback whales northeast of the survey area, and a portion of the minke and sei whale feeding BIAs within the survey area. Migration and feeding BIAs for NARW are present in the survey area and are discussed in the NARW subsection below.

Due to the fact that the survey activities are temporary and the spatial extent of sound produced by the survey will be very small relative to the spatial extent of the available feeding habitat in the BIAs for large whales (as previously discussed), feeding for large whales is not expected to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability will be adversely affected by HRG survey operations.

NARWs

The status of the NARW population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active Unusual Mortality Event (UME). Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of NARWs. As noted previously, the survey area overlaps migratory and feeding BIAs and critical habitat for NARW. Because the survey activities are temporary and the spatial extent of sound produced by the survey will be very small relative to the spatial extent of the available migratory and feeding habitats in the BIAs and critical habitat, NARW migration is not expected to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability for NARW will be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Park City Wind's activities. Additionally, only very limited take by Level B harassment of NARW has been

requested and is being authorized by NMFS, as HRG survey operations are required to maintain a 500 m EZ and shutdown if a NARW is sighted at or within the EZ. The 500 m shutdown zone for NARWs is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* boomer) is estimated to be 178 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types for use. NMFS does not anticipate NARWs takes that will result from Park City Wind's activities will impact annual rates of recruitment or survival. Thus, any takes that occur will not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Park City Wind's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales and has been stable despite the UME.

The required mitigation measures are expected to reduce the number and/or severity of planned takes for all species listed in Table 5, including those with active UMEs, to the level of least practicable adverse impact. In particular, they will provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or anticipated or authorized.

NMFS expects that takes will be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals will only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures will further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our 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 or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as migratory and feeding area BIAs and designated critical habitat for NARWs, the activities will occur in such a comparatively small area such that any avoidance of the survey area due to activities will not affect migration or feeding. In addition, mitigation measures to shut down at 500 m to minimize potential for Level B behavioral harassment will limit the severity of any take that occurs;
- While the survey area is within areas noted as feeding area BIAs for large whales, the activities will occur in such a comparatively small area such that any avoidance of the survey area due to activities will not affect prey availability or foraging activities.
- The mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the 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.

NMFS has authorized incidental take of 16 marine mammal species. The total amount of takes relative to the best available population abundance is less than 9 percent for NARW, less than 6 percent for common dolphin, less than 4 percent for humpback whales, and less than 2 percent for all other species and stocks, which NMFS finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks. Please see Table 5.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds 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 will 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, in this case with NMFS Greater Atlantic Regional Fisheries Office (GARFO).

NMFS OPR is authorizing the incidental take of four species of marine mammals which are listed under the ESA: North Atlantic right, fin, sei, and sperm whales. On June 29, 2021 (revised September 2021), GARFO completed an informal programmatic consultation on the effects of certain site assessment and site characterization activities to be carried out to support the siting of offshore wind energy development projects off the U.S. Atlantic coast. Part of the activities considered in the consultation are geophysical surveys such as those proposed by Park City Wind for which we have authorized take. GARFO concluded site assessment surveys (and issuance of associated IHAs) are not likely to adversely affect endangered species or adversely modify or destroy critical habitat. NMFS has determined that issuance of the IHA is covered under the programmatic consultation.

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 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 will preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS is issuing an IHA to Park City Wind for conducting marine site characterization surveys off the coast of Massachusetts south to Long Island, New York, incorporating the previously mentioned mitigation, monitoring, and reporting requirements. The IHA can be found at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-park-city-wind-llc-new-england-wind-project-phase-1-marine.*

Dated: July 19, 2022.

Shannon Bettridge,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–15765 Filed 7–22–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EDT, Wednesday, July 27, 2022.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (for Commissioners and CFTC staff participants only). Public observation by remote live feed via streaming or phone. See *https://www.cftc.gov* for details and instructions.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- *Proposed Rule:* Governance Requirements for Derivatives Clearing Organizations;
- Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination submitted by the Financial Services Agency of Japan; and
- Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination submitted by Nonbank Swap Dealers subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* Instructions for public observation of the meeting via access to the live feed of the meeting will also be posted on the Commission's website. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: July 20, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–15917 Filed 7–21–22; 11:15 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0044]

Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (Commission or CPSC) requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of disposable and novelty cigarette lighters. This collection of information consists of testing and recordkeeping requirements in regulations implementing the Safety Standard for Cigarette Lighters, approved previously under OMB Control No. 3041–0116. The CPSC will consider all comments received in response to this notice, before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by September 23, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0044, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/Hand Delivery/Courier Written Submissions: CPSC encourages you to

submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you must submit such comments by mail, hand delivery, or courier, or by email to: *cpsc-os@cpsc.gov.*

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2009–0044, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Cigarette Lighters.

OMB Number: 3041–0116.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of cigarette lighters.

Estimated Number of Respondents: In 2021, 30 firms submitted information to the CPSC on 143 lighter models. There were 4 new lighter models and 139 lighters that were comparable to models previously tested (''comparison lighters'').

Estimated Time per Response: The burden associated with the standard includes the time and cost spent testing and maintaining the test records, either by the firm or by outside contractors. If the firm elects to use an outside contractor, the cost of testing per model is estimated to be about $25,000 on average. If all 4 new lighter models are tested annually by outside contractors, the cost would be about $100,000. If tests are conducted in-house, testing new lighter models is expected to take about 90 hours per model. The total testing time for the four models, would be 360 hours (90 hours × 4 models). Recordkeeping consists of two separate components: recordkeeping for new lighter models, and recordkeeping for comparison lighters.

New Lighter Models—The time burden for recordkeeping for new lighter models is estimated at 20 hours per model. The total time for recordkeeping is estimated to be 80 hours (20 hours × 4 models).

Comparison Lighters—Firms may also submit comparison lighters to demonstrate compliance with the standard. In 2021, 139 comparison lighters were reported to the CPSC. While firms bear no testing costs for comparison lighters, the burden hours for recordkeeping has been estimated at 3 hours per model. Thus, an estimated 417 hours (139 models × 3 hours) is estimated for recordkeeping for comparison lighters.

Reporting Requirements—Approximately 1 hour will be required for firms to submit forms to CPSC per model, for a total annual reporting burden on 143 hours (143 models × 1 hour).

Total Estimated Annual Burden: The annual total number of hours could be as high as 1000 hours (360 testing + 497 recordkeeping hours + 143 reporting hours) per year. If some firms elect to outsource testing of new models, there may be fewer burden hours. The CPSC estimates the total cost for firms to test, and prepare, maintain, and submit records to the CPSC in compliance with the lighter regulation would be in the range of of $47,859 to $122,515, depending upon whether the testing is done in-house or through outsourcing.

General Description of Collection: In 1993, the CPSC issued the Safety Standard for Cigarette Lighters (16 CFR part 1210) under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard requires certain test protocols, as well as recordkeeping and reporting requirements. 16 CFR part 1210, subpart B. In addition, section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Request for Comments

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–15885 Filed 7–22–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Promise Neighborhoods Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On June 29, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2022 Promise Neighborhoods program (84.215N). The NIA established a deadline date of September 27, 2022, for the transmittal of applications. This notice extends the deadline date for transmittal of applications until October 7, 2022 and extends the deadline for intergovernmental review until December 8, 2022.

DATES:

Deadline for Transmittal of Applications: October 7, 2022.

Deadline for Intergovernmental Review: December 8, 2022.

FOR FURTHER INFORMATION CONTACT: Rich Wilson, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202–6450. Telephone: (202) 453–6709. Email: *Richard.Wilson@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On June 29, 2022, we published the NIA in the **Federal Register** (87 FR 38719). The NIA established a deadline date of September 27, 2022, for the transmittal of applications. We are extending the deadline date for transmittal of applications, because the *Grants.gov* platform will be closed for site maintenance from September 23–29, 2022. Since applicants will be unable to submit or work in the *Grants.gov* system during that time, we are extending the deadline to allow applicants additional time to complete and submit their applications.

Applicants that have submitted applications before the original deadline date of September 27, 2022, may resubmit their applications on or before the new application deadline date of October 7, 2022, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that was last successfully submitted and received by 11:59:59 p.m., Eastern Time, on October 7, 2022.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 7273–7274.

Accessible Format: On request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document, the NIA, 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. 2022–15789 Filed 7–22–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–486–000]

Texas Eastern Transmission, LP; Notice of Application and Establishing Intervention Deadline

Take notice that on July 7, 2022, Texas Eastern Transmission (Texas Eastern), 5400 Westheimer Court, Houston, TX 77056, filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to abandon certain facilities and to construct, install, own, operate, and maintain the proposed Appalachia to Market II Project and the proposed Armagh and Entriken Compressor Station Horsepower Replacement Projects. The various proposed facilities are in Lebanon, Indiana, and Huntingdon counties in Pennsylvania. Texas Eastern estimates the cost for the two projects to be $368,729,684.

Specifically, Texas Eastern's proposed Appalachia to Market II Project is designed to provide up to 55,000 dekatherms per day of additional firm natural gas transportation service from the Appalachia supply basin in Southwest Pennsylvania to existing local distribution company customers in New Jersey. The Armagh and Entriken Compressor Station Horsepower Replacement Projects are designed to improve reliability on the Texas Eastern system by replacing a gas-driven compressor unit with an electric-motor driven compressor unit at each of two compressor stations.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Brian Kim, Manager, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, TX 77251 by telephone at (713) 627–4059, or by email at *brian.kim@cnbridge.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 9, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more

[1] 18 CFR (Code of Federal Regulations) 157.9.

specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 9, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–486–000 in your submission.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's website at *www.ferc.gov* under the link to *Documents and Filings.* Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–486–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is August 9, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–486–000 in your submission.

(1) You may file your motion to intervene by using the Commission's *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–486–000.

Kimberly D. Bose Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Brian Kim, Manager, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, TX 77251 or by email at *brian.kim@cnbridge.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on August 9, 2022.

Dated: July 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15845 Filed 7–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2336–101]

Georgia Power Company; Notice of Waiver Period for Water Quality Certification Application

On July 18, 2022, Georgia Power Company submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with Georgia Department of Natural Resources, Environmental Protection Division (Georgia EPD), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section [4.34(b)(5), 5.23(b), 153.4, or 157.22] of the Commission's regulations,[1] we hereby notify the Georgia EPD of the following:

Date of Receipt of the Certification Request: June 24, 2022.

Reasonable Period of Time to Act on the Certification Request: June 24, 2023.

If Georgia EPD fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: July 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15843 Filed 7–22–22; 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: RP22–1054–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Compliance filing: Semi-Annual Transporter's Use Report July 2022 to be effective N/A.
Filed Date: 7/18/22.
Accession Number: 20220718–5065.
Comment Date: 5 pm ET 8/1/22.

Docket Numbers: RP22–1055–000.
Applicants: Venture Global Plaquemines LNG, LLC.
Description: Petition for Limited Waiver of Buy/Sell Prohibition of Venture Global Plaquemines LNG, LLC.
Filed Date: 7/18/22.
Accession Number: 20220718–5149.
Comment Date: 5 pm ET 8/1/22.

Docket Numbers: RP22–1056–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: Compliance filing: Baseline Seventh Revised Vol No. 1 to be effective 8/19/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5049.
Comment Date: 5 pm ET 8/1/22.

Docket Numbers: RP22–1057–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: Compliance filing: Baseline Third Revised Volume Filed Agreements to be effective 8/19/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5050.
Comment Date: 5 pm ET 8/1/22.

Docket Numbers: RP22–1058–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: Tariff Amendment: Cancellation of Sixth Revised Volume No. 1 Tariff to be effective 8/19/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5058.
Comment Date: 5 pm ET 8/1/22.

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: July 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15840 Filed 7–22–22; 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: EC22–52–000.
Applicants: Hallador Power Company, LLC.
Description: Hallador Power Company, LLC submits response to Deficiency Letter.
Filed Date: 7/15/22.
Accession Number: 20220715–5204.
Comment Date: 5 pm ET 7/29/22.

Docket Numbers: EC22–61–000.
Applicants: LSP-Whitewater Limited Partnership, Wisconsin Public Service Corporation, Wisconsin Electric Power Company.
Description: Response to May 19, 2022 Deficiency Letter of LSP-Whitewater Limited Partnership, et. al.
Filed Date: 7/18/22.
Accession Number: 20220718–5206.
Comment Date: 5 pm ET 8/8/22.

Docket Numbers: EC22–91–000.
Applicants: CID Solar, LLC, Cottonwood Solar, LLC, Onward Solar Gen-Tie, LLC, RE Columbia, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of CID Solar, LLC, et al.
Filed Date: 7/15/22.
Accession Number: 20220715–5245.
Comment Date: 5 pm ET 8/5/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–76–000; QF22–777–001.
Applicants: Rocktown Solar, LLC, Rocktown Solar, LLC.
Description: Application for Order Reinstating the Obligation to Purchase Under 18 CFR 292.311 of Rocktown Solar, LLC.
Filed Date: 7/15/22.
Accession Number: 20220715–5238.
Comment Date: 5 pm ET 8/12/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2219–001.

[1] 18 CFR [4.34(b)(5)/5.23(b)/153.4/157.22].

Applicants: New England Power Company.

Description: Compliance filing: 2022–07–19 Amended Order No. 864 Compliance Filing—IFA Sched III–B Revisions to be effective 1/27/2020.

Filed Date: 7/19/22.

Accession Number: 20220719–5081.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER20–2551–001.

Applicants: ISO New England Inc., New England Power Company.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: NEP Order No. 864 Compliance Revisions to Schedule 21–NEP in Docket ER20–2551 to be effective 1/27/2020.

Filed Date: 7/18/22.

Accession Number: 20220718–5153.

Comment Date: 5 pm ET 8/8/22.

Docket Numbers: ER20–2553–001.

Applicants: New England Power Company.

Description: Compliance filing: 2022–07–18 Supplemental Order No. 864 Compliance Revisions to TSA–NEP–22 to be effective 1/27/2020.

Filed Date: 7/18/22.

Accession Number: 20220718–5160.

Comment Date: 5 pm ET 8/8/22.

Docket Numbers: ER21–40–000.

Applicants: ConocoPhillips Company.

Description: Refund Report: Refund Report Filing Under ER21–40–000 to be effective N/A.

Filed Date: 7/19/22.

Accession Number: 20220719–5168.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER21–125–001.

Applicants: Tampa Electric Company.

Description: Compliance filing: Amendment—Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 7/19/22.

Accession Number: 20220719–5109.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2408–000.

Applicants: Switch Energy LLC.

Description: Tariff Amendment: Cancellation of Market Based Rate Tariff to be effective 7/20/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5001.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2409–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5416; Queue Nos. AC2–067/AC2–068 to be effective 6/4/2019.

Filed Date: 7/19/22.

Accession Number: 20220719–5006.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2410–000.

Applicants: Sonny Solar, LLC.

Description: Baseline eTariff Filing: Sonny Solar, LLC MBR Tariff to be effective 8/31/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5097.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2411–000.

Applicants: PGR 2021 Lessee 13, LLC.

Description: Baseline eTariff Filing: PGR 2021 Lessee 13, LLC MBR Tariff to be effective 8/31/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5098.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2412–000.

Applicants: Bulldog Solar, LLC.

Description: Baseline eTariff Filing: Bulldog Solar, LLC MBR Tariff to be effective 8/31/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5099.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2413–000.

Applicants: PGR 2021 Lessee 9, LLC.

Description: Baseline eTariff Filing: PGR 2021 Lessee 9, LLC MBR Tariff to be effective 8/31/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5100.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2414–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3988 Wagon/Amber/States/Flat Ridge/Evergy KS Central SNUFCA to be effective 9/17/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5118.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2415–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Great Kiskadee Storage Generation Interconnection Agreement to be effective 6/30/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5120.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2416–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Vail to Tortolita Participation Agreement to be effective 7/20/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5124.

Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2417–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX–AP Sunray 1st A&R System Upgrade Agreement to be effective 7/5/2022.

Filed Date: 7/19/22.

Accession Number: 20220719–5126.

Comment Date: 5 pm ET 8/9/22.

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: July 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15842 Filed 7–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–487–000]

Town of Colorado City, Arizona; Notice of Application and Establishing Intervention Deadline

Take notice that on July 8, 2022, the Town of Colorado City, Arizona (Colorado City), 25 S. Central Street, PO Box 70, Colorado, Arizona 86021 filed in Docket No. CP22–487–000 an application under section 7(f) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a service area determination within which Colorado City may, without further Commission authorization, utilize its natural gas distribution facilities to receive delivery of natural gas supply from Utah for redelivery to and consumption by its distribution customers in Colorado City.

Colorado City seeks a service area determination that encompasses its entire Arizona service, including the pipeline crossing the Arizona/Utah border. Colorado City will receive gas from Hildale City, a local distribution company (LDC) in Utah, into a 4-inch-diameter distribution pipeline at an interconnection on the Arizona/Utah border. Colorado City will redeliver the gas over its distribution system for use

by its customers in Arizona. Colorado City also requests: (1) a finding that it continues to qualify as a LDC for purposes of section 311 of the Natural Gas Policy Act (NGPA); and (2) a waiver of the Commission's accounting and reporting requirements and other regulatory requirements typically applicable to natural gas companies under the NGA and NGPA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this filing may be directed to: Vance W. Barlow, Colorado City Gas Department, Town of Colorado City, 25 South Central Street, PO Box 70, Colorado City, Arizona 86021, by phone at (928) 875–9160 or by email at *manager@tocc.us*.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

[1] 18 CFR (Code of Federal Regulations) 157.9.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 9, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 9, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–487–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–487–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is August 9, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–487–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.*; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–487–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Vance W. Barlow, Colorado City Gas Department, Town of Colorado City, 25 South Central Street, PO Box 70, Colorado City, Arizona 86021 or by email at *manager@tocc.us*. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp*.

Intervention Deadline: 5:00 p.m. Eastern Time on August 9, 2022.

Dated: July 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15844 Filed 7–22–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: ER22–2418–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-West Texas Solar Project II 3rd A&R Generation Interconnection Agreement to be effective 6/22/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5129.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2419–000.
Applicants: Lockhart Solar PV, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/18/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5130.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2420–000.
Applicants: Lockhart Solar PV II, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/18/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5131.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2421–000.
Applicants: SR DeSoto I, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 7/20/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5146.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2422–000.
Applicants: SR Turkey Creek, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/18/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5148.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2423–000.
Applicants: SR DeSoto I Lessee, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 7/20/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5149.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2424–000.
Applicants: SR Bell Buckle, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/18/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5152.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2425–000.
Applicants: SR Clay, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 7/20/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5153.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2426–000.
Applicants: SR McKellar, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/18/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5155.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2427–000.
Applicants: SR Cedar Springs, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 7/20/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5156.
Comment Date: 5 pm ET 8/9/22.

Docket Numbers: ER22–2428–000.
Applicants: SR McKellar Lessee, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/18/2022.
Filed Date: 7/19/22.
Accession Number: 20220719–5157.
Comment Date: 5 pm ET 8/9/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–53–000.
Applicants: AEP Generating Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Generating Company.
Filed Date: 7/18/22.
Accession Number: 20220718–5208.
Comment Date: 5 pm ET 8/8/22.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR21–10–001.
Applicants: North American Electric Reliability Corporation.
Description: Compliance Filing of the North American Electric Reliability Corporation In Response to the Order On the Rules of Procedure Revisions to the Compliance Monitoring and Enforcement Program.
Filed Date: 7/18/22.
Accession Number: 20220718–5218.
Comment Date: 5 pm ET 8/8/22.

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: July 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–15841 Filed 7–22–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 22–769; FR ID 97533]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing a meeting of the North American Numbering Council (NANC).

DATES: October 4, 2022. The meeting will come to order at 2 p.m.

ADDRESSES: The meeting will be conducted via video conference and available to the public via the internet at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: You may also contact Christi Shewman, Designated Federal Officer, at *christi.shewman@fcc.gov* or 202–418–0646. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

SUPPLEMENTARY INFORMATION: The NANC meeting is open to the public on the internet via live feed from the FCC's web page at *http://www.fcc.gov/live.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in CC Docket No. 92–237. This is a summary of the Commission's document in CC Docket No. 92–237, DA 22–769, released July 15, 2022.

Proposed Agenda: At the October 4, 2022 meeting, the NANC will consider and vote on recommendations from the Numbering Administration Oversight Working Group on the feasibility of individual telephone number pooling trials. This item was originally scheduled to be presented at the NANC meeting on August 15, 2022, CC Docket No. 92–237, DA 22–474, released April 29, 2022. The NANC will also hear routine status reports from the Numbering Administration Oversight Working Group, the North American Portability Management, LLC, and the Secure Telephone Identity Governance Authority. The agenda may be modified at the discretion of the NANC Chair and the Designated Federal Officer (DFO).

(5 U.S.C. App 2 § 10(a)(2))

Federal Communications Commission.

Pamela Arluk,

Division Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2022–15866 Filed 7–22–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. AT–RP–22–0007]

Notice of Opportunity To Submit Amici Curiae Briefs in a Representation Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: The Federal Labor Relations Authority (Authority) provides an opportunity for all interested persons to submit briefs as amicus curiae on an issue arising in a case pending before the Authority. The issue concerns whether section 7111(f)(4) of the Federal Service Labor-Management Relations Statute (the Statute) or § 2422.12(b) of the Authority's Regulations apply to bar decertification petitions filed within twelve months after a labor organization is certified, without an election, as exclusive representative of a consolidated bargaining unit under section 7112 of the Statute. Because this issue is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amici briefs addressing the above question.

DATES: To be considered, briefs must be received on or before August 30, 2022.

ADDRESSES: Mail briefs to Brandon Bradley, Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Brandon Bradley, Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, (202) 218–7740.

SUPPLEMENTARY INFORMATION: On July 19, 2022, the Authority granted an application for review of the Regional Director's (RD's) decision and order (decision) dismissing the petition in *U.S. Department of the Interior, National Park Service, Blue Ridge Parkway, North Carolina,* Case No. AT–RP–22–0007, 73 FLRA 120 (2022) (*NPS*). A summary of the case follows.

1. Background and RD's Decision

The RD certified the American Federation of Government Employees, AFL–CIO, (Union) without an election, as the exclusive representative of a consolidated bargaining unit under section 7112(d) of the Statute. Later that same month, an individual (Petitioner) filed a petition seeking an election to decertify the Union as the exclusive representative of the consolidated unit (decertification petition). The Petitioner asserted that section 7111(f)(4) of the Statute did not bar the decertification petition, because the Authority had not conducted a secret-ballot election for the consolidated unit within the previous twelve months. In addition, the Petitioner argued that applying a certification bar to consolidations would improperly incentivize unions to consolidate bargaining units in order to prevent the filing of decertification petitions.

The RD found that under section 7111(f)(4) of the Statute and § 2422.12(b) of the Authority's Regulations, a certification bar arises from a certification of a consolidated bargaining unit. Citing the Authority's decision in *Commodity Futures Trading Commission, Eastern Regional Office, New York, New York,* 70 FLRA 291 (2017) (*CFTC*), the RD explained that the certification bar does not apply to petitions filed before the issuance of a certification of a consolidated unit. However, because the Petitioner filed its decertification petition after the consolidation certification issued to the Union, the RD concluded that the certification bar applied.

Based on the plain wording of § 2422.12(b) of the Authority's Regulations, the RD determined that an election was not required to trigger the certification bar. In response to the Petitioner's policy argument, the RD found that the Statute adequately protects against consolidations that are undertaken to prevent the filing of decertification petitions.

Based on these findings, the RD dismissed the decertification petition as untimely.

2. Application for Review

In an application for review of the RD's decision, the Petitioner argued that the RD's decision raised an issue for which there is an absence of precedent: whether a certification bar applies to decertification petitions filed after the certification of a labor organization as exclusive representative of a consolidated unit. The Petitioner asserted that the Authority has never explicitly addressed whether section 7111(f)(4) of the Statute or § 2422.12(b) of the Authority's Regulations apply to bar decertification petitions filed within twelve months of a certification of a consolidated bargaining unit under section 7112(d) of the Statute. According to the Petitioner, neither those statutory or regulatory provisions, nor the Authority's decision in *CFTC,* support the RD's dismissal of the decertification petition. Additionally, the Petitioner alleged that the Office of the General Counsel's Representation Case Handling Manual failed to provide a basis for the RD's application of the certification bar.

3. Question on Which Briefs Are Solicited

In *NPS,* the Authority found that the RD's decision raised a question for which there is an absence of precedent. Accordingly, the Authority directed the parties to file briefs addressing the following question:

> Does section 7111(f)(4) of the Statute or § 2422.12(b) of the Authority's Regulations apply to bar decertification petitions filed within twelve months after a labor organization is certified, without an election, as exclusive representative of a consolidated bargaining unit under section 7112(d) of the Statute?

In answering that question, the parties should address any pertinent considerations of: (1) statutory construction; (2) legislative and regulatory history; (3) applicable precedent, including under the National Labor Relations Act; and (4) policy.

4. Required Format for Briefs

All briefs shall be captioned ''*U.S. Department of the Interior, National Park Service, Blue Ridge Parkway, North Carolina,* Case No. AT–RP–22–0007.'' Briefs shall contain separate headings for each issue covered. Interested persons must submit an original and four (4) copies of each amicus brief, with any enclosures, on 8½ × 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's Regulations showing service of one copy of the brief on all counsel of record or other designated representatives as well as the Federal Labor Relations Authority Regional Director involved in this case. 5 CFR 2429.27. Accordingly, briefs must be served on: Nicholas P. Provenzo, Esq., c/o National Right to Work Legal Defense Foundation, Inc., 8001 Braddock Road, Ste. 600, Springfield, VA 22160–2110; Cathie McQuiston, Esq., Deputy General Counsel, AFGE, AFL–CIO, 80 F Street NW, Washington, DC 20001; Eboni Speller, Regional Human Resources Specialist, Interior Region 2 Human Resources (ER/LR), National Park Service, Department of the Interior, 1924 Building, 100 Alabama St. SW, Atlanta, GA 30303; and Brent Hudspeth, Acting Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, 229 Peachtree Street NE, Ste. 900, International Tower, Atlanta, GA 30303. Interested persons may obtain copies of the Authority's decision granting the application for review in this case on the FLRA's website, *www.flra.gov.*

Noah Peters,

Solicitor, Federal Labor Relations Authority.

[FR Doc. 2022–15863 Filed 7–22–22; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with the CFPB's and the Board's Regulations V (FR V; OMB No. 7100–0308).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on

the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Recordkeeping and Disclosure Requirements Associated with the CFPB's and the Board's Regulations V.

Collection identifier: FR V.

OMB control number: 7100–0308.

Frequency: Annually.

Respondents: Depository institutions identified in 15 U.S.C. 1681s(b)(1)(A)(ii): (1) regardless of size, with respect to the identity theft red flags provisions of the Board's Regulation V and (2) with $10 billion or less in assets and any affiliates thereof, for all other provisions.[1]

Estimated number of respondents: Negative information notice, 1,361; Affiliate marketing notices: notices to consumers, 1,300; Affiliate marketing notices: consumer opt-out response, 267,860; Identity theft red flags, 2,495; Address discrepancies, 1,361; Risk based pricing notice to consumers, 1,361; Duties of furnishers of information: policies and procedures, 1,361; and Duties of furnishers of information: notices of frivolous disputes to consumers, 1,361.

Estimated average hours per response: Negative information notice, 0.25; Affiliate marketing notices: notices to consumers, 18; Affiliate marketing notices: consumer opt-out response, 0.08; Identity theft red flags, 37; Address discrepancies, 4; Risk based pricing notice to consumers, 5; Duties of furnishers of information: policies and procedures, 40; and Duties of furnishers of information: notices of frivolous disputes to consumers, 0.23.

Estimated annual burden hours: Negative information notice, 340; Affiliate marketing notices: notices to consumers, 23,400; Affiliate marketing notices: consumer opt-out response, 21,429; Identity theft red flags, 92,315; Address discrepancies, 5,444; Risk based pricing notice to consumers, 81,660; Duties of furnishers of information: policies and procedures, 54,440; and Duties of furnishers of information: notices of frivolous disputes to consumers, 132,099.

General description of report: The Consumer Financial Protection Bureau's (CFPB) Regulation V[2] and the Board's Regulation V[3] (collectively ''FR V Regulations'') implement in part the Fair Credit Reporting Act (FCRA), which was enacted in 1970 based on a Congressional finding that the banking system is dependent on fair and accurate credit reporting.[4] The FCRA was enacted to ensure consumer reporting agencies exercise their responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy. The FCRA requires consumer reporting agencies to adopt reasonable procedures that are fair and equitable to the consumer with regard to the confidentiality, accuracy, relevancy, and proper utilization of consumer information.[5]

Legal authorization and confidentiality: The FR V is authorized by sections 1025 and 1088(a)(2) and (10) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Under the FCRA, as amended by sections 1025 and 1088(a)(10) of the Dodd-Frank Act, the Board is authorized to enforce compliance with the information collection requirements contained in the CFPB's FCRA regulations[6] applicable to institutions identified in 15 U.S.C. 1681s(b)(1)(A)(ii) with $10 billion or less in assets, and applicable to consumers of these institutions.[7] Additionally, pursuant to section 1088(a)(2) and (10) of the Dodd-Frank Act, the Board retained authority under the FCRA to prescribe and enforce the information collection requirements in the Board's FCRA regulations relating to identity theft red flags[8] for institutions identified in 15 U.S.C. 1681s(b)(1)(A)(ii) of any size.[9] The obligation to comply with the FR V is mandatory, except for the consumer opt-out responses, which consumers are required to submit in order to obtain a benefit.

The notices, records, and disclosures included in the FR V are not provided to the Federal Reserve, but are maintained at Board-supervised institutions. As such, no issue of confidentiality generally arises under the Freedom of Information Act (FOIA). In the event such notices, records, or disclosures are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[10] In addition, certain information (such as direct dispute notices regarding a consumer) may also be withheld under exemption 6 of the FOIA, which protects from disclosure information that ''would constitute a clearly unwarranted invasion of personal privacy.'' [11]

Current actions: On February 14, 2022, the Board published a notice in the **Federal Register** (87 FR 8246) requesting public comment for 60 days on the extension, without revision, of the FR V. The comment period for this notice expired on April 15, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, July 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–15816 Filed 7–22–22; 8:45 am]

BILLING CODE 6210–01–P

[1] See 12 U.S.C. 5515 and footnote 7.

[2] 12 CFR part 1022.

[3] 12 CFR part 222.

[4] The FCRA is one part of the Consumer Credit Protection Act, which also includes the Truth in Lending Act, Equal Credit Opportunity Act, and Fair Debt Collection Practices Act. See 15 U.S.C. 1601 *et seq.*

[5] See 15 U.S.C. 1681.

[6] Appendix B to 12 CFR part 1022; and 12 CFR 1022.20–.27, 1022.40–.43, 1022.70–.75, and 1022.82.

[7] See 15 U.S.C. 1681s(b); 12 U.S.C. 5515.

[8] 12 CFR 222.90–.91.

[9] See 15 U.S.C. 1681m(e), and 1681s(b) and (e).

[10] 5 U.S.C. 552(b)(8).

[11] 5 U.S.C. 552(b)(6).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with the Consumer Financial Protection Bureau's (CFPB) Regulation E (Electronic Fund Transfers) (FR E; OMB No. 7100–0200).

DATES: Comments must be submitted on or before September 23, 2022.

ADDRESSES: You may submit comments, identified by FR E, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9 a.m. and 5 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed 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;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Recordkeeping and Disclosure Requirements Associated with the Consumer Financial Protection Bureau's (CFPB) Regulation E (Electronic Fund Transfers).

Collection identifier: FR E.

OMB control number: 7100–0200.

Frequency: Event generated.

Respondents: State member banks, their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

Estimated number of respondents: Recordkeeping, 874; Initial disclosures, 874; Change-in-terms, 874; Periodic statements, 67; Error resolution, 874; Pre-acquisition disclosures (short form disclosure), 5; internet posting and submission of prepaid account agreements, 6; Remittance transfer disclosures, 874; Error resolution for remittance transfers, 874; and Remittance transfers scheduled before the date of transfer, 874.

Estimated average hours per response: Recordkeeping, 0.97; Initial disclosures, 0.03; Change-in-terms, 0.02; Periodic statements, 7; Error resolution, 0.5; Pre-acquisition disclosures (short form disclosure), 4; internet posting and submission of prepaid account agreements, 0.08; Remittance transfer disclosures, 8; Error resolution for remittance transfers, 4.5; and Remittance transfers scheduled before the date of transfer, 8.

Estimated annual burden hours: Recordkeeping, 848; Initial disclosures, 6,555; Change-in-terms, 5,943; Periodic statements, 5,628; Error resolution, 13,110; Pre-acquisition disclosures (short form disclosure), 191; internet posting and submission of prepaid account agreements, 2; Remittance transfer disclosures, 83,904; Error resolution for remittance transfers, 47,196; and Remittance transfers scheduled before the date of transfer, 6,992.

General description of report: The Electronic Funds Transfer Act (EFTA) requires consumers be provided meaningful disclosures about the basic terms, costs, and rights relating to electronic fund transfer (EFT) services involving a consumer's account. The disclosures required by the EFTA are triggered by specific events. The disclosures inform consumers, for example, about the terms of the EFT service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors.

Legal authorization and confidentiality: The FR E is authorized pursuant to section 904 of the EFTA,[1] which requires that the CFPB prescribe regulations to carry out the purposes of the EFTA, including disclosure and recordkeeping requirements relating to consumer EFT transactions. The FR E is mandatory.

The disclosures and records required under Regulation E are not required to be submitted to the Board, so normally no confidentiality issues would be implicated. To the extent such disclosures and records are obtained by

[1] 15 U.S.C. 1693b.

the Board through the examination process, they may be kept confidential under exemption 8 of the Freedom of Information Act, which protects information contained in or related to an examination of a financial institution.[2]

Consultation outside the agency: The Board consulted with the CFPB regarding the estimated burden of the FR E.

Board of Governors of the Federal Reserve System, July 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–15814 Filed 7–22–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Regulation H (FR H–2; OMB 7100–0280) of the Board's rules.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H.

Collection identifier: FR H–2.

OMB control number: 7100–0280.

Effective date: The revisions are applicable as of July 25, 2022.

Frequency: On occasion.

Respondents: State member banks (SMBs).

Estimated number of respondents: Recordkeeping: Private flood insurance (Sections 208.25(c)(3)(iii) and (iv)), 11,171; Retention of standard Federal Emergency Management Agency (FEMA) form (Section 208.25(f)(2)), 728; Notice of special flood insurance (Section 208.25(i)), 728; Disclosure: Notice of special flood hazards and availability of federal disaster relief assistance with escrow notice, as applicable (Sections 208.25(i) and (e), as applicable), 728; Notice to FEMA of servicer (Section 208.25(j)(1)), 728; Notice to FEMA of change of servicer (Section 208.25(j)(2)), 728; Notice to borrowers of lapsed mandated flood insurance (Section 208.25(g)), 728; Purchase of flood insurance on the borrower's behalf (Section 208.25(g)), 728; Notice to borrowers of lapsed mandated flood insurance due to remapping (Section 208.25(g)), 728; Purchase of flood insurance on the borrower's behalf due to remapping (Section 208.25(g)), 728; One-time notice for any designated loan outstanding on July 1 of the year SMB no longer qualifies for small lender exception, 12.

Estimated average time per response: Recordkeeping: Private flood insurance (Sections 208.25(c)(3)(iii) and (iv)), 15 minutes; Retention of standard FEMA form (Section 208.25(f)(2)), 2.5 minutes; Notice of special flood insurance (Section 208.25(i)), 2.5 minutes; Disclosure: Notice of special flood hazards and availability of federal disaster relief assistance with escrow notice, as applicable (Sections 208.25(i) and (e), as applicable), 5 minutes; Notice to FEMA of servicer (Section 208.25(j)(1)), 5 minutes; Notice to FEMA of change of servicer (Section 208.25(j)(2)), 5 minutes; Notice to borrowers of lapsed mandated flood insurance (Section 208.25(g)), 5 minutes; Purchase of flood insurance on the borrower's behalf (Section 208.25(g)), 15 minutes; Notice to borrowers of lapsed mandated flood insurance due to remapping (Section 208.25(g)), 5 minutes; Purchase of flood insurance on the borrower's behalf due to remapping (Section 208.25(g)), 15 minutes; One-time notice for any designated loan outstanding on July 1 of the year SMB no longer qualifies for small lender exception, 40 hours.

Estimated annual burden hours: Recordkeeping: Private flood insurance (Sections 208.25(c)(3)(iii) and (iv)), 2,793; Retention of standard FEMA form (Section 208.25(f)(2)), 12,255; Notice of special flood insurance (Section 208.25(i)), 2,457; Disclosure: Notice of special flood hazards and availability of federal disaster relief assistance with escrow notice, as applicable (Sections 208.25(i) and (e), as applicable), 4,914; Notice to FEMA of servicer (Section 208.25(j)(1)), 4,914; Notice to FEMA of change of servicer (Section 208.25(j)(2)), 2,487; Notice to borrowers of lapsed mandated flood insurance (Section 208.25(g)), 971; Purchase of flood insurance on the borrower's behalf (Section 208.25(g)), 728; Notice to borrowers of lapsed mandated flood insurance due to remapping (Section 208.25(g)), 485; Purchase of flood insurance on the borrower's behalf due to remapping (Section 208.25(g)), 728; One-time notice for any designated loan outstanding on July 1 of the year SMB no longer qualifies for small lender exception, 480.

General description of report: In general, the federal flood insurance statutes and Regulation H—Membership of State Banking Institutions in the Federal Reserve System (12 CFR 208) provide that a lender shall not make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area unless the secured property is covered by flood insurance for the term of the loan. With respect to the recordkeeping and disclosure provisions, the regulation generally requires state member banks to retain certain flood hazard documentation and to notify borrowers and servicers regarding properties in flood hazard areas and requirements related to flood insurance. State member banks also must notify FEMA of the identity of, and any change in, the servicer of a loan secured by improved property in a special flood hazard area.

[2] 5 U.S.C. 552(b)(8).

Legal authorization and confidentiality: Section 102 of the Flood Disaster Protection Act of 1973, as amended,[1] and section 1364 of the National Flood Insurance Act, as amended,[2] authorize the Board to impose the disclosure and recordkeeping requirements in section 208.25 of Regulation H. The obligation to comply is mandatory.

Because the Federal Reserve does not collect information from the FR H–2, confidentiality issues generally would not arise. In the event the records are obtained by the Board as part of the examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the Freedom of Information Act, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[3]

Current actions: On November 4, 2021, the Board published a notice in the **Federal Register** (86 FR 60818) requesting public comment for 60 days on the extension, with revision, of the Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H.

The Board is finalizing revisions to the FR H–2 information collection to account for the recordkeeping provision in section 208.25(i) of Regulation H that had not been previously cleared by the Board under the PRA. When a state member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, Regulation H requires that the bank mail or deliver a written notice to the borrower and to the servicer in all cases indicating whether flood insurance is available under the National Flood Insurance Program (NFIP) for the collateral securing the loan. The state member bank must retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

The comment period for this notice expired on January 3, 2022. The Board did not receive any comments. The revisions will be implemented as proposed.

[1] 42 U.S.C. 4012a.

[2] 42 U.S.C. 4104a.

[3] 5 U.S.C. 552(b)(8). The Board also has the authority to require reports from state member banks. (12 U.S.C. 248(a) and 324).

Board of Governors of the Federal Reserve System, July 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–15815 Filed 7–22–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Federal Reserve Payments Study (FR 3066a and FR 3066b; OMB No. 7100–0351).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Federal Reserve Payments Study.

Collection identifier: FR 3066a and FR 3066b.

OMB control number: 7100–0351.

Effective date: The revisions are applicable as of July 25, 2022.

Frequency: Annually.

Respondents: Depository institutions, general-purpose credit card networks, private-label credit card merchant issuers, private-label credit card processors, general-purpose debit card networks, general-purpose prepaid card networks, automated teller machine card networks, general-purpose prepaid card processors, electronic benefits transfer card processors, private-label prepaid card issuers and processors, person-to-person (P2P) and money transfer processors, online bill payment processors, walk-in bill payment processors, private-label Automated Clearinghouse (ACH) debit card processors, toll collection processors, online payment authentication methods processors, mobile wallet processors, and transit system operators.

Estimated number of respondents: FR 3066a, 513; FR 3066b, 133.

Estimated average hours per response: FR 3066a, 22; FR 3066b, 8.

Estimated annual burden hours: FR 3066a, 11,286; FR 3066b, 1,064.

General description of collection: The Federal Reserve Payments Study (FRPS) collects information from organizations with a significant role in processing payments, including depository and financial institutions, general-purpose payment networks, third-party payment processors, issuers of private-label payment instruments, and providers of various alternative payment methods and systems and help to support the Federal Reserve System's (Federal Reserve's) role in the payments system. The FR 3066a and FR 3066b consist of a full set of surveys every three years and smaller versions of the surveys (fewer surveys, questions, or respondents) in each year between. The FRPS publishes aggregate estimates of noncash payment volumes, cash deposits and withdrawals, and related information derived from the surveys.

Legal authorization and confidentiality: The Board uses the information obtained through the FR 3066a and FR 3066b to discharge its statutory responsibilities, including those under the following statutes: Section 609 of the Expedited Funds Availability Act; [1] Sections 904 and 920

[1] 12 U.S.C. 4008(c) (authorizing the Board to prescribe such regulations as it may determine appropriate to carry out its responsibility to regulate the payment system).

of the Electronic Fund Transfers Act; [2] Section 15 of the Check Clearing for the 21st Century Act; [3] and Sections 2A, 11, 11A, 13, and 16 of the Federal Reserve Act.[4]

The FR 3066a and FR 3066b are voluntary. The information contained in responses to the core questions of the FR 3066a and FR 3066b is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent. The Board therefore may keep such information confidential pursuant to exemption 4 of the Freedom of Information Act (FOIA).[5] Supplemental questions asked on each survey may vary, and the Board's ability to keep confidential responses to such questions must therefore be determined on a case-by-case basis. Responses to supplemental questions may contain nonpublic commercial information that may be kept confidential by the Board pursuant to exemption 4 of the FOIA. Some such responses may also contain information contained in or related to an examination of a financial institution, which may be kept confidential under exemption 8 of the FOIA.[6]

Current actions: On April 6, 2022, the Board published a notice in the **Federal Register** (87 FR 19924) requesting public comment for 60 days on the extension, with revision, of the FR 3066a and FR 3066b. The Board has revised the FRPS by structuring it as a partially ad hoc collection to improve its ability to collect relevant information in response to changing conditions in payments markets by streamlining the ability to add, remove, or modify survey items and respondents based on the Federal Reserve's information needs. Under the adopted revisions, the FRPS would contain the same core substantive questions asked on prior FRPS surveys, which would generally remain consistent from year to year. However, questions could be added, modified, or removed from year to year based on the Federal Reserve's information needs. The comment period for this notice expired on June 6, 2022. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–15813 Filed 7–22–22; 8:45 am]

BILLING CODE 6210–01–P

[2] 15 U.S.C. 1693b, 1693o–2 (authorizing the Board to prescribe regulations relating to interchange fees for electronic debit transactions and require any debit card issuer or payment card network to provide the Board with such information as may be necessary to carry out its responsibility to regulate interchange fees for electronic debit transactions).

[3] 12 U.S.C. 5014 (authorizing the Board to prescribe such regulations as it determines necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the Expedited Funds Availability Act, as amended).

[4] 12 U.S.C. 225a, 248, 248a, 342, 360, and 248–1 (*inter alia,* requiring the Board to maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates).

[5] 5 U.S.C. 552(b)(4).

[6] 5 U.S.C. 552(b)(8).

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0303; Docket No. 2022–0001; Sequence No. 6]

Submission for OMB Review; General Services Administration Acquisition Regulation; Federal Supply Schedule Solicitation Information

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement regarding OMB Control No. 3090–0303, Federal Supply Schedule Solicitation Information.

DATES: Submit comments on or before August 24, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review 2—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy Division, GSA, by phone at 202–445–0390 or by email at *thomas.olinn@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of information used by Contracting Officers awarding GSA Federal Supply Schedule (FSS) contracts in the review and evaluation of offers.

B. Annual Reporting Burden

The annual total annual public hour burden for this information collection is estimated to be 12,207 total hours. Annual reporting burdens include the estimated respondents with one (1) submission per respondent multiplied by preparation hours per response to get the total response burden hours.

GSAR clause 552.238–84, Discounts for Prompt Payment. This clause requests an offeror to identify in their offer any discounts for early payment.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–87, Delivery Prices. This clause requests an offeror to identify in their offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–95, Separate Charge for Performance Oriented Packaging (POP).** This clause requests an offeror, if applicable, to identify any hazardous material item (*i.e.,* SIN or Descriptive Name of Article) being offered and the separate charge that applies.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–96, Separate Charge for Delivery within Consignee's Premises.** This clause requests an offeror, as applicable, to identify any separate charge(s) for shipping when the delivery is within the consignee's premises (inclusive of items that are comparable in size and weight).

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–97, Parts and Service. This clause requests an offeror, if applicable, to include in their offer the names and addresses of all supply and service points maintained in the geographic area in which the offeror would perform under the GSA FSS contract (if awarded one). Additionally, requests an offeror to indicate whether

or not a complete stock of repair parts for the items being offered is carried at that point, and whether or not mechanical service is available.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–99, Delivery Prices Overseas. This clause requests an offeror to identify the intended geographic area(s)/countries/zones which are covered by their offer.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–111, Environmental Protection Agency Registration Requirement.** This clause requests offerors, if applicable, to identify the manufacturer's and/or distributor's name and EPA Registration Number for each item offered that requires registration with the EPA.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: 1.0 (1 hr.).

Total response burden hours: 3,051.

** This clause applies to specific GSA FSS Solicitation Large Categories.

C. Public Comments

A 60-day notice published in the **Federal Register** at 87 FR 28829 on May 11, 2022. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0303, Federal Supply Schedule Solicitation Information, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–15829 Filed 7–22–22; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1282; Docket No. CDC–2022–0092]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Improving Performance Measurement and Monitoring by CDC Programs: The Performance Measures Project. CDC is requesting approval for a revision to the previously approved project to work with selected CDC programs to provide tools, templates and technical assistance to develop and implement performance measures for CDC funded public health initiatives.

DATES: CDC must receive written comments on or before September 23, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0092 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Improving Performance Measurement and Monitoring by CDC Programs: The Performance Measures Project (OMB Control No. 0920–1282, Exp. 01/31/2023)—Revision—Office of the Associate Director for Policy and Strategy (OADPS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year, approximately 75% of the CDC's congressionally appropriated funding goes to extramural organizations, including state and local partners, via contracts, grants, and, most commonly, cooperative agreements. The

availability of funding for grants and cooperative agreements is announced through a Notice of Funding Opportunity (NOFO). CDC awards up to 100 new, non-research NOFOs each year (each funded for one to five years). These awards may have only a few funded recipients or more than 50 (such as when a CDC program provides funding to all states and territories).

CDC programs develop logic models for each NOFO, describing the key programmatic strategies and activities and the short/medium/long-term outcomes funded recipients are expected to achieve during their period of performance. Programs develop performance measures customized to a NOFO-specific public health initiative to assess actions prescribed by the logic model with the immediate goal of monitoring progress and the long-term goal of improving performance.

Monitoring and reporting of program performance is required of any non-federal entity receiving federal funds under 45 CFR 75.342 which states; ''the non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved''. Under this requested approval, CDC programs customize a sample ''Performance Measure Technical Specification Instrument'' and a sample ''Performance Measure Reporting Instrument'' to measure, at the local level, the desired public health outcomes of a particular public health initiative, in compliance with the Paperwork Reduction Act (PRA). Individual collection requests submitted under this Generic approval will include the tailored forms and a supplementary template. CDC programs developing new, non-research NOFOs are eligible to participate.

Currently three CDC programs have received OMB approval to collect performance measure data using the 0920–1282 Generic Information Collection. Two additional programs are in final CDC clearance for submitting their Generic ICR (GenIC) requests and three programs are actively developing applications. As CDC programs begin to normalize operations following the COVID–19 pandemic, numerous other CDC programs have showed strong interest in participating in the Performance Measures Project (PMP) when: (1) they develop new NOFOs or; (2) transition current performance measure data collection from the HHS Public Health Emergency (PHE) PRA waiver for Coronavirus Disease 2019 [COVID–19] to the PMP GenIC for ongoing performance data collection. This revision is requested to allow participating CDC programs to continue performance measure data collection through the remaining approval period and for additional programs to use the GenIC for future performance measure data collection.

This revision reflects expanded technical assistance that the Program Performance and Evaluation Office (PPEO) provides to CDC programs. CDC program eligibility to participate in PMP will be expanded as follows:

(1) Given the recent increase in grants and other funding mechanisms used at CDC to enhance programmatic flexibility, PMP eligibility will expand to include all available funding mechanisms for eligible programs.

(2) PPEO is providing increasing technical assistance to international programs. Eligibility will expand to include both domestic and international programs.

(3) Many CDC programs are operating under the 21st Century Cures Act PHE PRA COVID–19 Emergency Waiver. This PHE PRA Waiver is likely to be terminated in 2022. PMP will prioritize transitioning CDC program performance measure data collection from the PHE PRA Waiver to PMP.

(4) Some CDC programs are developing common performance metrics across multiple public health initiatives. PMP will prioritize cross-NOFO collaboration with these programs to increase efficiency.

(5) As programs transition back to normal function after the COVID–19 pandemic, there has been increased interest in PMP. The revision will increase the number of programs that may participate from 25 Programs to 40, resulting in an increase of estimated annual burden hours from 35,000 to 56,000.

CDC requests OMB approval for an estimated 56,000 annual burden hours. Participation of respondents is voluntary. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Recipients of CDC funds for public health initiatives.	Performance Measures Project Information Collection Tool.	1400	1	40	56,000
Total					56,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–15767 Filed 7–22–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2021–N–1112; FDA–2018–N–4465; FDA–2014–N–1960; FDA–2018–N–4428; and FDA–2018–N–3353]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Interstate Shellfish Dealer's Certificate and Participation in the National Shellfish Sanitation Program	0910–0021	6/30/2025
Administrative Detention and Banned Medical Devices	0910–0114	6/30/2025
MedWatch: The Food and Drug Administration Safety Information and Adverse Event Reporting Program	0910–0291	6/30/2025
Medicated Feed Mill License Application—21 CFR Part 515	0910–0337	6/30/2025
Antimicrobial Animal Drug Distribution Reports and Recordkeeping	0910–0659	6/30/2025

Dated: July 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15827 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–N–0801 and FDA–2021–N–0336]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Export Notification and Recordkeeping Requirements	0910–0482	6/30/2025
Quantitative Research on a Voluntary Symbol Depicting the Nutrient Content Claim ''Healthy'' on Packaged Food	0910–0905	6/30/2025

Dated: July 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15822 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1548]

Failure To Respond to an Abbreviated New Drug Application Complete Response Letter Within the Regulatory Timeframe; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Failure To Respond to an ANDA Complete Response Letter Within the Regulatory Timeframe.'' This guidance is intended to assist applicants in responding to complete response letters (CRLs) to abbreviated new drug applications (ANDAs) submitted to FDA under the Federal Food, Drug, and Cosmetic Act (FD&C Act). This guidance provides information and recommendations regarding potential courses of action for an ANDA applicant after issuance of a CRL as well as the actions that FDA may take if the applicant fails to respond to a CRL. In addition, this guidance recommends information an applicant may submit in its request for an extension to respond to a CRL as well as a non-exhaustive list of factors that FDA generally intends to consider in determining whether such a request is

reasonable. This guidance finalizes the draft guidance of the same title issued on September 29, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on July 25, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1548 for ''Failure To Respond to an ANDA Complete Response Letter Within the Regulatory Timeframe.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lisa Bercu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–6902; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Failure to Respond To an ANDA Complete Response Letter Within the Regulatory Timeframe.'' This guidance provides information and recommendations regarding the potential courses of action for an ANDA applicant after issuance of a CRL as well as the actions that FDA may take if the applicant fails to respond to the CRL. This guidance also identifies information that an applicant may submit in its request for an extension to respond to a CRL as well as a non-exhaustive list of factors that FDA generally intends to consider in determining whether such a request is reasonable.

This guidance finalizes the draft guidance entitled ''Failure to Respond to an ANDA Complete Response Letter Within the Regulatory Timeframe'' issued on September 29, 2020 (85 FR 61006). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include adding an appendix that provides examples of factors that FDA could consider as the basis for concluding that an applicant's request for an extension of time to respond to a CRL is reasonable. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Failure To Respond to an ANDA Complete Response Letter Within the Regulatory Timeframe.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of

information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 314.102 and 314.110 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: July 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15825 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1068]

Orange Book—Questions and Answers; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Orange Book—Questions and Answers.'' This guidance is intended to assist interested parties (including prospective drug product applicants, drug product applicants, and approved application holders) in utilizing the publication *Approved Drug Products with Therapeutic Equivalence Evaluations* (commonly known as the Orange Book). This guidance finalizes the draft guidance of the same title issued on June 1, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on July 25, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1068 for ''Orange Book—Questions and Answers.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Levine, Office of Generic Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1674, Silver Spring, MD 20993–0002, 240–402–7936, *Susan.Levine@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Orange Book—Questions and Answers.'' This

guidance is intended to assist interested parties (including prospective drug product applicants, drug product applicants, and approved application holders) in utilizing the Orange Book. This guidance provides answers to commonly asked questions FDA has received from interested parties regarding the Orange Book.

The Orange Book identifies drug products approved by FDA under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and related patent and exclusivity information. The main criteria for the inclusion of a drug product in the Orange Book are that the drug product is the subject of an approved application and that FDA has not determined the drug product to have been withdrawn from sale for safety or effectiveness reasons. In addition, the Orange Book contains therapeutic equivalence evaluations for approved multisource prescription drug products. These evaluations have been prepared to serve as public information and advice to State health agencies, prescribers, and pharmacists to promote public education on drug product selection and to foster containment of healthcare costs.

This guidance provides answers to questions that have been received by FDA staff that manage the Orange Book. The questions and answers cover the following topics: general inquiries about the content and format of the Orange Book, petitioned abbreviated new drug applications, the movement of drug products between different sections in the Orange Book, and patent listings.

This guidance finalizes the draft guidance entitled ''Orange Book—Questions and Answers'' issued on June 1, 2020 (85 FR 33167). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include minor clarifying revisions (including revisions to reflect the Orange Book Transparency Act of 2020 enacted on January 5, 2021) (Pub. L. 116–290).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Orange Book—Questions and Answers.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The following collections of information have been approved under OMB control number 0910–0001: (1) 21 CFR 314.50(a) through (f), (i), (h), and (k); (2) 21 CFR 314.53 for new drug application (NDA) submissions; (3) amendments to NDA submissions; (4) supplements to NDA submissions to FDA using Forms FDA 3542 (Patent Information Submitted Upon and After Approval of an NDA or Supplement) and 3542a (Patent Information Submitted With the Filing of an NDA, Amendment, or Supplement); and (5) 21 CFR 314.94.

In addition, the FDA Reauthorization Act of 2017 (Pub. L. 115–52) added section 506I to the FD&C Act (21 U.S.C. 356i), which imposes marketing status reporting requirements for notification of withdrawal from sale, notification of drugs not available for sale, and reports on marketing status. The collections of information regarding 506I notifications described in FDA's guidance entitled ''Marketing Status Notifications Under Section 506I of the Federal Food, Drug, and Cosmetic Act'' have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15831 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2040; FDA–2020–E–2041; and FDA–2020–E–2051]

Determination of Regulatory Review Period for Purposes of Patent Extension; VUMERITY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VUMERITY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 23, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 23, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 23, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 23, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2020–E–2040; FDA–2020–E–2041; and FDA–2020–E–2051 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VUMERITY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VUMERITY (diroximel fumarate). VUMERITY is indicated for the treatment of relapsing forms of multiple sclerosis, to include clinically isolated syndrome, relapsing-remitting disease, and active secondary progressive disease, in adults. Subsequent to this approval, the USPTO received a patent term restoration application for VUMERITY (U.S. Patent Nos. 8,669,281; 9,090,558; 10,080,733) from Alkermes Pharma Ireland Limited, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated April 5, 2021, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VUMERITY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VUMERITY is 1,944 days. Of this time, 1,623 days occurred during the testing phase of the regulatory review period, while 321 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 5, 2014. The applicant claims July 31, 2014, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 5, 2014, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 13, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for VUMERITY (NDA 211855) was initially submitted on December 13, 2018.

3. *The date the application was approved:* October 29, 2019. FDA has verified the applicant's claim that NDA 211855 was approved on October 29, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 40 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15823 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1156]

Kenneth Zipperer: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Kenneth Zipperer for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Zipperer was convicted of one felony count under Federal law relevant to these debarment proceedings for mail fraud. The factual basis supporting Mr. Zipperer's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Zipperer was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of March 30, 2022 (30 days after receipt of the notice), Mr. Zipperer had not responded. Mr. Zipperer's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable July 25, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On September 9, 2021, Mr. Zipperer was convicted, as defined in section 306(l)(1) of FD&C Act, in the U.S. District Court for the Western District of Wisconsin, when the court entered judgment against him for two offenses, one of which is relevant to these debarment proceedings: the offense of mail fraud, in violation of 18 U.S.C. 1341. FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: Mr. Zipperer acknowledged in his plea and sentencing hearing on September 9, 2021, that he owned and operated Zipperer Financial LLC where he worked as an insurance broker selling Medicare insurance policies to elderly individuals. Mr. Zipperer imported, via U.S. mail, foreign-sourced prescription drugs from an internet pharmacy company in India using the website ''*www.alldaychemist.com.*'' The packages mailed from this pharmacy contained the return address of Derric Wood in Delhi, India, and Mr. Zipperer had these packages shipped to a P.O. Box he rented for Zipperer Financial LLC. Mr. Zipperer imported many of the foreign-sourced prescription drugs in wholesale quantities and broke down the bulk shipments and repackaged them into retail quantities for his individual clients. Mr. Zipperer distributed many of these foreign-sourced prescription medications to his clients in person, though he had no valid wholesale distribution license, pharmacy license, or license to prescribe prescription drugs.

Further, as Mr. Zipperer acknowledged in his plea and sentencing hearing on September 9, 2021, the prescription drugs Mr. Zipperer distributed to his clients were misbranded because they were foreign-sourced versions of various prescription drugs that were not approved by FDA for use in the United States and were dispensed to consumers without a valid prescription of a practitioner licensed by law to administer such drugs. The drugs were therefore misbranded because they did not contain adequate directions for use. Mr. Zipperer imported these misbranded prescription drugs in boxes containing customs declaration forms affixed outside the box that falsely declared that the contents were personal supply medications.

As a result of this conviction, FDA sent Mr. Zipperer, by certified mail, on February 14, 2022, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Zipperer's felony conviction for mail fraud, in violation of 18 U.S.C. 1341, was for conduct relating to the importation into the United States of any drug or controlled substance because he illegally imported misbranded prescription drugs and then distributed those drugs, unlawfully, to consumers. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Zipperer's offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Zipperer of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Zipperer received the proposal and

notice of opportunity for a hearing on February 28, 2022. Mr. Zipperer failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Kenneth Zipperer has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Zipperer is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Zipperer is a prohibited act.

Any application by Mr. Zipperer for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2021–N–1156 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: July 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15795 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0810]

Conducting Remote Regulatory Assessments—Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Conducting Remote Regulatory Assessments—Question and Answers.'' FDA is issuing the draft guidance to describe the Agency's current thinking regarding its use of remote regulatory assessments (RRAs) in order to increase industry's understanding of RRAs and facilitate FDA's process for conducting RRAs. FDA has used RRAs to conduct oversight, mitigate risk, meet critical public health needs and help maximize compliance of FDA-regulated products. This draft guidance provides answers to frequently asked questions regarding what RRAs are, when and why FDA may use them, and how FDA may conduct them, among others.

DATES: Submit either electronic or written comments on the draft guidance by September 23, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0810 for ''Conducting Remote Regulatory Assessments; Questions and Answers; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20852. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by email by emailing ORA at *orapolicystaffs@fda.hhs.gov.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Christopher Henderson, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20857, *Christopher.Henderson@fda.hhs.gov,* 240–402–8186; or Ben Firschein, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Silver Spring, MD 20993–0002, *Ben.Firschein@fda.hhs.gov,* 240–402–8186.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Conducting Remote Regulatory Assessments—Questions and Answers.'' FDA is issuing the draft guidance to describe the Agency's current thinking regarding its use of RRAs in order to help increase industry's understanding of RRAs, thereby facilitating FDA's process for conducting remote assessments. RRAs include requests for records and other information for FDA review and interactive evaluations of an FDA-regulated establishment or product with the use of, for example, livestreaming video. RRAs can be either voluntary or mandated. FDA has used RRAs to conduct oversight, mitigate risk, meet critical public health needs, and help maximize compliance with applicable FDA requirements, for all types of FDA-regulated products.

For example, during the Coronavirus Disease 2019 (COVID–19) pandemic, FDA has used RRAs to inform approval and licensing decisions, verify corrective actions for establishments with an acceptable compliance status, and gain compliance insight into establishments that FDA has been unable to inspect. This experience has identified significant benefits of using RRAs to FDA, regulated industry, and the public. For these and other reasons, FDA is issuing this draft guidance to describe its intention to, when appropriate, continue to use RRAs outside of the COVID–19 public health emergency and for all FDA-regulated product types.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Conducting Remote Regulatory Assessments.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.regulations.gov.*

Dated: July 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–15812 Filed 7–22–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before September 23, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Teen Pregnancy Prevention Fiscal Year 2020/2021 Tier 1 and Tier 2 Implementation Study.

Type of Collection: New collection.

OMB No. 0990–NEW–Office of Population Affairs.

Abstract: The Office of Population Affairs (OPA), U.S. Department of Health and Human Services (HHS) is requesting 2 years of approval by OMB on a new collection. The Teen Pregnancy Prevention (TPP) Tier 1 and Tier 2 Implementation Study will document how 75 grantees funded in 2020 and 2021 are implementing their grant strategies to reduce rates of teen pregnancy and sexually transmitted infections in their selected communities or priority areas. OPA anticipates that grantees will employ diverse strategies working with partner organizations within communities to implement their teen pregnancy prevention projects. To document approaches and experiences of each grantee, a lead staff member in each grantee organization and up to one other staff member will be interviewed during an in-person or virtual site visit. Up to two staff members from key grantee partner organizations will be interviewed for 31 of the 62 Tier 1 grantees and all 13 Tier 2 grantees.

Type of Respondent: Interview participants will include up to 124 Tier 1 grantee staff members, 62 Tier 1 grantee partner organization staff members, 26 Tier 2 grantee staff members and 26 Tier 2 grantee partner organization staff members.

Frequency: One time.

Affected Parties: Public and private businesses.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Tier 1 Grantee Interview Guide	Tier 1 grantee director and other staff.	124	1	2	248
Tier 1 Partner Interview Guide	Tier 1 grantee partner staff	62	1	1	62
Tier 2 Grantee Interview Guide	Tier 2 grantee director and other staff.	26	1	2	52
Tier 2 Partner Interview Guide	Tier 2 grantee partner staff	26	1	1	26
Total			1		388

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–15792 Filed 7–22–22; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Cancer Institute Special Emphasis Panel NCI Informatics Technologies for Cancer Research.

Date: September 8–9, 2022.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shuli Xia, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20852, 240–276–5460, *shuli.xia@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel IMAT Biospecimen Research.

Date: September 16, 2022.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shuli Xia, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20852, 240–276–5256, *shuli.xia@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel Transition Career Development Award (K22) and Institutional Training and Education (T32, R25).

Date: September 22, 2022.

Time: 10 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850, 240–276–6368, *Stoicaa2@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel Innovative Molecular and Cellular Analysis Technologies.

Date: October 5, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240–276–5460, *jfang@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI Program Project (P01) SEP–D.

Date: October 6–7, 2022.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–276–5007, *tandlea@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI SPORE (P50) Review I.

Date: October 18–19, 2022.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850, 240–276–5735, *mike.lindquist@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI SPORE (P50) Review II.

Date: October 19–20, 2022.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH,

9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240–276–6611, *mukesh.kumar3@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI Program Project (P01) SEP–C.

Date: October 25–26, 2022.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, *mh101v@nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group Career Development Study Section (J).

Date: October 27–28, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850, 240–276–6132, *tushar.deb@nih.gov*.

Dated: July 19, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15758 Filed 7–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Clinical Trials in Stroke.

Date: August 3–4, 2022.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, 301–435–6033, *rajarams@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.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NINDS BRAIN Review (NS–21–026, R01 and NS–21–027, U01) Meeting.

Date: August 5, 2022.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mir Ahamed Hossain, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *mirahamed.hossain@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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15761 Filed 7–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group Acquired Immunodeficiency Syndrome Research Study Section Acquired Immunodeficiency Syndrome Research Study Section (AIDS).

Date: August 10, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40A, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892, (240) 669–5035, *robert.unfer@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15759 Filed 7–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: August 16, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: August 17, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15760 Filed 7–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

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 materials, 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 Library of Medicine Special Emphasis Panel; COI–PAR Curation.

Date: December 1, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Video Assisted Meeting.

Contact Person: Jan Li, M.D., Ph.D., Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, 301–496–3114, *lij21@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 19, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15806 Filed 7–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NINDS Contract Evaluations.

Date: July 28, 2022.

Time: 1 to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Bethesda, MD 20892, 301–827–9087, *mooremar@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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15762 Filed 7–22–22; 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; IMPROVE Initiative: Implementation Science to Advance Maternal Health and Maternal Health Equity.

Date: August 17, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.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: July 19, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–15807 Filed 7–22–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4656–DR; Docket ID FEMA–2022–0001]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4656–DR), dated June 29, 2022, and related determinations.

DATES: The declaration was issued June 29, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 29, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from a severe storm, straight-line winds, tornadoes, and flooding on May 12, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Alana B. Kuhn, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Aurora, Beadle, Bon Homme, Brookings, Clay, Codington, Day, Deuel, Grant, Hamlin, Hanson, Hutchinson, Kingsbury, Lake, McCook, Miner, Minnehaha, Moody, Roberts, and Turner Counties and the Flandreau Santee Sioux Tribe of South Dakota and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation for Public Assistance.

All areas within the State of South Dakota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15883 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2022.

Colfax, Mora, and San Miguel Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15875 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4655–DR; Docket ID FEMA–2022–0001]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–4655–DR), dated June 16, 2022, and related determinations.

DATES: The declaration was issued June 16, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 16, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Montana resulting from a severe storm and flooding beginning on June 10, 2022, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Maona N. Ngwira, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Carbon, Park, and Stillwater Counties for Public Assistance.

All areas within the State of Montana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15880 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4628–DR; Docket ID FEMA–2022–0001]

Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4628–DR), dated October 26, 2021, and related determinations.

DATES: This change occurred on July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Catharine O. Fan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Gerard M. Stolar as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15870 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4646–DR; Docket ID FEMA–2022–0001]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–4646–DR), dated March 14, 2022, and related determinations.

DATES: This change occurred on June 15, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Yolanda J. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Dargan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15873 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4654–DR; Docket ID FEMA–2022–0001]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–4654–DR), dated May 25, 2022, and related determinations.

DATES: The declaration was issued May 25, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 25, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe winter storms and straight-line winds during the period of March 17 to March 22, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, DuWayne Tewes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Barton, Clark, Comanche, Edwards, Ellis, Ford, Graham, Gray, Hodgeman, Kiowa, Lane, Meade, Ness, Pawnee, Phillips, Rooks, Rush, Stafford, Trego, and Wallace Counties for Public Assistance.

All areas within the State of Kansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15879 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4657–DR; Docket ID FEMA–2022–0001]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4657–DR), dated June 29, 2022, and related determinations.

DATES: The declaration was issued June 29, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 29, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, and flooding during the period of May 2 to May 8, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Roland W. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Adair, Cherokee, Muskogee, Okmulgee, Pottawatomie, Seminole, and Tulsa Counties for Individual Assistance.

All areas within the State of Oklahoma are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15884 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued June 9, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 9, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from wildfires and straight-line winds beginning on April 5, 2022, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declaration of May 4, 2022, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs for the first 90 days of the incident period.

This adjustment to state and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15876 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4653–DR; Docket ID FEMA–2022–0001]

Rhode Island; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4653–DR), dated May 12, 2022, and related determinations.

DATES: The declaration was issued May 12, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 12, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Rhode Island resulting from a severe winter storm and snowstorm during the period of January 28 to January 29, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Rhode Island have been designated as adversely affected by this major disaster:

Bristol, Kent, Newport, Providence, and Washington Counties, including the Narragansett Indian Tribe for Public Assistance.

Snow Assistance will be provided for a period of 48 hours for Bristol, Kent, Newport, Providence, and Washington Counties, including the Narragansett Indian Tribe.

All areas within the State of Rhode Island are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15878 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4644–DR; Docket ID FEMA–2022–0001]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4644–DR), dated March 11, 2022, and related determinations.

DATES: This change occurred on July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Catharine O. Fan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Gerard M. Stolar as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15872 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued June 27, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from wildfires and straight-line winds beginning on April 5, 2022, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declarations of May 4, 2022 and June 9, 2022, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs for a 90-day period from the date of declaration.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15877 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4648–DR; Docket ID FEMA–2022–0001]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–4648–DR), dated March 24, 2022, and related determinations.

DATES: This change occurred on June 15, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Yolanda J. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Dargan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15874 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4655–DR; Docket ID FEMA–2022–0001]

Montana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–4655–DR), dated June 16, 2022, and related determinations.

DATES: This amendment was issued June 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Montana is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 16, 2022.

Carbon, Park, and Stillwater Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15881 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4655–DR; Docket ID FEMA–2022–0001]

Montana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–4655–DR), dated June 16, 2022, and related determinations.

DATES: This amendment was issued July 7, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Montana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 16, 2022.

Sweet Grass, Treasure, and Yellowstone Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15882 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4585–DR; Docket ID FEMA–2022–0001]

Alaska; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–4585–DR), dated February 17, 2021, and related determinations.

DATES: This change occurred on June 15, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Yolanda J. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Dargan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15869 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4638–DR; Docket ID FEMA–2022–0001]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–4638–DR), dated January 15, 2022, and related determinations.

DATES: This change occurred on June 15, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Yolanda J. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Dargan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–15871 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2022–0040]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee management; notice of committee re-establishment.

SUMMARY: The Secretary of Homeland Security has determined that the re-establishment of the Data Privacy and Integrity Advisory Committee is necessary and in the public interest in connection with the Department of Homeland Security's performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

DATES: The committee's charter expired on July 8, 2022.

ADDRESSES: Any Comments must be identified by DHS Docket Number (DHS–2022–0040) and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2022–0040) in the subject line of the message.
- *Fax:* (202) 343–4010.
- *Mail:* Sandra L. Taylor, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Privacy Office, Mail Stop 0655, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20598–0655.

Instructions: All submissions must include the words ''Department of Homeland Security'' and DHS–2022–0040, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra L. Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Privacy Office, Mail Stop 0655, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20598–0655, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *privacycommittee@hq.dhs.gov.*

Responsible DHS Officials: Lynn Parker Dupree, Chief Privacy Officer, and Sandra L. Taylor, Designated Federal Officer, 2707 Martin Luther King, Jr., Avenue SE, Mail Stop 0655, Washington, DC 20598, *PrivacyCommittee@dhs.gov,* (202) 343–1717.

SUPPLEMENTARY INFORMATION:

Purpose and Objective: Under the authority of 6 U.S.C. 451, this charter renewed the Data Privacy and Integrity Advisory Committee as a discretionary committee, which shall operate in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. The Committee provides advice at the request of the Secretary and the Chief Privacy Officer of the Department of Homeland Security (DHS) (hereinafter ''the Chief Privacy Officer'') on programmatic, policy, operational, security, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity, transparency, and other privacy-related matters.

Lynn Parker Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2022–15833 Filed 7–22–22; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0050]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) invites the

general public and other Federal agencies to comment on this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, this information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments

DATES: Comments are encouraged and will be accepted until September 23, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0050 in the body of the correspondence, the agency name and Docket ID ICEB–2019–0003. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2019–0003.

FOR FURTHER INFORMATION CONTACT: If you have questions related to this collection please contact: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, email *sevp@ice.dhs.gov,* telephone: 703–603–3400. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Comment

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households; Farms; Business or other for-profit; Not-for-profit institutions; State, local or Tribal governments; The information collection garners qualitative customer and stakeholder feedback in an efficient and 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 provides insights into customer or stakeholder perceptions, experiences and expectations, provides an early warning of issues with service, or focuses attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance provides useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 130,000 responses at 5 minutes (0.0833 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,829 annual burden hours.

Dated: July 20, 2022.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2022–15834 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0045]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) invites the general public and other Federal agencies to comment on this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, this information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted until September 23, 2022.

ADDRESSES: All submissions received must include the OMB Control Number

1653–0045 in the body of the correspondence, the agency name and Docket ID ICEB–2009–0002. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2009–0002.

FOR FURTHER INFORMATION CONTACT: If you have questions related to this collection please contact: Carl Albritton, ERO Bond Management Unit, (202) 732–5918, *carl.a.albritton@ice.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comment

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–395; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. When an obligor loses the original Receipt of Immigration Officer-United States Bonds, Notes, or Cash, Accepted as Security on an Immigration Bond, or I–305, the obligor must submit form I–395 to claim the principal and earned interest due for cancelled or mitigated bonds.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

Dated: July 20, 2022.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2022–15830 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0122]

Agency Information Collection Activities; Revision of a Currently Approved Collection: USCIS Online Account Access

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 23, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0122 in the body of the letter, the agency name and Docket ID USCIS–2011–0015. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2011–0015.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

USCIS is changing the name of this information collection from ''USCIS Identity and Credential Access Management (ICAM)'' to ''USCIS Online Account Access.''

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2011–0015 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Online Account Access.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. In order to create a new USCIS Online Account, members of the public (*i.e.,* users) must submit a valid email address; create a password; select their preferred method for interacting with a two-step verification process (authentication app, text message, or email); and provide responses to five password reset questions of their choice. Any given email address may be associated with only one USCIS Online Account; users may not establish multiple accounts using the same email address. A user is required to complete a two-step verification process upon creation of a new account and during each subsequent log-in. USCIS makes use of the information received during the account creation process to set up the user's profile. Once the account is established/the user has logged in, the user can edit/add certain profile information or select a USCIS online system with which to interact.

USCIS systems currently accessible by logging in through the USCIS Online Account Access process are: myUSCIS, the Freedom of Information Act electronic request system (FIRST), and myE-Verify. These systems serve specific, unique purposes and may require the user to provide information beyond what is required to create an account/log in through the USCIS Online Account Access process. Each system may be considered a collection of information in its own right and be covered by its own OMB Control Numbers. USCIS may add additional online systems for public use in the future.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the USCIS Online Account Access information collection is 3,397,160 and the estimated hour burden per response is 0.167 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 567,326 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: July 14, 2022.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–15805 Filed 7–22–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7062–N–10]

Privacy Act of 1974; System of Records

AGENCY: Office of the Chief Human Capital Officer, HUD.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Office of the Chief Human Capital Officer (OCHCO) is issuing a public notice of its intent to establish a Privacy Act system of records titled ''Student Loan Repayment Program. The purpose of this system of records is to allow HUD to collect and maintain records on employees and job candidates who are being considered for student loan repayment benefits under the Department's Policy 550.2 Chg. 1, Chapter 4—Pay Administration Handbook, entitled ''Repayment of Student Loans,'' as well as individuals who have been approved for and are receiving such benefits.

DATES: Comments will be accepted on or before August 24, 2022. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer, The Executive Secretariat, 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). Individuals who are hearing- or speech-impaired may access this telephone number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: HUD Student Loan Repayment Program (SLRP) is a popular tool used by the Department to attract or retain highly or uniquely qualified candidates into mission-critical positions and retain highly qualified employees in critical positions. If the employee is likely to leave for employment outside of the federal sector and the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the accomplishment of a strategic goal and/or objective, the Department may agree to repay the lender (on behalf of the employee, all, or part of any outstanding federally insured student loan(s). The operation of this program is contingent upon the availability of funds.The SLRP is offered on an annual basis to all HUD employees through the Department's SharePoint site. Prior to the opening of the annual SLRP, all HUD employees are notified via email a ''Save the Date'' notification message; an electronic posting is uploaded on the Department's HUD@Work website and poster boards are posted throughout the building. When applying, employees are encouraged to adhere to established timelines for consideration.

SYSTEM NAME AND NUMBER:

Student Loan Repayment Program, HUD/OCHCO–02.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the following locations: U.S. Department of Housing and Urban Development Headquarters location, 451 7th Street SW, Washington, DC 20410–0001.

SYSTEM MANAGER(S):

Director, Human Capital Information System Division (HCISD), Robyn R. Johnson, Office of the Chief Human Capital Officer (OCHCO), Office of 451 Seventh Street SW, Washington, DC 20410–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Floyd D. Spence National Defense Authorization Act of Fiscal Year 2001 (Pub. L. 106–398); 5 U.S.C. 5379, as amended, and implementing regulations at 5 CFR part 537.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to allow HUD to collect and maintain records on employees requesting or receiving repayment on qualified student loans. Another purpose of this system is to monitor, process, track and report the processing of approved student loan benefits while ensuring compliance with applicable laws and regulations, including confidentiality requirements protecting information individuals submit in support of student loan repayment requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former HUD employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full Name, home and work addresses, home and work telephone numbers, education records, student loan applications, account numbers, loan balance, repayment schedule, repayment history, repayment status; email addresses, loan holders' name, loan holders' addresses, lender verification letters and service agreements.

RECORD SOURCE CATEGORIES:

Individuals and Loan lenders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

2. To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement, for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission.

3. To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with HUD or under contract to another agency when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

4. To appropriate agencies, entities, and persons when: (I) HUD suspects or has confirmed that there has been a breach of the system of records; (II) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (III) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

5. To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (I) responding to a suspected or confirmed breach or (II) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

6. To appropriate Federal, State, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

7. To a court, magistrate, administrative tribunal, or arbitrator while presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

8. To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

9. To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

10. To the Office of Personnel Management (OPM), the Merit Systems Protection Board (and its office of the Special Counsel), the Federal Labor Relations Authority (and its General Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and Paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Full name and HUD identification number.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Destroy 3 years after date of approval, completion of service agreement, or termination of incentive or differential payment, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For Paper Records: Comprehensive paper records are kept in locked metal file cabinets in locked rooms in HUD Headquarters, in the Office of Policy, which is the office responsible for the Student Loan Repayment Program. Access to these records is limited to only those persons who have a need for them in the performance of their official duties. All physical access to the building where the system of records is maintained is controlled and monitored by security personnel who perform security checks on a routine basis.

For Electronic Records: Comprehensive electronic records are maintained and stored in an electronic encryption database system. These records can only be access based off the user's rights and privileges to the system. Electronic records are stored on the SharePoint ''online'', D110 Microsoft Office 365 Multi-Tenant Software (MS O365 MT) environment, which runs on the Department's network (HUD). This environment complies with the security and privacy controls and procedures as described in the Federal Information Security Management Act (FISMA), National Institute of Standards and Technology (NIST) Special Publications, and Federal; Information Processing Standards (FIPS). A valid HSPD–12 ID Credential, access to HUD's LAN, a valid UserID and Password and a Personalized Identification Number (PIN) is required to access the Student Loan Repayment Program. These records are restricted to only those persons with a role in the Student Loan Repayment Program, having a need to access them in the performance of their official duties.

For Electronic Records (cloud based): Comprehensive electronic records are secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Management Act (FISMA) Moderate dedicated hosting environment. All data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handing data at rest and in transit are in accordance with HUD encryption standards.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Department of Housing and Urban Development, Attn: FOIA Program Office, 451 7th Street SW, Suite 10139, Washington, DC 20410–0001, or by emailing *foia@hud.gov.* Individuals must furnish the following information for their records to be located:

1. Full name.
2. Signature.
3. The reason why the individual believes this system contains information about him/her.
4. The address to which the information should be sent.

CONTESTING RECORD PROCEDURES:

Same as the Notification Procedures below.

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the System Manager. Such person should provide his or her full name, position title and office location at the time the accommodation was requested, and a mailing address to which a response is to be sent.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

N/A.

HISTORY:

N/A.

LaDonne White,

Senior Agency Official for Privacy, Office of Chief, Human Capital Officer.

[FR Doc. 2022–15799 Filed 7–22–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–41]

30-Day Notice of Proposed Information Collection: Designation as a Single-Family Foreclosure Commissioner, OMB Control No.: 2510–0012

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 24, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 17, 2022, at 87 FR 29871.

A. Overview of Information Collection

Title of Information Collection: Designation as a Single-Family Foreclosure Commissioner.

OMB Approval Number: 2510–0012.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Under the Single-Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclosure Commissioners to do this. HUD needs the Notice and resulting applications for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Application for Foreclosure Commissioner	30.00	1.00	30.00	.50	15.00	$25.00	$375.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Data Officer.

[FR Doc. 2022–15851 Filed 7–22–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–40]

30-Day Notice of Proposed Information Collection: Manufactured Housing Installation Program Reporting Requirements OMB Control No.: 2502–0578

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for additional 30 days of public comment.

DATES: *Comments Due Date:* August 24, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 19, 2022, at 87 FR 23227.

A. Overview of Information Collection

Title of Information Collection: Manufactured Housing Installation Program Reporting Requirements.

OMB Approval Number: 2502–0578.

OMB Expiration Date: July 31, 2022.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–305; HUD–306; HUD–307; HUD–308; HUD–309; HUD–312.

Description of the need for the information and proposed use: The Manufactured Housing Installation Program, mandated by the Manufactured Home Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, establishes regulations for the implementation and administration of an installation program and establishes a regulatory program for States that choose not to implement their own programs. HUD uses the information collected for the enforcement of the Model Manufactured Home Installation Standards in each State that does not have an installation program established by State law to ensure that the minimum criteria of an installation program are met.

Respondents: Business or other for-profit; State, Local, or Tribal Government; Individuals or households.

Estimated Number of Respondents: 4,072.

Estimated Number of Responses: 388,357.

Frequency of Response: Annually.

Average Hours per Response: 4.

Total Estimated Burdens: 290,523 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–15835 Filed 7–22–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7062–N–09]

Privacy Act of 1974; System of Records

AGENCY: Office of Disaster Management and National Security, HUD.

ACTION: Notice of a new system of records.

SUMMARY: HUD Emergency Operations Center, Office of Disaster Management and National Security proposes to add a new system of records entitled, ''Emergency Notification System''. The purpose of this system is to maintain emergency contact information for HUD personnel to enable emergency notifications involving an immediate threat to health or safety of HUD employees. The system provides for high-speed message delivery that reaches all HUD personnel across all available communication channels to deliver alerts and notifications issued by the Department of Homeland Security, other Federal Operations Centers, and/or local emergency officials regarding weather related emergencies, national security incidents, or other critical situations that disrupt the operations and accessibility of a worksite. The system will also enable the Department to account for the safety of HUD personnel during an emergency or incident.

DATES: This new system will be effective upon publication. New routine uses will be effective August 24, 2022. Submit comments on or before August 24, 2022.

ADDRESSES: You may submit comments, identified by docket number by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat, 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White, The Privacy Office; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). Individuals who are hearing- or speech-impaired may access this telephone number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development Act of 1965 established HUD as Cabinet-level agency. HUD will maintain the records covered by this notice. The new system of records notice Emergency Notification System, HUD ADM–10,'' is being established to use existing work-related contact information and collect voluntary emergency contact information for current employees to be used in the event of an emergency or incident.

SYSTEM NAME AND NUMBER:

Emergency Notification System, HUD ADM–10.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

HUD Emergency Operations Center, Office of Disaster Management and National Security, Office of the Chief Administrative Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6280, Washington, DC 20410–0001, Everbridge, 25 Corporate Drive, Suite 400 Burlington, MA, US 01803. Data centers are located in Northern California and West Virginia.

SYSTEM MANAGER(S):

Ms. Laura L. McClure, HUD Emergency Operations Center, Office of Disaster Management and National Security, Office of the Chief Administrative Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6280, Washington, DC 20410–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations, 44 U.S.C. 3101, Records management by agency heads; general duties, The Department of Housing and Urban Development Act of 1965, Presidential Policy Directive 8, Presidential Policy Directive 40, Federal Continuity Directive 1, Federal Executive Branch National Continuity Program and Requirements and Federal Continuity Directive 2, Federal Executive Branch Mission Essential Functions and Candidate Primary Mission Essential Functions Identification and Submission Process.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain emergency contact information for HUD personnel. The system provides for high-speed message delivery that reaches all HUD personnel in response to alerts and notification issued by the Department of Homeland Security, other Federal Operations Centers, and local emergency officials regarding weather related emergencies, national security incidents, or other critical situations that disrupt the operations and accessibility of a worksite. The system will also enable the Department to account for the safety of HUD personnel during an emergency or incident.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees, interns and detailees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, email address, phone number, organization/office of assignment, and duty station. Individuals may voluntarily provide alternate contact information, personal email address or phone number.

RECORD SOURCE CATEGORIES:

Individuals and HUD Active Directory System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

(2) (a) Appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breach of the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems,

programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(3) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(4) To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(5) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(6) To appropriate Federal, State, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and Paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, name, email address, phone number, organization/office assignment, or by some combination thereof.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

The system is subject to HUD's existing records schedule and electronic records retention policy. HUD will maintain computer and paper records for three years, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic files containing personal identifiers in secure storage areas accessible only by our authorized employees and contractors who have a need for the information when performing their official duties. Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes, unique identifiers, authentication ID, and passwords. Paper records are printed for quality control purposes and are considered working documents and they are maintained per the Policies and Practices for Retention and Disposal Records. Authorized personnel will be provided security awareness and incident response training no less than annually.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Department of Housing and Urban Development, Attn: FOIA Program Office, 451 7th Street SW, Suite 10139, Washington, DC 20410–0001. or by emailing *foia@hud.gov.* Individuals must furnish the following information for their records to be located:

1. Full name.
2. Signature.
3. The reason why the individual believes this system contains information about him/her.
4. The address to which the information should be sent.

CONTESTING RECORD PROCEDURES:

Same as the Notification Procedures below.

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the System Manager. Such person should provide his or her full name, position title and office location at the time the accommodation was requested, and a mailing address to which a response is to be sent.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a newly proposed system of records.

LaDonne White,

Senior Agency Official for Privacy, Office of Chief Human Capital Officer.

[FR Doc. 2022–15798 Filed 7–22–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK930000.L51010000.000000.LVRWL20L1090]

Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Willow Master Development Plan, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) prepared a Draft Supplemental Environmental Impact Statement (EIS) to address deficiencies identified by the U.S. District Court for the District of Alaska in the 2020 Willow Master Development Plan (MDP)/Final Environmental Impact Statement and Record of Decision (ROD) issued in October 2020, and to ensure compliance with applicable law. The BLM, by this notice, is announcing the opening of the public comment period on this Draft Supplemental EIS and is also announcing that it intends to hold in-person public meetings in Utqiagvik and Nuiqsut, as well as three virtual public meetings. A hearing to receive comments on the Draft Supplemental EIS and the proposed project's potential to impact subsistence resources and activities will be held in Nuiqsut concurrent with the planned in-person public meeting.

DATES: To afford the BLM the opportunity to consider comments, please ensure that the BLM receives your comments within 45 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the Draft Supplemental EIS in the **Federal Register**. To ensure that comments will be considered, the BLM must receive written comments on the Draft Supplemental EIS for the Willow Master Development Plan by August 29, 2022. Dates, times, and locations of public meetings and subsistence hearings will be announced at least 15 days in advance on the project website, as well as through various additional means

such as public notices, media releases, social media posts, and mailings.

ADDRESSES: You may submit comments on issues related to the Draft Supplemental EIS by any of the following methods:

- *BLM's National Environmental Policy Act (NEPA) Register website: https://eplanning.blm.gov/eplanning-ui/project/109410/510.*
- *Mail:* 222 W 7th Avenue, Stop #13, Anchorage, Alaska 99513.

More details and instructions for submitting public comment may be found on the BLM NEPA Register website at *https://eplanning.blm.gov/eplanning-ui/project/109410/510.* Documents pertinent to this proposal may be examined at the NEPA Register website.

FOR FURTHER INFORMATION CONTACT: Stephanie Rice at (907) 271–3202, or by email at *srice@blm.gov,* on questions specific to NEPA or to have your name added to our mailing list. Individuals in the United States who are deaf, blind, 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: The Willow project was originally analyzed in the 2020 Willow MDP/Final EIS and authorized in a ROD issued in October 2020. In August 2021, the U.S. District Court for the District of Alaska vacated the ROD and remanded the matter to BLM to correct deficiencies in the EIS regarding analysis of foreign greenhouse gas emissions and screening of alternatives for detailed analysis. In order to comply with this ruling, the BLM made numerous updates to the analysis, including development of a new alternative that substantially reduces infrastructure in the Teshekpuk Lake Special Area. This Draft Supplemental EIS complies with all applicable laws and current Department of the Interior guidance, including (but not limited to) NEPA, the Federal Land Policy and Management Act of 1976, the Alaska National Interest Lands Conservation Act, and the Naval Petroleum Reserves Production Act.

The input of Alaska Native Tribes and Corporations is of critical importance to this Supplemental EIS. Therefore, during the NEPA process, the BLM will continue to consult with potentially affected Federally recognized Tribes on a government-to-government basis, and with affected Alaska Native Corporations in accordance with Executive Order 13175, as well as Public Law 108–199, Div. H, sec. 161, 118 Stat. 452, as amended by Public Law 108–447, Div. H, sec. 518, 118 Stat. 3267, and other Department and Bureau policies. We respectfully request participation in consultation by Alaska Native Tribes and Alaska Native Corporations to provide their views and recommendations on the analysis, including effects from the proposed activities. The BLM will hold individual consultation meetings upon request.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the Supplemental EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

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.

(Authority: 40 CFR 1506.6(b))

Steven Cohn,

State Director, BLM Alaska.

[FR Doc. 2022–15757 Filed 7–22–22; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–34243; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before July 16, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by August 9, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 16, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

HAWAII

Honolulu County

House at 3035 Kiele Avenue, 3035 Kiele Ave., Honolulu, SG100008038

IOWA

Bremer County

Wartburg College Historic District, 100 Wartburg Blvd., Waverly, SG100008031

Muscatine County

Chicago, Rock Island and Pacific Railroad Passenger Depot, 405 North Elm St., West Liberty, SG100008032

MASSACHUSETTS

Barnstable County

South Chatham Village Historic District, Western portion of Main St., and northern portions of Deep Water Ln., Forest Beach Rd., and Pleasant St., Chatham, SG100008033

Hampden County

Essex Street Historic District, Roughly bounded by Chestnut, Essex, and Pine Sts., Holyoke, SG100008035

NEW YORK

Chemung County

Goff, Way and Brand Leaf Tobacco Warehouse, 310 Academy Pl., Elmira, SG100008028

Stowell House, 319 William St., Elmira, SG100008029

Erie County

Illinois Alcohol Company Building, 1432 Niagara St., Buffalo, SG100008027

OHIO

Columbiana County

New Garden Monthly Meetinghouse, 32114 Winona Rd., Hanoverton, SG100008030

Huron County

Norwalk Theatre, 57 East Main St., Norwalk, SG100008039

Lucas County

Craft Master Building, 328 North Westwood Ave., Toledo, SG100008037

TEXAS

Wichita County

American Trust Building-Holiday Inn, 726 Scott Ave., Wichita Falls, SG100008026

In the interest of preservation, a SHORTENED comment period has been requested for the following resource:

MARYLAND

Baltimore Independent City

Baltimore Federal Savings & Loan Association, 19–25 East Fayette St., Baltimore, SG100008034, Comment period: 3 days.

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 16, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–15864 Filed 7–22–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–379 and 731–TA–788, 792, and 793 (Fourth Review)]

Stainless Steel Plate From Belgium, South Africa, and Taiwan; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on stainless steel plate from South Africa and the antidumping duty orders on stainless steel plate from Belgium, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on December 1, 2021 (86 FR 68278) and determined on March 7, 2022 that it would conduct expedited reviews (87 FR 29878, May 17, 2022).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on July 19, 2022. The views of the Commission are contained in USITC Publication 5335 (July 2022), entitled *Stainless Steel Plate from Belgium, South Africa, and Taiwan: Investigation Nos. 701–TA–379 and 731–TA–788, 792, and 793 (Fourth Review).*

By order of the Commission.

Issued: July 19, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–15793 Filed 7–22–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

[OMB Number 1110–0026]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ), 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. This information collection request is for the Federal Firearms Licensee (FFL) Enrollment/National Instant Criminal Background Check System (NICS) E-Check Enrollment Form, Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities under the NICS Form, Responsibilities of a Federal Firearms Licensee (FFL) under the National Instant Criminal Background Check System (NICS) Form.

DATES: Comments are encouraged and will be accepted for 30 days until August 24, 2022.

FOR FURTHER INFORMATION CONTACT: If you have 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 the Criminal Justice Information Services Division, Federal Bureau of Investigation, National Instant Criminal Background Check System Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or email *NICS@fbi.gov* Attention: OMB PRA 1110–0026. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee (FFL) Enrollment/National Instant Criminal Background Check System (NICS) E-Check Enrollment Form, Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities under the NICS Form, Responsibilities of a Federal Firearms Licensee (FFL) under the National Instant Criminal Background Check System (NICS) Form.

(3) *Agency form number:* 1110–0026.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Any Federal Firearms Licensee (FFL) or State Point of Contact (POC) requesting access to conduct National Instant Criminal Background Check System (NICS) checks telephonically or by the internet through the NICS E-Check.

Brief Abstract: The Brady Handgun Violence Prevention Act of 1993 required the United States Attorney General to establish a National Instant Criminal Background Check System (NICS) that any Federal Firearms Licensee (FFL) may contact, by telephone or other electronic means, for information to be supplied immediately on whether receipt of a firearm to a prospective purchaser would violate state or federal law. Information pertaining to FFLs who may contact the NICS is collected to manage and control access to the NICS and to the NICS E-Check, to ensure appropriate resources are available to support the NICS, and to ensure the privacy and security of NICS information. For more information regarding the NICS, please visit *https://www.fbi.gov/services/cjis/nics.*

(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 380 FFLs enroll with the NICS per month for a total of 4,560 enrollments per year. The average response time for reading the directions for the National Instant Criminal Background Check System (NICS) Federal Firearms Licensee (FFL) Enrollment/NICS E-Check Enrollment Form is estimated to be two minutes; time to complete the form is estimated to be three minutes; and the time it takes to assemble, mail, or fax the form to the FBI is estimated to be three minutes, for a total of eight minutes. The average hour burden for this specific form is 4,560 × 8 minutes/60 = 608 hours.

The FFL Officer/Employee Acknowledgment of Responsibilities Form under the NICS takes approximately three minutes to read the responsibilities and two minutes to complete the form, for a total of five minutes. The average hour burden for this specific form is 4,560 × 5 minutes/60 = 380 hours.

The Responsibilities of an FFL under the NICS Form takes an additional two minutes to read which would be 4,560 × 2 minutes/60 = 152 hours.

The entire process of reading the material and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the material would be 4,560 × 15/60 = 1,140 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The entire process of reading the material and completing both forms would take 15 minutes per respondent. The average hour burden would be 4,560 × 15/60 = 1,140 hours.

If additional information is required contact: Robert Houser, Assistant Director, 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: July 20, 2022.

Robert Houser,

Department Clearance Officer for PRA, Assistant Director, U.S. Department of Justice.

[FR Doc. 2022–15820 Filed 7–22–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0077]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Report of Stolen or Lost Intrastate Purchase of Explosives Coupon (IPEC)

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 August 24, 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

Type of Information Collection: Extension without Change of a Currently Approved Collection.

The Title of the Form/Collection: Report of Stolen or Lost Intrastate Purchase of Explosives Coupon (IPEC).

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Individuals or households, and Farms.

Abstract: This collection is a reporting requirement for Federal explosives licensees and permittees to notify the Bureau of Alcohol, Tobacco, Firearms, and Explosives when an Intrastate Purchase of Explosives Coupon (IPEC)—ATF Form 5400.30 is stolen, lost, or destroyed, by telephoning 1–888–ATF–BOMB.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to

respond: An estimated 10 respondents will prepare reports for this collection once annually, and it will take each respondent approximately 20 minutes to complete their report.

An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 3.3 or 3 hours, which is equal to 10 (total respondents) * 1 (# of response per respondent) * .3333333 (20 minutes or the total time taken to prepare each response).

If additional information is required, contact: Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–206, Washington, DC 20530.

Dated: July 20, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer U.S. Department of Justice.

[FR Doc. 2022–15856 Filed 7–22–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0011]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Previously Approved Collection

AGENCY: Violent Criminal Apprehension Program (ViCAP), Critical Incident Response Group, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Violent Criminal Apprehension Program, Critical Incident Response Group, Federal Bureau of Investigation, Department of Justice, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until August 24, 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 Nathan Graham, Program Manager, ViCAP, Critical Incident Response Group, Federal Bureau of Investigation, FBI Academy, Quantico, Virginia 22135; phone: 202–324–3000, facsimile (703) 632–4239. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk.

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 Critical Incidence Response Group, Federal Bureau of Investigation, 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:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* ViCAP Case Submission Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is FD–676. The applicable component within the Department of Justice is the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, state, local, and tribal government law enforcement agencies charged with the responsibility of investigating violent crimes.

Abstract: Established by the Department of Justice in 1985, ViCAP serves as the national repository for violent crimes; specifically; Homicides (and attempts) that are known or suspected to be part of a series and/or are apparently random, motiveless, or sexually oriented. Sexual assaults that are known or suspected to be part of a series and/or are committed by a stranger. Missing persons where the circumstances indicate a strong possibility of foul play and the victim is still missing. Unidentified human remains where the manner of death is known or suspected to be homicide. Comprehensive case information submitted to ViCAP is maintained in the ViCAP National Crime Database and is automatically compared to all other cases in the databases to identify potentially related cases.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Of the approximately 18,000 government law enforcement agencies that are eligible to submit cases, it is estimated that thirty to fifty percent will actually submit cases to ViCAP. The time burden of the respondents is less than 60 minutes per form.

6. *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 20, 2022.

Robert Houser,

Department Clearance Officer for PRA, Assistant Director, U.S. Department of Justice.

[FR Doc. 2022–15819 Filed 7–22–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Lead in Construction Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 24, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The standard requires employers to train employees about the hazards of lead, monitor employee exposure, provide medical surveillance, and maintain accurate records of employee exposure to lead. These records will be used by employers, employees, physicians and the Government to ensure that employees are not harmed by exposure to lead in the workplace. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 3, 2022 (87 FR 26227).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Lead in Construction Standard.

OMB Control Number: 1218–0189.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 122,576.

Total Estimated Number of Responses: 8,149,750.

Total Estimated Annual Time Burden: 1,226,717 hours.

Total Estimated Annual Other Costs Burden: $82,343,194.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–15786 Filed 7–22–22; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 22–08]

Notice of Entering Into a Compact With the Government of Kosovo

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Millennium Challenge Act of 2003, as amended, the Millennium Challenge Corporation (MCC) is publishing a summary of the Millennium Challenge Compact (Compact) between the United States of America, acting through MCC, and the Government of Kosovo. Representatives of MCC and the Government of Kosovo executed the Compact on July 15, 2022. The complete text of the Compact has been posted at: *https://assets.mcc.gov/content/uploads/compact-kosovo.pdf.*

(Authority: 22 U.S.C. 7709 (b)(3))

Dated: July 19, 2022.

Thomas G. Hohenthaner,

Acting VP/General Counsel and Corporate Secretary.

Summary of Kosovo Compact

Overview of MCC Kosovo Compact

MCC's five-year Compact with the Government of Kosovo in the amount of $202,000,000 aims to reduce poverty through economic growth by targeting a binding constraint to economic growth in the country: the unreliable supply of electricity. The Compact will address this constraint through three projects: the Energy Storage Project, the Just and Equitable Transition Acceleration (JETA) Project, and the American Catalyst Facility for Development (ACFD) Project. The ACFD Project leverages U.S. International Development Finance Corporation (DFC) financing to complement the objectives of the Energy Storage Project. MCC's investments in Kosovo's energy sector will accelerate Kosovo's transition towards an energy future that is more sustainable, inclusive, reliable, and affordable.

Project Summaries

The projects and activities to be completed are:

1. *Energy Storage Project:* The objective of the Energy Storage Project is to support energy security and transition to a cleaner energy future, as reflected by the (1) usage of energy storage systems; (2) availability of the energy storage system; and (3) reduced cost of securing adequate electricity for Kosovo. The project includes three activities:

- *Frequency Restoration Response Activity:* This activity intends to support the transmission system operator in owning and operating approximately 90 megawatt-hours (MWh) of energy reserves to cost-effectively smooth out unexpected imbalances in the electricity grid.
- *Multi-Functional Energy Storage (MFES) Activity:* This activity intends to support a public or public-private partnership battery storage entity in owning and operating approximately 250MWh of energy storage that could be used for frequency restoration reserves, energy arbitrage, or other potential ancillary services, filling in gaps of longer-scale, unexpected outages or shifting energy to cover peak demand.
- *Energy and Climate Policy Support Activity:* This activity intends to support technical and administrative capacity building for energy and climate regulators and the policy and institutional reforms required to ensure the operating environment for energy storage in Kosovo is well defined and regulated through Kosovo's laws and supported by good planning, maintenance, and cost-reflective tariffs. It also aims to support cross-cutting measures on female employment and entrepreneurship across projects, and policy and institutional reform around pro-poor and gender-inclusive planning in the sector.

2. *JETA Project:* The objectives of the JETA Project are to (1) produce graduates who are hired in relevant jobs in the energy and adjacent sectors; and (2) increase employment of women among participating employers in the

Inclusive Energy Sector Workforce Activity.

• *Energy Skills for the Future Activity:* This activity aims to establish new technical training programs and builds on existing programs to provide the skills demanded by employers in the energy and adjacent sectors, aiming to facilitate the Government of Kosovo's energy transition and increasing women's participation in such programs.

• *Inclusive Energy Sector Workforce Activity:* This activity aims to incentivize gender equitable practices among energy sector employers, support networking, training, and mentoring opportunities for women, and provide technical assistance to help increase female representation in energy companies in Kosovo.

3. *ACFD Project:* The objective of the ACFD Project is to facilitate complementary DFC investments in Kosovo. The project aims to leverage DFC's financing to support one or more blended finance transaction(s) that will catalyze private investment in Kosovo that could include (1) complementing MCC's funding to deliver a public private partnership focused transaction for energy storage in lieu of a public entity for the MFES Activity; (2) leveraging private sector participation to scale a successful energy storage public entity launch via additional private sector delivered storage systems and services (*i.e.,* additionally leased energy storage capacity); and (3) catalyzing complementary renewable energy investments that bolster generation capacity and strengthen the energy storage entity business case.

Kosovo Compact Budget

The compact budget is up to $236,670,600, which includes up to $202,000,000 funded by MCC and a contribution from the Government of Kosovo of $34,670,600.

Component	MCC funding
1. Energy Storage Project	$147,695,906
1.1 Frequency Restoration Response Activity	21,481,015
1.2 Multi-Functional Energy Storage Activity	116,588,890
1.3 Energy and Climate Policy Support Activity	9,626,001
2. Just and Equitable Transition Acceleration Project	16,000,000
2.1 Energy Skills for the Future Activity	8,000,000
2.2 Inclusive Energy Sector Workforce Activity	8,000,000
3. American Catalyst Facility for Development	2,000,000
4. Monitoring and Evaluation	3,565,000
5. Program Management and Administration	32,739,094
Total MCC Funding	202,000,000

Total compact funding	Amount
Total MCC Funding	$202,000,000
Government of Kosovo Contribution	34,670,600
Total Compact	236,670,600

[FR Doc. 2022–15791 Filed 7–22–22; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (22–057)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, August 9, 2022, 1 p.m.–5:30 p.m. Eastern Time; and Wednesday, August 10, 2022, 1 p.m.–5:30 p.m. Eastern Time.

ADDRESSES: The meeting will be virtual for members of the public. Dial-in audio teleconference and webcast details to watch the meeting remotely will be available on the NASA Advisory Council website at: *www.nasa.gov/offices/nac/home/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Guignard, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, *marcia.guignard@nasa.gov.*

The agenda for the meeting will include reports on the following NAC priority focus areas:

—Climate Change
—Commercial and Industry Partnerships
—Diversity, Equity, Inclusion and Accessibility
—International Collaboration
—Program Management and Acquisition

The agenda for the meeting will also include reports from the following NAC committees:

—Aeronautics Committee
—Human Exploration and Operations Committee
—Science Committee
—STEM Engagement Committee
—Technology, Innovation and Engineering Committee

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–15839 Filed 7–22–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0014; NARA–2022–056]

Records Schedules; Availability and Request for Comments (CORRECTED)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register**

and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules. This records schedule notice was originally published on June 9, 2022. Due to multiple clerical errors, it was subsequently withdrawn on July 14, 2022. It is now reposted as a new notice allowing the full 45-day comment period for the public to submit comments.

DATES: We must receive responses on the schedules listed in this notice by September 9, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-22-0014/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov*, you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a) and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Air Force, Agency-wide, Financial Management (65 Series)-Financial Management-Auditing Records (DAA–AFU–2021–0005).

2. Department of Commerce, National Oceanic and Atmospheric Administration, Coastal Nonpoint Pollution Control Program Records (DAA–0370–2022–0002).

3. Department of Homeland Security, U.S. Citizenship and Immigration Services, I–941 Application for Entrepreneur Parole Records (DAA–0566–2022–0008).

4. Department of Transportation, Federal Aviation Administration, Pilot Record Database (DAA–0237–2021–0023).

5. Central Intelligence Agency, Agency-wide, Global Trade Patterns (DAA–0263–2021–0012).

6. Central Intelligence Agency, Agency-wide, Audit Logs (DAA–0263–2022–0003).

7. Federal Trade Commission, Office of the Secretary, Correspondence Records (DAA–0122–2022–0001).

8. National Aeronautics and Space Administration, Agency-wide, Protective Services (DAA–0255–2022–0003).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–15821 Filed 7–22–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Astronomy and Astrophysics Advisory Committee (#13883) (Virtual)

Date and Time: September 26, 2022; 10:00 a.m.–4:00 p.m., September 27, 2022, 10:00 a.m.–4:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314/Zoom Videoconference.

Attendance information for the meeting will be forthcoming on the AAAC website: *https://www.nsf.gov/mps/ast/aaac.jsp*.

Type of Meeting: Open.

Contact Person: Dr. Martin Still, Program Director, Division of Astronomical Sciences, Suite W 9188, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–4290.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: July 20, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–15858 Filed 7–22–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–88 and CP2022–92]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 26, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–88 and CP2022–92; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 18 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 18, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin Clendenin; *Comments Due:* July 26, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–15766 Filed 7–22–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–89 and CP2022–93]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 27, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–89 and CP2022–93; *Filing Title:* USPS Request to Add Priority Mail Express Contract 96 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 19, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* July 27, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–15887 Filed 7–22–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Privacy Act; System of Records

AGENCY: Postal Service®

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service® (Postal Service) is proposing to modify one General Privacy Act System of Records (SOR) to support an initiative sponsored by its Transportation Strategy group to procure a software tool that will be used to manage bid solicitation and contract management activities more effectively, by aligning tactical buying decisions with overall sourcing strategies. This initiative also aligns with the network modernization objective within the USPS Delivering for America 10-year plan.

DATES: These revisions will become effective without further notice on August 24, 2022, unless, responses to comments received on or before that date, result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service is proposing revisions to an existing system of records (SOR) to support the implementation of a software solution that will provide enhanced functionality and be used to more effectively manage bid solicitation and contract management activities to meet USPS transportation needs.

I. Background

The Postal Service is proposing modifications to SOR 500.100 Carrier and Vehicle Operator Records, to support an initiative to replace existing information systems that have reached the end of their useful life, with a more effective solution that will be used for fulfilling transportation contracting management needs. USPS is implementing a Commercial off-the-shelf (COTS) Bid Solicitation and Contract Management System (CMS) that will align tactical buying decisions with overall sourcing strategies. The USPS Transportation group encompasses Transportation Services, Air, Contract Delivery Service (CDS), Processing Network Transportation (PNT), and Local Distribution Transportation (LDT) with management and oversight of over 12,000 contracts.

Each year thousands of transportation contracts reach the end of their contract term period of performance and require analysis, procurement and negotiation of new agreements. In addition, the Postal Service must respond to unexpected events and emergencies related to seasonal changes, weather emergencies and global crises requiring urgency and flexibility to solicit contracts for reactionary services in a timely manner. The implementation of the COTS solution comprehensively creates, generates and releases solicitations, produces and manages contract requests, and provides approval and tracking capabilities for all transportation organizational stakeholders' groups. The solution will be supported by a combined cloud-based architecture system, that includes a secure, stable, reliable, and scalable application, with a user interface platform for internal and external stakeholders.

The new solution for Bid Solicitation and Contract Management is expected to meet the changing needs of the USPS' transportation needs to improve usability, increase accuracy, and reduce redundant activities. A logistics gateway and user interface will be established for existing suppliers, that will also facilitate participation of new bidders to provide service for USPS. All information is currently requested by

and received via a printed form. To support transition from the old systems, the newly implemented solution will offer the opportunity to convert printed form data into an electronic means that accepts the supplier's electronic signature as confirmation. The system will also house both historical and current contracts, manage workflow, automatically assign purchase requests, facilitate contract approvals, send email notifications and follow-up emails, along with opportunities for customization of data fields and reporting capabilities.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing modifications to USPS SOR 500.100 Carrier and Vehicle Operator Records in the summary of changes listed below:

- Updated System Managers to reflect current USPS organizational structure
- Added new Categories of Individuals #4, Purpose #7, Categories of Records #4, Retention period #7
- Added ''suppliers'' to the Record Source Categories
- Added ''contract number'' to Retrieval of Records

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions to this SOR has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this modified system of records to have any adverse effect on individual privacy rights. Accordingly, for the reasons stated above, the Postal Service proposes revisions to USPS SOR 500.100 Carrier and Vehicle Operator Records as follows:

SYSTEM NAME AND NUMBER:

USPS 500.100 Carrier and Vehicle Operator Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Headquarters; area and district facilities; processing and distribution centers; bulk mail centers; vehicle maintenance facilities; Post Offices; Integrated Business Solutions Services Centers; Accounting Service Centers; contractor or licensee locations; and facilities employing persons under a highway vehicle contract.

SYSTEM MANAGER(S):

Vice President, Retail & Post Office Operations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Delivery Operations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Transportation Strategy, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To reimburse carriers who use privately owned vehicles to transport the mail pursuant to a contractual agreement.

2. To evaluate delivery and collection operations and to administer these functions.

3. To provide local Post Office managers, supervisors, and transportation managers with information to assign routes and vehicles, and to adjust workload, schedules, and type of equipment operated.

4. To determine contract vehicle operator suitability for assignments requiring access to mail.

5. To serve as a basis for vehicle operator corrective action and presentation of safe driving awards.

6. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.

7. To administer a Bid Solicitation and Contract Management System to meet USPS transportation needs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. City Letter carriers.

2. Current and former USPS employees who operate or maintain USPS-owned or leased vehicles.

3. Contract highway vehicle operators.

4. Suppliers, including companies and individuals, under contract or agreement with the Postal Service to provide transportation services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Carrier information:* Records related to letter carriers, including carrier's name, home address, Social Security Number, Employee Identification Number, postal assignment information, work contact information, finance number(s), duty location, pay location, route number and work schedule, and effective date of agreement for use of a privately owned vehicle to transport the mail, if applicable.

2. *Vehicle operator information:* Records of employees' operation or maintenance of USPS-owned or leased vehicles, including employee name, home address, Social Security Number, Employee Identification Number, age, postal assignment information, work contact information, finance number(s), duty location, pay location, work schedule, Fuel Purchase Fleet Card Personal Identification Number (PIN), and other records of vehicle operation and maintenance.

3. *Highway vehicle contract employee information:* Records related to contract employee name, Social Security Number, address and employment history, driver's license number, and contract assignment information.

4. *Bid Solicitation and Contract Management System Records:* Individual operator name, owner name, address, email address, phone number, SMS text, other contact information, Social Security Number, Taxpayer Identification Number (TIN), driver's license number and state, route number, trip schedules, Accounts Payable Excellence (APEX) system number, Standard Carrier Alpha Code (SCAC), contract number, bid solicitation information, financial statements, insurance information, company name, company address, company phone number, company email address, list of services provided, cost of services provided, geographic coverage, other information such as safe driving or accident records and other scanned in documents that accompany contract information, contract Terms and Conditions, lease agreements, payment information, and scanned images of hardcopy contract documentation.

RECORD SOURCE CATEGORIES:

Employees; contractors or suppliers; carrier supervisors; route inspectors; and state motor vehicle departments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES OR PRACTICES FOR RETRIEVAL OF RECORDS:

By name, Social Security Number, Taxpayer Identification Number (TIN), Employee Identification Number, pay location, Postal Service facility name,

route number, vehicle number, or Fuel Purchase Fleet Card Personal Identification Number (PIN), contract number, Accounts Payable Excellence (APEX) System Number, and Standard Carrier Alpha Code (SCAC).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Route inspection records and minor adjustment worksheets are retained 2 years where inspections or minor adjustments are made annually or more frequently. Where inspections are made less than annually, records are retained until a new inspection or minor adjustment, and an additional 2 years thereafter.

2. Statistical engineering records are retained 5 years and may be retained further on a year-to-year basis.

3. Agreements for use of a privately owned vehicle are retained 2 years. Post office copies of payment authorizations are retained 90 days. Vehicle records are maintained for the life of the vehicle.

4. Records of employees who operate or maintain USPS vehicles are retained 4 years.

5. Records of highway vehicle contract employees are retained 1 year after contract expiration or contract employee termination.

6. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

7. Records stored within the Bid Solicitation and Contract Management System are retained for 6 years after the end of the fiscal year in which the contract record become inactive.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.*5.*

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Current and former employees, and highway vehicle contract employees, wanting to know if information about them is maintained in this system of records must address inquiries to the facility head where currently or last employed. Requests must include full name, Social Security Number or Employee Identification Number, and, where applicable, the route number and dates of any related agreements or contracts.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

May 15, 2020, 85 FR 29492; June 27, 2012, 77 FR 38342.

* * * * *

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–15853 Filed 7–22–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–464, OMB Control No. 3235–0527]

Proposed Collection; Comment Request; Extension: Rule 7d–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies (''funds'') that are ''qualified companies'' for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 (''Investment Company Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 7d–2 under the Investment Company Act[3] permits foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as

[1] 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (''Securities Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

[3] 17 CFR 270.7d–2.

investment companies under the Investment Company Act.

Rule 7d–2 contains a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[4] Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d–2 does not require any documents to be filed with the Commission.

Rule 7d–2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 4,312 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.[5] The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 216 (5 percent) additional Canadian funds would newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 648 offering documents. The staff therefore estimates that 216 respondents would make 648 responses by adding the new disclosure statement to 648 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d–2 disclosure requirement would be 108 hours (648 offering documents × 10 minutes per document). The total annual cost of these burden hours is estimated to be $49,140 (108 hours × $455 per hour of attorney time).[6]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 23, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov* .

Dated: July 19, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15780 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

[4] 44 U.S.C. 3501–3502.

[5] Investment Company Institute, 2021 Investment Company Fact Book (2021) at 276, tbl. 66, *available at https://www.ici.org/system/files/2021-05/2021_factbook.pdf.* Since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the number of estimated Canadian funds has increased from the last renewal.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $455 per hour figure for an Attorney is based on SIFMA's Management & Professional Earnings in the Securities Industry 2013, updated for 2022, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. As discussed in footnote 5, since the last renewal, we understand that the Investment Company Institute has changed its methodology to enhance the accuracy of how it estimates the number of Canadian funds. The estimate used for this renewal reflects this change in methodology and the hourly burden has increased from the last renewal.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95322; File No. SR–FINRA–2022–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Current Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

July 19, 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 July 19, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the current pilot program related to FINRA

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) (''Clearly Erroneous Transaction Pilot'' or ''Pilot'') until October 20, 2022.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA is proposing a rule change to extend the current pilot program related to FINRA Rule 11892 governing clearly erroneous transactions in exchange-listed securities until the close of business on October 20, 2022. Extending the Pilot would provide FINRA and the national securities exchanges additional time to consider a permanent proposal for clearly erroneous transaction reviews.[4]

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: (i) provided for uniform treatment of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of FINRA to deviate from the objective standards set forth in the rule.[5] In 2013, FINRA adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (''Plan'').[6] Finally, in 2014, FINRA adopted two additional provisions addressing (i) erroneous transactions that occur over one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted information resulting in a severe valuation error; and (ii) a disruption or malfunction in the operation of the facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt.[7]

On April 9, 2019, FINRA filed a proposed rule change to untie the effectiveness of the Clearly Erroneous Transaction Pilot from the effectiveness of the Plan, and to extend the Pilot's effectiveness to the close of business on October 18, 2019.[8] On October 10, 2019, FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2020.[9] On March 18, 2020, FINRA filed a proposed rule change to extend the pilot's effectiveness until October 20, 2020.[10] On October 16, 2020, FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2021.[11] On March 15, 2021, FINRA filed a proposed rule change to extend the Pilot's effectiveness until October 20, 2021.[12] On October 5, 2021, FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2022.[13] On April 6, 2022, FINRA filed a proposed rule change to extend the Pilot's effectiveness until July 20, 2022.[14] FINRA now is proposing to further extend the Pilot until October 20, 2022, so that market participants can continue to benefit from the more objective clearly erroneous transaction standards under the Pilot.[15] Extending the Pilot also would provide more time to permit FINRA and the other self-regulatory organizations to consider what changes, if any, to the clearly erroneous transaction rules are appropriate.[16]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning the review of transactions as clearly erroneous. FINRA believes that extending the Pilot under FINRA Rule 11892, until October 20, 2022, would help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, FINRA believes the Clearly Erroneous Transaction Pilot should continue to be in effect while FINRA and the national securities exchanges consider a permanent proposal for clearly erroneous transaction reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not

[4] FINRA notes that Cboe BZX Exchange, Inc. has filed a proposed rule change with the Commission to amend its clearly erroneous executions rule to, among other things, make the clearly erroneous pilot program permanent. *See* Securities Exchange Act Release No. 95259 (July 12, 2022), 87 FR 42760 (July 18, 2022) (Notice of Filing of File No. SR–CboeBZX–2022–037).

[5] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[6] *See* Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–012).

[7] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (Order Approving File No. SR–FINRA–2014–021).

[8] *See* Securities Exchange Act Release No. 85612 (April 11, 2019), 84 FR 16107 (April 17, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–011).

[9] *See* Securities Exchange Act Release No. 87344 (October 18, 2019), 84 FR 57076 (October 24, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–025).

[10] *See* Securities Exchange Act Release No. 88495 (March 27, 2020), 85 FR 18608 (April 2, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–008).

[11] *See* Securities Exchange Act Release No. 90219 (October 19, 2020), 85 FR 67574 (October 23, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–036).

[12] *See* Securities Exchange Act Release No. 91373 (March 19, 2021), 86 FR 16003 (March 25, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–004).

[13] *See* Securities Exchange Act Release No. 93355 (October 15, 2021), 86 FR 58374 (October 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–026).

[14] *See* Securities Exchange Act Release No. 94673 (April 11, 2022), 87 FR 22559 (April 15, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–008).

[15] If the pilot period is not either extended or approved as permanent, the version of Rule 11892 prior to SR–FINRA–2010–032 shall be in effect, and the amendments set forth in SR–FINRA–2014–021 and the provisions of Supplementary Material .03 of the rule shall be null and void.

[16] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

[17] 15 U.S.C. 78*o*–3(b)(6).

necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous transaction rules across the U.S. equities markets while FINRA and the national securities exchanges consider further amendments to these rules. FINRA understands that the national securities exchanges also will file similar proposals to extend their clearly erroneous execution pilot programs, as applicable. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while a permanent proposal for clearly erroneous execution reviews is being considered.[24] Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[25]

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–FINRA–2022–020 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–FINRA–2022–020. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2022–020 and should be submitted on or before August 15,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15774 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 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. FINRA has satisfied the five-day prefiling requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See* Securities Exchange Act Release No. 95259 (July 12, 2022), 87 FR 42760 (July 18, 2022) (Notice of Filing of File No. SR–CboeBZX–2022–037).

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–0088, OMB Control No. 3235–0083]

Submission for OMB Review; Comment Request Extension: Rule 15Ba2–1 and Form MSD

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information provided for in Rule 15Ba2–1 (17 CFR 240.15Ba2–1) and Form MSD (17 CFR 249.1100) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*).

Rule 15Ba2–1 provides that an application for registration with the Commission by a bank municipal securities dealer must be filed on Form MSD. The Commission uses the

information obtained from Form MSD filings to The Commission uses the information obtained from Form MSD filings to determine whether bank municipal securities dealers meet the standards for registration set forth in the Exchange Act, to make information about particular bank municipal securities dealers available to customers and members of the public, and to develop risk assessment information about bank municipal securities dealers.

Form MSD is a one-time registration form that must be amended only if it becomes inaccurate. Based upon past submissions of zero initial filings and 14 amendments in 2019, zero initial filings and three amendments in 2020, zero initial filings and one amendment in 2021, and zero initial filings and zero amendments so far in 2022, the Commission estimates that on an annual basis approximately one respondent will use Form MSD for an initial registration application, and that approximately six respondents will utilize Form MSD for an amendment, for a total of seven respondents per year. The time required to complete Form MSD varies with the size and complexity of the bank municipal securities dealer's proposed operations. Bank personnel that prepare Form MSD filings previously indicated that it can take up to 15 hours for a bank with a large operation and many employees to complete the form, but that smaller banks with fewer personnel can complete the form in one to two hours. We believe that most recent applications have come from smaller banks. Also, amendments to form MSD are likely to require significantly less time. We estimate that the total annual burden is currently approximately 11 hours at an average of 1.5 hours per respondent. (7 respondents/year × 1.5 hours/respondent = 10.5 hours/year rounded up to 11). The staff estimates that the average internal compliance cost per hour is approximately $406.[1] Therefore, the estimated total annual internal cost of compliance is approximately $4,263 per year (10.5 hours/year × $406/hour = $4,263/year).

Rule 15Ba2–1 does not contain an explicit recordkeeping requirement, but the rule does require the prompt correction of any information on Form MSD that becomes inaccurate, meaning that bank municipal securities dealers need to maintain a current copy of Form MSD indefinitely. In addition, the instructions for filing Form MSD state that an exact copy should be retained by the registrant. Providing the information on the application is mandatory in order to register with the Commission as a bank municipal securities dealer. The information contained in the application will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by August 24, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 19, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15785 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

[1] The estimate of $406 per hour is for a compliance attorney, based on the Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–124, OMB Control No. 3235–0107]

Submission for OMB Review; Comment Request: Extension: Form T–4

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–4 (17 CFR 269.4) is a form used by an issuer to apply for an exemption under Section 304(c) (15 U.S.C. 77ddd (c)) of the Trust Indenture Act of 1939 (77 U.S.C. 77aaa *et seq.*). Form T–4 takes approximately 5 hours per response to prepare and is filed by approximately 3 respondents. We estimate that 25% of the 5 burden hours (1 hour per response) is prepared by the filer for a total reporting burden of 3 hours (1 hour per response × 3 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 24, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 19, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15781 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95314; File No. SR–CBOE–2022–015]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 10.3 Regarding Margin Requirements

July 19, 2022.

I. Introduction

On March 30, 2022, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–CBOE–2022–015 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b-4 [2] thereunder, to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

amend Cboe Rule 10.3 regarding margin requirements that provide margin relief for a cash-settled index option written against a holding in an exchange-traded fund that tracks the same index as the index underlying the index option. On April 13, 2022, the Exchange filed Amendment No. 1 to the Proposed Rule Change.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on April 20, 2022.[4] On June 2, 2022 the Exchange consented to an extension of the time period in which the Commission must approve the Proposed Rule Change, disapprove the Proposed Rule Change, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change to July 19, 2022. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act[5] to determine whether to approve or disapprove the Proposed Rule Change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange is proposing to amend Rule 10.3 regarding margin requirements. Generally, the Proposed Rule Change would amend Rule 10.3(c)(5)(C)(iii)(b) to update the exception to margin requirements applicable to cash-settled short option positions or warrants on indexes that are offset by positions in an underlying stock basket, non-leveraged index mutual fund, or non-leveraged exchange-traded fund (collectively referred to as ''ETFs'') that is based on the same index, as well as move it within Rule 10.3 to Rule 10.3(c)(5)(C)(iv).[6]

The Proposed Rule Change would amend the form of margin required to be held in an account for a short in-the-money index call (put) option if there is a long position in an ETF based on the same index to be the amount by which the value of an ETF is below (above) the aggregate index value. Rather than necessitating the purchase or deposit of additional ETF shares to address a deficiency in the value of the ETF compared to the aggregate index value (regardless of the amount of the deficiency), the Proposed Rule Change would enable excess maintenance margin equity in a margin account to support the requirement. If excess maintenance margin is insufficient or nonexistent, a deposit of additional margin would be required, which can be in any form (*e.g.,* cash and/or marginable securities) from the account owner in an amount equal to any deficit.

Additionally, the Proposed Rule Change will require no margin when an option is at- or out-of-the-money, regardless of whether the ETF market value is at least equal to the aggregate index value, and eliminates the requirement to mark the price of a long ETF with an index call option written against it at the lower of the ETF's market value or the index option strike price.[7]

The Proposed Rule Change also makes clarifying, nonsubstantive changes to conform to the language used throughout Rule 10.3.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2022–015 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or disapproved.[8] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the Proposed Rule Change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[9] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 any request for an opportunity to make an oral presentation.[10]

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or disapproved by August 9, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 15, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–CBOE–2022–015 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–015. 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, as modified by Amendment No. 1, that are filed with the Commission,

[3] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboe-2022-015/srcboe2022015-20123573-279781.pdf.*

[4] *See* Exchange Act Release No. 94723 (Apr. 14, 2022), 87 FR 23629 (Apr. 20, 2022) (File No. SR–CBOE–2022–015) (''Notice''). The Commission received one comment letter on the Proposed Rule Change. *See* letter from Andrew Robison, (Apr. 22, 2022), available at: *https://www.sec.gov/comments/sr-cboe-2022-015/srcboe2022015.htm.* The comments expressed by the commenter are not relevant to the Proposed Rule Change.

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Notice, 87 FR at 23630.

[7] *Id.,* at FR 23631.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *Id.*

[10] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

and all written communications relating to the Proposed Rule Change, as modified by Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–*2022–015* and should be submitted on or before August 9, 2022. Rebuttal comments should be submitted by August 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15775 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95320; File No. SR–NYSECHX–2022–18]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10 (Clearly Erroneous Executions)

July 19, 2022

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 13, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2022. The pilot program is currently due to expire on July 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Article 20, Rule 10 that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Article 20, Rule 10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] After the Commission approved the Exchange's proposal to transition to trading on Pillar,[11] the Exchange amended the corresponding Pillar rule—Rule 7.10—to extend the pilot's effectiveness to the close of business on April 20, 2020,[12] October 20, 2020,[13]

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–CHX–2010–13).

[5] *See* Securities Exchange Act Release No. 68802 (Feb. 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–CHX–2014–06).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71782 (March 24, 2014), 79 FR 17630 (March 28, 2014) (SR–CHX–2014–04).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85533 (April 5, 2019), 84 FR 14701 (April 11, 2019) (SR–NYSECHX–2019–04).

[11] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345 (October 16, 2019) (SR–NYSECHX–2019–08). Article 20, Rule 10 is no longer applicable to any securities that trade on the Exchange.

[12] *See* Securities Exchange Act Release No. 87351 (October 18, 2019), 84 FR 57068 (October 24, 2019) (SR–NYSECHX–2019–13).

[13] *See* Securities Exchange Act Release No. 88591 (April 8, 2020), 85 FR 20771 (April 14, 2020) (SR–NYSECHX–2020–09).

April 20, 2021,[14] October 20, 2021,[15] April 20, 2022,[16] and July 20, 2022.[17]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further three months until the close of business on October 20, 2022 while the Commission considers a proposal to make the pilot program permanent that has been filed by Cboe BZX.[18] If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Article 20, Rule 10 prior to being amended by SR–CHX–2010–13 shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[19] In such an event, the remaining sections of Article 20, Rule 10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of these rules for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[20] in general, and Section 6(b)(5) of the Act,[21] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25]

A proposed rule change filed under Rule 19b–4(f)(6)[26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while a permanent proposal for clearly erroneous execution reviews is being considered.[28] For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[14] *See* Securities Exchange Act Release No. 90156 (October 13, 2020), 85 FR 66384 (October 19, 2020) (SR–NYSECHX–2020–29).

[15] *See* Securities Exchange Act Release No. 91550 (April 14, 2021), 86 FR 20560 (April 20, 2021) (SR–NYSECHX–2021–06).

[16] *See* Securities Exchange Act Release No. 93360 (October 15, 2021), 86 FR 58313 (October 21, 2021) (SR–NYSECHX–2021–15).

[17] *See* Securities Exchange Act Release No. 94639 (April 7, 2022), 87 FR 21957 (April 13, 2022) (SR–NYSECHX–2022–05).

[18] *See* SR–CboeBZX–2022–37 (July 8, 2022).

[19] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 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.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] *See* SR–CboeBZX–2022–37 (July 8, 2022).

[29] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSECHX–2022–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2022–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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–NYSECHX–2022–18 and should be submitted on or before August 15,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15772 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95319; File No. SR–OCC–2022–001]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Concerning The Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

July 19, 2022.

I. Introduction

On January 24, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–001 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to change quantitative models related to certain volatility products.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on February 11, 2022.[4] The Commission has received comments regarding the Proposed Rule Change.[5]

On March 24, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[6] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[7] On May 12, 2022, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.[8] This order approves the Proposed Rule Change.

OCC is a central counterparty (''CCP''), which means it interposes itself as the buyer to every seller and seller to every buyer for financial transactions. As the CCP for the listed options markets in the U.S., as well as for certain futures, OCC is exposed to the risk that one or more of its members may fail to make a payment or to deliver securities. OCC addresses such exposures, in part, by requiring its members to provide collateral, including margin collateral. Margin is the collateral that CCPs, like OCC, collect to cover potential changes in a member's positions over a set period of time. Typically, margin is designed to cover such exposures during normal market conditions, which means that margin collateral should be sufficient to exposures at least 99 out of 100 days.

Margin requirements may fluctuate from day to day; however, CCPs seek to reduce fluctuations that could otherwise impose systemic risk. For example, if a CCP collects too little margin during relatively stable market conditions, then it would need to collect significantly more margin during stressed market conditions. Margin requirements that are strongly reactive to market movements are considered to be ''procyclical.'' By contrast, a CCP may collect slightly more margin during quiet times to reduce the additional strain it places on members during times of market stress.

OCC's process for setting margin requirements considers several distinct risk factors, including volatility. OCC's current models for estimating the impact of volatility on member positions have a number of limitations that may result in procyclical margin requirements. OCC is proposing to change its models to reduce the level of procyclicality in its margin requirements caused by changes in volatility. The changes OCC is proposing would also provide for offsets between products based on the same underlying asset. Based on data provided by OCC, the proposed model changes would likely increase margin requirements slightly overall, which, in turn, would reduce the additional

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 87 FR 8072.

[4] Securities Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072 (Feb. 11, 2022) (File No. SR–OCC–2022–001) (''Notice of Filing''). OCC also filed a related advance notice (SR–OCC–2022–801) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. The Advance Notice was published in the **Federal Register** on February 11, 2022. Securities Exchange Act Release No. 94166 (Feb. 7, 2022), 87 FR 8063 (Feb. 11, 2022) (File No. SR–OCC–2022–801).

[5] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2022-001/srocc2022001.htm.* Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

[6] 15 U.S.C. 78s(b)(2).

[7] Securities Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072 (Feb. 11, 2022) (File No. SR–OCC–2022–001).

[8] Securities Exchange Act Release No. 94900 (May 12, 2022), 87 FR 30284 (May 18, 2022) (File No. SR–OCC–2022–001).

amount of margin OCC would need to collect during periods of market stress.

The proposed changes to OCC's models are a continuation of volatility model changes that OCC has implemented over the past several years. In 2015, the Commission approved OCC's proposal to more broadly incorporate variations in implied volatility in OCC's margin methodology.[9] In 2018, OCC modified its implied volatility model to address issues highlighted by large spikes in volatility. The following sections describe the proposed changes to OCC's models in more detail as well as the consistency of the proposed changes with applicable law.

II. Background [10]

The System for Theoretical Analysis and Numerical Simulations (''STANS'') is OCC's methodology for calculating margin.[11] STANS includes econometric models that incorporate a number of risk factors. OCC defines a risk factor in STANS as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in STANS are the returns on individual equity securities; however, a number of other risk factors may be considered, including, among other things, returns on implied volatility.[12]

OCC's STANS Methodology Description includes subsections on (i) implied volatility risk factors to measure the expected future volatility of an option's underlying security at expiration, (ii) a synthetic futures model to price specified products such as volatility index-based futures, and (iii) a specialized factor model to price variance futures.[13] As described below, and in more detail in the Notice of Filing, OCC proposes to change three quantitative models related to certain volatility products. Specifically, OCC proposes the following changes:

(1) implement a new model for incorporating variations in implied volatility within STANS for products based on the S&P 500 Index (''S&P 500''); such proposed model being the ''S&P 500 Implied Volatility Simulation Model'');

(2) implement a new model to margin futures on volatility indexes [14] (''Volatility Index Futures''); such proposed model being the ''Volatility Index Futures Model''); and

(3) replace OCC's model for margining variance futures; [15] such model being the ''Variance Futures Model.''

A. S&P 500 Implied Volatility Simulation Model

OCC considers variations in implied volatility within STANS to ensure that the anticipated cost of liquidating options positions in an account recognizes the possibility that implied volatility could change during the two-business day liquidation time horizon and lead to corresponding changes in the market prices of the options. OCC relies on its Implied Volatilities Scenarios Model to simulate the variations in implied volatility that OCC uses to re-price options within STANS for substantially all option contracts [16] available to be cleared by OCC that have a residual tenor [17] of less than three years. As noted above, OCC now proposes to implement a new model, the S&P 500 Implied Volatility Simulation Model, for incorporating variations in implied volatility within STANS for products based on the S&P 500 Index.

In the Notice of Filing, OCC stated that its current Implied Volatilities Scenarios Model is subject to certain limitations and issues.[18] Such issues relate to (1) volatility of volatility forecasting; (2) volatility surface discontinuities; and (3) arbitrage constraints and cross-product offsets. OCC proposes to replace the current Implied Volatilities Scenarios Model for the S&P 500 product group with the proposed S&P 500 Implied Volatility Simulation Model to address such limitations, which are described below. OCC would continue to use the current Implied Volatilities Scenarios Model for the products other than S&P 500-based products.[19]

Volatility of volatility forecasting. In the current Implied Volatilities Scenarios Model, OCC uses a GARCH model [20] to forecast the volatility of implied volatility risk factors.[21] OCC's past analysis has demonstrated that the volatility changes forecasted by the GARCH model were extremely sensitive to sudden spikes in volatility, which at times resulted in margin requirements that OCC believes were unreasonable.[22] OCC's current Implied Volatilities Scenarios Model relies on an exponentially weighted moving average [23] of forecasted volatilities over a specified look-back period to reduce the model's sensitivity to large, sudden shocks in market volatility. OCC stated that reliance on an exponentially weighted moving average reduces and delays the impact of large implied volatility spikes, but that it does so in an artificial way that does not target the limitations and issues with the model noted above.[24]

In the proposed S&P 500 Implied Volatility Simulation Model, OCC

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[9] *See* Securities Exchange Act Release No. 76781 (Dec. 28, 2015), 81 FR 135 (Jan. 4, 2016) (File No. SR–OCC–2015–016).

[10] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[11] In February 2021, the Commission approved a proposed rule change by OCC to adopt a new document describing OCC's system for calculating daily and intraday margin requirements for its Clearing Members (the ''STANS Methodology Description''). *See* Securities Exchange Release No. 91079 (Feb. 8, 2021), 86 FR 9410 (Feb. 12, 2021) (File No. SR–OCC–2020–016) (''STANS Methodology Approval'').

[12] Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and the current risk-free rate. In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to modify its margin methodology by more broadly incorporating variations in implied volatility within STANS. *See* Securities Exchange Act Release No. 76781 (Dec. 28, 2015), 81 FR 135 (Jan. 4, 2016) (File No. SR–OCC–2015–016) and Securities Exchange Act Release No. 76548 (Dec. 3, 2015), 80 FR 76602 (Dec. 9, 2015) (File No. SR–OCC–2015–804). In December 2018, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to introduce an exponentially weighted moving average for the daily forecasted volatility of implied volatility risk factors in STANS. *See* Securities Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392 (Dec. 28, 2018) (File No. SR–OCC–2018–014) and Securities Exchange Act Release No. 84838 (Dec. 18, 2018), 83 FR 66791 (Dec. 27, 2018) (File No. SR–OCC–2018–804).

[13] *See* STANS Methodology Approval, 86 FR at 9411.

[14] A volatility index is an index designed to measure the volatiles implied by the prices of options on an underlying index.

[15] A variance future is an exchange-traded futures contract based on the expected realized variance of an underlying interest.

[16] OCC's Implied Volatilities Scenarios Model excludes: (i) binary options, (ii) options on commodity futures, (iii) options on U.S. Treasury securities, and (iv) Asians and Cliquets.

[17] The ''tenor'' of an option is the amount of time remaining to its expiration.

[18] *See* Notice of Filing, 87 FR at 8074.

[19] *See* Notice of Filing, 87 FR at 8075, n. 31.

[20] The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986).

[21] *See* Notice of Filing, 87 FR at 8073.

[22] *See id.*

[23] An exponentially weighted moving average is a statistical method that averages data in a way that gives more weight to the most recent observations using an exponential scheme. As noted above, OCC introduced an exponentially weighted moving average for the daily forecasted volatility of implied volatility risk factors in STANS in 2018. See *supra* note 12. OCC found that using unweighted daily forecasted volatilities of implied volatilities caused jumps in aggregate margin requirements of up to 80 percent overnight, which OCC believes were unreasonable. *See* Securities Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392, 67393 (Dec. 28, 2018) (File No. SR–OCC–2018–014) and Securities Exchange Act Release No. 84838 (Dec. 18, 2018), 83 FR 66791, 66792 (Dec. 27, 2018) (File No. SR–OCC–2018–804).

[24] *See* Notice of Filing, 87 FR at 8074.

would forecast volatility for S&P 500 1-month at-the-money (''ATM'') implied volatility based on the 30-day VVIX, Cboe's option-implied volatility-of-volatility index. OCC would further smooth the daily 30-day VVIX to control for procyclicality. OCC asserted that, based on a performance analysis, the proposed S&P 500 Implied Volatility Simulation Model would (1) provide adequate margin coverages for both upward and downward movements of implied volatility over the margin risk horizon; and (2) remain stable across both time and low, medium, and high volatility market conditions.[25]

Volatility surface discontinuities. The current Implied Volatilities Scenarios Model relies on a ''nearest neighbor'' method to map the implied volatility surface between reference points.[26] The reliance on a nearest neighbor method introduces discontinuity in the implied volatility curve for a given tenor. Further, the current Implied Volatilities Scenarios Model's use of arithmetic implied volatility returns can result in near-zero implied volatility in simulated scenarios, which OCC states is unrealistic.[27] Additionally, the current model includes implied volatility scenarios for call and put options with the same tenor and strike price that are not equal, which contributes to inconsistencies in the implied volatility scenarios. OCC now proposes to model the implied volatility surface directly to generate a surface that would be smooth and continuous in both term structure and moneyness [28] dimensions.[29] Modeling the implied volatility surface directly rather than mapping the surface based on a series of reference points would simplify OCC's margin methodology and help avoid the discontinuities discussed above.

Arbitrage constraints and cross-product offsets. The current Implied Volatilities Scenarios Model does not impose constraints to ensure that simulated surfaces are arbitrage-free. Because of this potential for arbitrage, OCC believes the implied volatilities are not adequate inputs to price Variance Futures and Volatility Index Futures accurately, both of which assume an arbitrage-free condition.[30] Further, the current Implied Volatilities Scenarios Model may not provide natural offsetting of risks in Clearing Member accounts that contain combinations of S&P 500 options, variance futures, and/or volatility index futures because OCC models such options and futures independent of each other rather than as inherently related components of a broader system, which could in turn result in unnecessarily large margin requirements for certain Clearing Members.

Under the proposed model, put and call options with the same tenors and strike prices would have the same implied volatility scenarios. Imposing such a constraint on arbitrage would be sufficient to allow OCC to use the output of the proposed model for margining volatility index futures and variance futures.[31] Use of the proposed S&P 500 Implied Volatility Simulation Model as an input to margining volatility index futures and variance futures also would, in turn, support margin offsets between S&P 500 options, VIX futures, and S&P 500 variance futures.

B. Volatility Index Futures Model

To calculate margin for Clearing Member portfolios, OCC currently relies on its ''Synthetic Futures Model'' to calculate the theoretical value of volatility index futures, among other products.[32] As noted above, OCC now proposes to implement its new Volatility Index Futures model, which would be used to calculate the theoretical values of futures on certain volatility futures indexes (*i.e.,* indexes designed to measure volatilities implied by prices of options on a particular underlying index).[33]

In the Notice of Filing, OCC stated that its current Synthetic Futures Model is subject to certain limitations and issues.[34] First, the current Synthetic Futures Model relies on a GARCH variance forecast that, as noted above, is sensitive to large volatility shocks. OCC mitigates this sensitivity by imposing a floor for variance estimates based on the underlying index (*e.g.,* VIX). The proposed Volatility Index Futures Model would instead rely on a direct link between the volatility index futures price and the underlying S&P 500 options price to mitigate the model's sensitivity to large volatility shocks. Such a link would come from reliance on the output of the proposed S&P 500 Implied Volatility Simulation Model, which does not rely on a GARCH process and, therefore, the input to the proposed Volatility Index Futures Model would not have the same sensitivity to large volatility shocks as the current Synthetic Futures Model.

Second, the current Synthetic Futures Model makes the rolling volatility futures contracts take on different variances from calibration at futures roll dates, which could translate to jumps in margin. The proposed Volatility Index Futures Model would be based on an entirely different approach that would not incorporate the same potential jumps in margin. Specifically, OCC proposes to adopt a parameter-free approach based on the replication of log-contract, which measures the expected realized volatility using S&P 500 options, as discussed in Cboe's VIX white paper.[35]

As described in the confidential exhibits OCC submitted with the Proposed Rule Change, the proposed Volatility Index Futures Model would provide more consistent margin coverage across the term structure when compared to the current Synthetic Futures Model. Based on OCC's testing, the proposed model would continue to provide adequate margin coverage during periods of low and high volatility as well as for short-term futures. Further, the proposed model

[25] *See* Notice of Filing, 87 FR at 8076.

[26] The Implied Volatilities Scenarios Model models a volatility surface by incorporating nine risk factors based on a range of tenors and option deltas. The ''delta'' of an option represents the sensitivity of the option price to the price of the underlying security.

[27] *See* Notice of Filing, 87 FR at 8074.

[28] The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price. *See* Notice of Filing, 87 FR at 8073, n. 12.

[29] Key risk factors driving the implied volatility surface are explicitly modeled within the model itself. *See* Notice of Filing, 87 FR at 8076.

[30] *See* Notice of Filing, 87 FR at 8074.

[31] *See* Notice of Filing, 87 FR at 8076. OCC intends to rely on the output from the proposed S&P 500 Implied Volatility Simulation Model as an input to the proposed Volatility Index Futures Model and Variance Futures Model described below. *See* Notice of Filing, 87 FR at 8075.

[32] *See* Securities Exchange Act Release No. 85873 (May 16, 2019), 84 FR 23620 (May 22, 2019) (File No. SR–OCC–2019–002) (approving a proposed rule change regarding the measurement of volatilities implied by prices of options on a particular underlying interest). OCC also applies the Synthetic Futures Model to (i) futures on the American Interbank Offered Rate (''AMERIBOR''); (ii) futures products linked to indexes comprised of continuous yield based on the most recently issued (*i.e.,* ''on-the-run'') U.S. Treasury notes listed by Small Exchange Inc. (''Small Treasury Yield Index Futures''); and (iii) futures products linked to Light Sweet Crude Oil (WTI) listed by Small Exchange (''Small Crude Oil Futures''). *See* Securities Exchange Act Release No. 89392 (Jul. 24, 2020), 85 FR 45938 (Jul. 30, 2020) (File No. SR–OCC–2020–007) (application of OCC's Synthetic Futures model to AMERIBOR futures); Securities Exchange Act Release No. 90139 (Oct. 8, 2020), 85 FR 65886 (Oct. 16, 2020) (File No. SR–OCC–2020–012) (application of OCC's Synthetic Futures model to Small Treasury Yield Index Futures); Securities Exchange Act Release No. 91833 (May 10, 2021), 86 FR 26586 (May 14, 2021) (File No. SR–OCC–2021–005) (application of OCC's Synthetic Futures model to Small Crude Oil Futures).

[33] OCC would continue to use the current Synthetic Futures Model to model prices for interest rate futures on AMERIBOR, Small Treasury Yield Index Futures and Small Crude Oil Futures. *See* Notice of Filing, 87 FR at 8074, n. 25.

[34] *See* Notice of Filing, 87 FR at 8074.

[35] *See* Cboe, *VIX White Paper* (2019), *available at https://www.cboe.com/micro/vix/vixwhite.pdf.*

would provide for more efficient margin coverage for VIX futures portfolios hedged with S&P 500 options.

C. Variance Futures Model

Variance futures are commodity futures for which the underlying interest is a variance. OCC's current model for calculating the theoretical value of variance futures, adopted in 2007, is an econometric model designed to capture long- and short-term conditional variance of the underlying S&P 500 to generate variance futures prices. OCC now proposes to replace its current model for margining variance futures with the proposed Variance Futures Model, which would be based on a replication technique using the log-contract to price variance futures similar to the proposed Volatility Index Futures Model.[36]

OCC believes that its current model for margining variance futures has several disadvantages.[37] First, OCC currently models variance futures by simulating a final settlement price rather than a near-term variance futures price, which is not consistent with OCC's two-day liquidation horizon.[38] The proposed Variance Futures Model would simulate a near-term variance futures price rather than a final settlement price, consistent with OCC's two-day liquidation assumption.

Second, similar to the Implied Volatilities Scenarios Model and Synthetic Futures Model, OCC's current model for margining variance futures relies on a GARCH model that OCC believes: (1) does not provide appropriate risk offsets with other instruments inherently related to the S&P 500 implied volatility and (2) does not generate margin requirements that are sufficiently conservative for short positions and aggressive for long positions to avoid causing model backtesting failures.[39]

Instead of relying on a GARCH variance forecast, the proposed Variance Futures Model would approximate the implied component of variance futures (*i.e.,* the unrealized variance) based on option prices generated using the proposed S&P 500 Implied Volatility Simulation Model. As described in the confidential exhibits OCC submitted with the Proposed Rule Change, this would significantly reduce long-side coverage exceedances relative to the current model while maintaining coverage for periods of low and high volatility. It would also offer offsets for variance futures with the options of the same underlying security.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[40] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(A) of the Exchange Act,[41] and Rule 17Ad–22(e)(6)[42] thereunder, as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[43] Based on its review of the record, and for the reasons described below, the Commission believes that allowing OCC to make the proposed model changes described above is consistent with the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The proposed models provide for margin coverage levels that are consistent with, and in certain instances (*e.g.,* long-side variance futures coverage) better than, the current models. The proposed models would also simplify OCC's methodology for simulating variations in implied volatilities while simultaneously supporting offsets for products with the same underlying (*e.g.,* volatility and variance products based on the S&P 500). The Commission believes that providing for such offsets would more accurately represent the relationship between the products OCC clears. Ensuring that OCC's margin models accurately reflect the relationships between the products OCC clears would, in turn, facilitate OCC's ability to set margins that more accurately reflect the risks posed by such products. Setting margins that accurately reflect the risks posed by the products OCC clears could reduce the likelihood that OCC would not have sufficient margin to address losses arising out of the default of a Clearing Member. Reducing the likelihood that OCC holds insufficient margin to address default losses would, in turn, further assure the safeguarding of surviving Clearing Members' collateral by reducing the likelihood that OCC would be forced to charge losses to the Clearing Fund.

The Commission believes, therefore, that the proposed model changes are consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[44]

B. Consistency With Rule 17Ad–22(e)(6) Under the Exchange Act

Rule 17Ad–22(e)(6) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, among other things, (1) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market[45] and (2) calculates sufficient margin to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.[46]

As described above, the proposed models would remove the reliance on GARCH models that have demonstrated extreme sensitivity to sudden spikes in volatility. The Commission believes that such reactivity can produce instability and in certain instances over or underestimation of margin requirements.[47] The proposed models would also replace the modeling techniques that currently allow for discontinuities and jumps in margin (*e.g.,* simulating scenarios with near-zero implied volatility). Such

[36] This approach is based on Cboe's published method for pricing S&P 500 variance futures. *See* Cboe, *S&P 500 Variance Futures Contract Specification* (Dec. 10, 2012), *available at http://www.cboe.com/products/futures/va-s-p-500-variance-futures/contract-specifications.*

[37] *See* Notice of Filing, 87 FR at 8075.

[38] OCC's processes for managing the default of a Clearing Member assume that OCC can close out the defaulter's portfolio within two days of default.

[39] *See* Notice of Filing, 87 FR at 8075.

[40] 15 U.S.C. 78s(b)(2)(C).

[41] 15 U.S.C. 78q–1(b)(3)(A).

[42] 17 CFR 240.17Ad–22(e)(6).

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] 15 U.S.C. 78q-1(b)(3)(F).

[45] 17 CFR 240.17Ad–22(e)(6)(i).

[46] 17 CFR 240.17Ad–22(e)(6)(iii)

[47] For example, OCC's current model would have increased aggregate margin requirements by 80 percent overnight in response to the increased volatility observed on February 5, 2018. *See* Securities Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392, 67393 (Dec. 28, 2018).

discontinuities and jumps in margin may, in turn, lead to disparate margin requirements for instruments with similar risk profiles. Further, OCC's proposed reliance on output from the proposed S&P 500 Implied Volatility Simulation Model as an input to the Volatility Index Futures model and Variance Futures model would capture the natural risk offsets between inherently related products. Providing for such offsets would more accurately represent the relationship between the products OCC clears. Ensuring that OCC's margin models accurately reflect the relationships between the products OCC clears would, in turn, facilitate OCC's ability to set margins that more accurately reflect the risks posed by such products. Further, providing for such offsets could reduce the likelihood that Clearing Members would be required to provide additional financial resources unnecessarily, which, in turn, could reduce the strain on such members during stress market conditions. Additionally, the proposed Variance Futures model would simulate a near-term variance futures price rather than a final settlement price, which is consistent with the risks OCC would face in the event of a Clearing Member default.

In response to the Notice of Filing,[48] the Commission received a comment opposing the proposal on the basis that the change would reduce margins to a level that could ensure some Clearing Members would fail, with expenses borne by ''direct investors.'' [49] The commenter's assertions, however, are inconsistent with the confidential performance data provided by OCC. The confidential information provided by OCC includes backtesting data demonstrating how the proposed models would have performed had they been in production at OCC from February 2018 through February 2021. This backtesting period includes the period of increased volatility observed on February 5, 2018 that demonstrated the reactivity of OCC's current models.[50] The confidential information provided by OCC and reviewed by the Commission demonstrates that, overall, the proposed models perform better than OCC's current models with regard to setting margin requirements to cover exposures presented by Clearing Member portfolios.[51]

Accordingly, the Commission believes that the proposed model changes are consistent with Rule 17Ad–22(e)(6) under the Exchange Act.[52]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [53] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[54] that the Proposed Rule Change (SR–OCC–2022–001) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

J. Matthew DeLesDernier,

Deputy Secretary.

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[48] *See* Notice of Filing, at 87 FR 8072.

[49] Comment from Mary (Feb. 7, 2022), *available at https://www.sec.gov/comments/sr-occ-2022-001/srocc2022001-20114809-267072.htm.* The commenter also raised a concern regarding the confidentiality of certain exhibits. *Id.* OCC asserted that the exhibits to the filing were entitled to confidential treatment because they contained commercial and financial information that is not customarily released to the public and is treated as the private information of OCC. Under Section 23(a)(3) of the Exchange Act, the Commission is not required to make public statements filed with the Commission in connection with a proposed rule change of a self-regulatory organization if the Commission could withhold the statements from the public in accordance with the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. 15 U.S.C. 78w(a)(3). The Commission has reviewed the documents for which OCC requests confidential treatment and concludes that they could be withheld from the public under the FOIA. FOIA Exemption 4 protects confidential commercial or financial information. 5 U.S.C. 552(b)(4). Under Exemption 4, information is confidential if it ''is both customarily and actually treated as private by its owner and provided to government under an assurance of privacy.'' *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2366 (2019). In its requests for confidential treatment, OCC stated that it has not disclosed the confidential exhibits to the public, and the information is the type that would not customarily be disclosed to the public. In addition, by requesting confidential treatment, OCC had an assurance of privacy because the Commission generally protects information that can be withheld under Exemption 4. Thus, the Commission has determined to accord confidential treatment to the confidential exhibits.

[50] *See supra* footnote 47.

[51] The Commission received other comments generally asserting that the proposal would reduce margin at the expense of retail investors and that there is a need to ''lower the amount of leverage in the system.'' As described above, the backtesting data provided by OCC demonstrates that the proposed models would set margin requirements that more effectively cover exposures presented by Clearing Member portfolios, which include customer positions.

[52] 17 CFR 240.17Ad–22(e)(6).

[53] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95313; File No. SR–NYSE–2022–29]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Period for Specified Commentaries to Rules 7.35A and 7.35C and Temporary Rule Relief in Rule 36.30

July 19, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief in Rule 36.30, to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief to Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022. The current temporary period that these Rules are in effect ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2022.

Background

To slow the spread of COVID–19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[3] On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19.[4] On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures designed to prevent the spread of COVID–19.[5] Consistent with these safety measures, both DMMs and Floor broker firms continue to operate with reduced staff on the Trading Floor.

Proposed Rule Change

Beginning in March 2020, the Exchange modified its rules to add Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and rule relief in Rule 36.30,[6] and has extended the expiration date of such Commentaries several times.[7] In July 2021, the Commission approved the Exchange's proposals to make permanent several of the rule changes that were the subject of those Commentaries.[8] The remaining Commentaries, specified below, are in effect until the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2022:

- Commentaries .01, .02, .03, .04, .05, and .07 to Rule 7.35A;
- Commentaries .01 and .02 to Rule 7.35C; and
- Amendments to Rule 36.30.

The first and second phases of the reopening of the Trading Floor are subject to safety measures designed to prevent the spread of COVID–19. To meet these safety measures, Floor brokers and DMM units that have chosen to return to the Trading Floor are operating with reduced staff. The Exchange is therefore proposing to extend Commentaries .01, .02, .03, .04, 05, and .07 to Rule 7.35A, Commentaries .01 and .02 to Rule 7.35C, and the amendments to Rule 36.30 until the earlier of December 31, 2022, or such time that there is a full reopening of the Trading Floor facilities to DMMs.

The Exchange is not proposing any substantive changes to these Rules.

2. Statutory Basis

The proposed rule change 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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating

[3] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[4] *See* Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

[5] *See* Securities Exchange Act Release No. 89086 (June 17, 2020) (SR–NYSE–2020–52) (Notice of filing and immediate effectiveness of proposed rule change).

[6] *See* Securities Exchange Act Release Nos. 88413 (March 18, 2020), 85 FR 16713 (March 24, 2020) (SR–NYSE–2020–19) (amending Rule 7.35C to add Commentary .01); 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR–NYSE–2020–22) (amending Rules 7.35A to add Commentary .01, 7.35B to add Commentary .01, and 7.35C to add Commentary .02); 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR–NYSE–2020–23) (amending Rule 7.35A to add Commentary .02); 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR–NYSE–2020–28) (amending Rule 7.35A to add Commentary .03); 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR–NYSE–2020–29) (amending Rule 7.35C to add Commentary .03); 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR–NYSE–2020–35) (amending Rule 7.35A to add Commentary .04); 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR–NYSE–2020–37) (amending Rule 7.35 to add Commentary .01); 88950 (May 26, 2020), 85 FR 33252 (June 1, 2020) (SR–NYSE–2020–48) (amending Rule 7.35A to add Commentary .05); 89059 (June 12, 2020), 85 FR 36911 (June 18, 2020) (SR–NYSE–2020–50) (amending Rule 7.35C to add Commentary .04); 89086 (June 17, 2020), 85 FR 37712 (SR–NYSE–2020–52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material 20, and Supplementary Material .30 to Rule 36); 89925 (September 18, 2020) (SR–NYSE–2020–75) (amending Rule 7.35 to add Commentary .02); and 90810 (December 29, 2020), 86 FR 335 (January 5, 2021) (SR–NYSE–2020–109) (amending Rule 7.35A to add Commentary .07).

[7] *See* Securities Exchange Act Release No. 94585 (April 1, 2022) 87 FR 20479 (April 7, 2022) (SR–NYSE–2022–18) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2022). *See also* Securities Exchange Act Release Nos. 93780 (December 14, 2021) 86 FR 72012 (December 20, 2021) (SR–NYSE–2021–71) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on March 31, 2022); 89199 (June 30, 2020), 85 FR 40718 (July 7, 2020) (SR–NYSE–2020–56) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material .20 to Rule 76; and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2020); 89368 (July 21, 2020), 85 FR 45272 (July 27, 2020) (SR–NYSE–2020–61) (Notice of filing and immediate effectiveness of proposed rule change to lift the temporary suspension to Rule 76 and delete Supplementary Material .20 to Rule 76); 89425 (July 30, 2020), 85 FR 47446 (August 5, 2020) (SR–NYSE–2020–63) (extending the temporary period specified in Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and Temporary Rule Relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020); 90005 (September 25, 2020), 85 FR 61999 (October 2020) (SR–NYSE–2020–78) (extending same to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020); 90795 (December 23, 2020), 85 FR 86608 (December 30, 2020) (SR–NYSE–2020–106) (extending same to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021); 91778 (May 5, 2021) 86 FR 25902 (May 11, 2021) (SR–NYSE–2021–29) (extending same to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on August 31, 2021); and 92802 (August 30, 2021), 86 FR 49587 (September 3, 2021) (SR–NYSE–2021–46) (extending same to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2021).

[8] *See* Securities Exchange Act Release Nos. 92374 (July 9, 2021), 86 FR 37367 (July 15, 2021) (SR–NYSE–2020–89) (making permanent the rule changes specified in Commentary .03 to Rule 7.35C); 92373 (July 12, 2021), 86 FR 37779 (July 16, 2021) (SR–NYSE–2020–93) (making permanent the rule changes specified in Commentaries .01 and .02 to Rule 7.35); and 92480 (July 23, 2021), 86 FR 40885 (July 29, 2021) (SR–NYSE–2020–95) (making permanent certain rule changes specified in Commentaries .01 and .06 to Rule 7.35A and Commentaries .01 and .03 to Rule 7.35B).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

To reduce the spread of COVID–19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. On May 14, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. On June 15, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning June 17, 2020, DMM units may choose to return a subset of staff to the Trading Floor.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Trading Floor has not yet reopened in full to DMMs or Floor brokers. Accordingly, the Exchange believes that the temporary rule changes in effect pursuant to the Commentaries to Rules 7.35A and 7.35C and amendments to Rule 36.30, which are intended to be in effect during the temporary period while the Trading Floor has not yet opened in full to DMMs, should be extended until such time that there is a full reopening of the Trading Floor facilities to DMMs. The Exchange is not proposing any substantive changes to these Rules.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of a full reopening of the Trading Floor facilities to DMMs or the close of the Exchange on December 31, 2022, market participants will have advance notice of the temporary period during which the Commentaries to Rules 7.35A and 7.35C and amendments to Rule 36.30 will be in effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather would extend the period during which Commentaries .01, .02, .03, .04, 05, and .07 to Rule 7.35A; Commentaries .01 and .02 to Rule 7.35C; and amendments to Rule 36.30 will be in effect. These Commentaries are intended to be in effect during the temporary period while the Trading Floor has not yet been opened in full to DMMs and Floor brokers and are currently due to expire on July 31, 2022. Because the Trading Floor has not been opened in full to DMMs, the Exchange proposes to extend the temporary period for these temporary rules to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the rules discussed above to remain in effect during the temporary period during which the Trading Floor has not yet been reopened in full to DMMs because of health precautions related to the Covid-19 pandemic. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–29. 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

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2022–29 and should be submitted on or before August 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15770 Filed 7–22–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95321; File No. SR–CboeEDGX–2022–033]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Regarding Complex Orders

July 19, 2022.

Pursuant to the provisions of 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 July 14, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Rules regarding complex orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the definition of complex order in Rule 21.20(a) provides that the term ''complex order'' means any order involving the concurrent purchase and/or sale of two or more different series in the same class (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. As such, only complex orders with a ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) may currently be submitted for trading on the Exchange. The proposed rule change amends the definition of complex order in Rule 21.20(a) to provide that a ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different series in the same class (the ''legs'' or ''components'' of the complex order), for the same account, in any ratio and for the purposes of executing a particular investment strategy. The Exchange notes that its affiliated options exchange, Cboe Options, recently amended its complex order rules in the same manner as proposed herein to permit complex orders with ratios less than one-to-three and greater than three-to-one to be eligible for electronic processing.[3] The Exchange proposes to accept complex orders with ratios larger than three-to-one or smaller than one-to-three for execution in order to provide execution opportunities for all complex orders, including those with investment strategies that do not fit within the three-to-one ratio requirement (which opportunities are afforded to those complex orders submitted to Cboe Options today).

While the proposed rule change will allow complex orders of any ratio to be traded on the Exchange, the Exchange does not propose to extend the complex order priority in Rule 21.20(f)(2)(A) afforded to complex orders with ratios equal to or greater than one-to-three and less than or equal to three-to-one to complex orders with larger ratios. Instead, the proposed rule change amends Rule 21.20(f)(2)(A) to provide that, if a complex order has a ratio less than one-to-three (.333) or greater than three-to-one (3.00), the component(s) of the complex order for the leg(s) with a Priority Customer order at the Best Bid or Offer (''BBO'') must execute at a price that improves the price of that Priority Customer order(s) on the Simple Book (the Exchange notes that this proposed rule change is described below in further detail). The proposed rule change also makes certain nonsubstantive changes to the complex priority rule. The Exchange notes that execution of complex orders with any ratio will continue to be required [sic] at net prices: (i) that would cause any component of the complex strategy to be executed at a price of zero; (ii) worse than the Synthetic Best Bid or Offer (''SBBO'') or equal to the SBBO when there is a Priority Customer order at the SBBO (except all-or-none (''AON''); (iii) that would cause any component of the complex strategy to be executed at a

[19] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94204 (February 9, 2022), 87 FR 8625 (February 15, 2022) (SR–CBOE–2021–046). The Cboe Options' filing SR–CBOE–2021–046 also amended Cboe Option's complex order rules to allow the minimum increment for bids and offers on complex orders with any ratio to be in $0.01 or greater (legs were already permitted to be executed in pennies on Cboe Options). The Exchange notes that Rule 21.20(f)(1) currently provides that the minimum increment for bids and offers on a complex order is $0.01, and the components of a complex order may be executed in $0.01 increments, regardless of the minimum increments otherwise applicable to the individual components of the complex order. As a result, all complex orders (including those with larger ratios as proposed in this filing) and their legs will be able to execute in pennies, and all bids and offers on all complex orders (including those with larger ratios, as proposed) will be able to be expressed in a minimum increment of $0.01.

price worse than the individual component prices on the Simple Book; or (iv) worse than the price that would be available if the complex order legged into the Simple Book.

Specifically, regarding the nonsubstantive changes to Rule 21.20(f)(2)(A), the proposed rule change combines subparagraph (ii) with (v) (and renumbers the subparagraphs), as the provisions ultimately mean the same thing. Specifically, Rule 21.20(f)(2)(A)(ii) provides that the System does not execute a complex order pursuant to Rule 21.20 at a net price worse than the SBBO or equal to the SBBO when there is a Priority Customer order at the SBBO, except all-or-none (''AON'') complex orders may only execute at prices better than the SBBO. Therefore, if there is a Priority Customer Order comprising part of the SBBO, a complex order could only execute by improving the SBBO, which would require improvement of component prices. This is what current Rule 21.20(f)(2)(A)(v) requires. Specifically, that provision states that the System does not execute a complex order pursuant to Rule 21.20 at a net price that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy. Because these two provisions are interrelated, the Exchange believes it is appropriate to combine them into proposed Rule 21.20(f)(2)(A)(iv).[4] The proposed rule change amends language in proposed Rule 21.20(f)(2)(A)(iv) to provide that the System does not execute a complex order at a net price worse than the SBBO or equal to the SBBO when there is a Priority Customer order on any leg comprising the SBBO and adds subparagraph (a) to additionally provide that if a complex order has a ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00), at least one component of the complex order must execute at a price that improves the BBO for that component, which is consistent with current functionality for complex orders in ratios that may currently be submitted on the Exchange. The proposed nonsubstantive rule changes to restructure Rule 21.20(f)(2)(A) have no impact on complex order priority and are consistent with and align the Exchange's complex order priority rule with Cboe Options Rule 5.33(f)(2), which governs Cboe Options complex order priority.[5]

Regarding the proposed rule change to incorporate complex orders with larger-ratios, as proposed, into the complex order priority provision, the proposed rule change adds subparagraph (b) to Rule 21.20(f)(2)(A)(iv), as proposed. As described above, Rule 21.20(f)(2)(A)(iv), as proposed, provides that the System does not execute a complex order at a net price worse than the SBBO or equal to the SBBO when there is a Priority Customer order on any leg comprising the SBBO, and, as proposed subparagraph (b) provides, if the complex order has a ratio less than one-to-three (.333) or greater than three-to-one (3.00), the component(s) of the complex order for the leg(s) with a Priority Customer order at the BBO must execute at a price that improves the price of that Priority Customer order(s) on the Simple Book. As a result, to the extent a complex order with a ratio of four-to-one (for example) is submitted for electronic execution, the complex order may be executed at a net debit or credit price only if each leg of the order betters the corresponding bid (offer) of a priority customer order(s) in the Simple Book. Therefore, the complex order priority rules will continue to protect Priority Customer interest on the Simple Book. The proposed rule change regarding complex order priority for complex order ratios less than one-to-three (.333) or greater than three-to-one (3.00) is consistent with the corresponding complex priority rule on Cboe Options [6] as it applies to complex order ratios less than one-to-three (.333) or greater than three-to-one (3.00) electronically submitted to Cboe Options, as previously approved by the Commission.[7]

The proposed rule change next corrects an error in the introductory paragraph of Rule 21.20(b) and the definition of COA-eligible and Do-Not-COA orders in Rule 21.20(b). Regarding the introductory paragraph to Rule 21.20(b), there is a stray clause (including a bracket) that was inadvertently left in this provision upon a previous rule change to harmonize the Exchange's complex order rule with the complex order rules of its affiliated options exchanges, Cboe C2 Exchange Inc. (''C2'') and Cboe Options.[8] Therefore, the proposed rule change removes the stray clause and corrects language within the provision to be consistent with corresponding C2 Rule 5.33(b) and Cboe Options Rule 5.33(b), as intended.

Regarding the definition of COA-eligible and Do-Not-COA orders in Rule 21.20(b), the Exchange's System currently determines whether an order is ''COA-eligible'' by comparing the price of an order to resting interest on the same side as the order in the Simple Book and in the Complex Order Book (''COB''). However, the current definition inadvertently inversed the relevant terms and compares the price of a buy complex order to the synthetic best offer (''SBO'') and sell complex orders and compares the price of a sell complex order to the synthetic best bid (''SBB'') and buy complex orders, which would be opposite-side interest. The proposed rule change corrects this error and revises the definition to provide that whether a complex order is COA-eligible will be determined by comparing the order's price to same-side interest, which is consistent with current System functionality. Specifically, a ''COA-eligible'' complex order is a buy (sell) complex order with User instructions to (or which default to) initiate a COA that is priced (A) equal to or higher (lower) than the SBB (SBO) (provided that if any of the bids or offers on the Simple Book that comprise the SBB (SBO) is represented by a Priority Customer order, the complex order must be priced at least $0.01 higher (lower) than the SBB (SBO) and (B) higher (lower) than the price of buy (sell) complex orders resting at the top of the COB. This is consistent with the provisions that will cause a COA to terminate early, pursuant to which a COA will end early because of incoming same-side interest.[9] Additionally, the

[4] The proposed rule change makes other nonsubstantive changes to the sentence structure as a result of the combination of provisions, as well as other nonsubstantive changes to the formatting and paragraph structure for added clarity and consistency with the structure of corresponding Cboe Options Rule 5.33(f)(2).

[5] *See* Cboe Options Rule 5.33(f)(2)(A); *and see* Securities Exchange Act Release No. 95006 (May 31, 2022), 87 FR 34334 (June 6, 2022) (SR–CBOE–2022–024).

[6] *See* Cboe Options Rule 5.33(f)(2)(A)(iv).

[7] *See* Securities Exchange Act Release No. 94204 (February 9, 2022), 87 FR 8625 (February 15, 2022) (SR–CBOE–2021–046). SR–CBOE–2021–046 did not make any changes to complex orders with ratios equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) available on Cboe Options and Cboe Options continues to allow trading in such complex orders with smaller ratios today. Likewise, the Exchange notes that this proposal does not make any changes to currently permissible complex order ratios (equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00)) and such complex orders with smaller ratios will continue to be available for trading on the Exchange, consistent with Cboe Options.

[8] *See* Securities Exchange Act Release Nos. 86353 (July 11, 2019), 84 FR 34230 (July 7, 2019) (SR–CboeEDGX–2019–039); *and* 87015 (September 19, 2019), 84 FR 50504 (September 25, 2019) (SR–CBOE–2019–060).

[9] Specifically, Rule 21.20(d)(3) provides that the COA response time interval terminates early (A) when the System receives a non-COA-eligible order

Continued

proposed rule change is consistent with the Exchange's affiliated options exchanges', Cboe Options and C2, definitions of ''COA-eligible'' order.[10]

Finally, the proposed rule change updates Rule 21.20(g) to reflect that the System accepts for electronic processing complex orders with more than four legs. Current Rule 21.20(g) states that a complex order may execute against orders and quotes resting in the Simple Book pursuant to Rule 21.20(d)(5)(A) and (e) if it can execute in full or in a permissible ratio and if it has no more than a maximum number of legs (which the Exchange determines on a class-by-class basis and may be two, three or four) subject to certain restrictions, including that non-Customer complex orders with two option legs that are both buy or both sell and that are both calls or both puts may not leg into the Simple Book and all complex orders with three or four option legs that are all buy or all sell may not leg into the Simple Book. The proposed rule change modifies the parenthetical regarding legging restrictions to indicate that the maximum number the Exchange may determine on a class-by-class basis may be up to 16, as the Exchange's System currently accepts complex orders with up to that many legs for electronic processing.[11] The proposed rule change makes no changes to which or how complex orders may leg into the Simple Book but rather updates this provision to reflect current functionality. This proposed rule change, too, is consistent with the corresponding Cboe Options rule.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will provide market participants with execution opportunities on the Exchange for all their complex trading and hedging strategies, regardless of ratio. Market participants may determine that investment and hedging strategies with ratios greater than three-to-one or less than one-to-three are appropriate for their investment purposes, and the Exchange believes it will benefit market participants if they have the flexibility to submit their investment and hedging strategies on the Exchange to achieve their desired investment results. The proposed rule change will further remove impediments to and perfect the mechanism of a free and open market and a national market system, as it will allow complex orders to be submitted on the Exchange in the same manner as complex orders may already be submitted on its affiliated options exchange, Cboe Options,[16] which currently permits orders of any ratio to be submitted to the exchange, as previously approved by the Commission.[17]

Additionally, the proposed rule change will continue to protect priority customer order interest on the Simple Book, as all complex orders with a ratio greater than three-to-one or less than one-to-three will be executed only if each leg of the order improves the price of a priority customer order on the Simple Book on each leg. Again, as noted above, the proposed rule change regarding complex order priority for complex order ratios less than one-to-three (.333) or greater than three-to-one (3.00) is consistent with the corresponding complex priority rule on Cboe Options as it applies to larger ratio orders submitted for electronic trading on Cboe Options.[18]

The proposed nonsubstantive rule changes make no changes to how complex orders are processed or executed, but rather update the Rules to reflect more accurately current System functionality and to make clarifying and simplifying changes, which the Exchange believes will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed change to the introductory paragraph to Rule 21.20(b) removes a stray clause, inadvertently left in the rules, and replaces it with language that is consistent with corresponding C2 and Cboe Options rules, as intended.[19] The proposed amendments to the definition of COA-eligible order in Rule 21.20(b) corrects an inadvertent error in the definition. Specifically, the System compares the price of the order to same-side interest rather than opposite-side interest but the current language inadvertently inverts the terms. As such, the proposed rule change corrects this inadvertent error, and thus provides additional transparency in the Rules, ultimately benefiting investors. This is consistent with the provisions that will cause a COA to terminate early, pursuant to

on the same side as the COA-eligible order that initiated the COA but with a price better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to Rule 21.20(d)(5) and posts the new order to the COB; (B) when the System receives an order in a leg of the complex order that would improve the SBBO on the same side as the COA-eligible order that initiated the COA to a price equal to or better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to Rule 21.20(d)(5), posts the new order to the Simple Book, and updates the SBBO; or (C) if the System receives a Priority Customer Order that would join or improve the SBBO on the same side as the COA in progress to a price equal to or better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to Rule 21.20(d)(5), posts the new order to the Simple Book, and updates the SBBO.

[10] *See* Cboe Options Rule 5.33(b)(5), and C2 Rule 5.33(b)(2); *and see* Securities Exchange Act Release No. 95006 (May 31, 2022), 87 FR 34334 (June 6, 2022) (SR–CBOE–2022–024).

[11] *See* Cboe Notice C2021060800, *Cboe Options Introduces 16-Leg Maximum for Non-FLEX Complex Orders* (June 8, 2021), *available at* Cboe Options Introduces 16-Leg Maximum for Non-FLEX Complex Orders; *see also Cboe US Options Complex Book Process* (technical specifications last updated June 3, 2022), Section 2.3.2, *available at* US Options Complex Book Process.

[12] *See* Cboe Options Rule 5.33(g); *and see* Securities Exchange Act Release No. 95006 (May 31, 2022), 87 FR 34334 (June 6, 2022) (SR–CBOE–2022–024).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

[16] The Exchange notes that its affiliated options exchange, C2, also intends to file a similar rule filing to allow complex orders of any ratio to be submitted on C2.

[17] *See supra* note 9. Prior to the Commission's approval of SR–CBOE–2022–046, larger ratio complex orders were already permitted to be submitted to Cboe Options' trading floor for execution in open outcry. The Commission's approval of SR–CBOE–2022–046 allowed larger ratio complex orders to be submitted for electronic trading.

[18] *See supra* note 8.

[19] *See supra* note 10.

which a COA will end early because of incoming same-side interest.[20] Additionally, the proposed rule change is consistent with Cboe Option's definition of ''COA-eligible'' order.[21]

The other nonsubstantive proposed rule change to the provisions regarding complex order priority in Rule 21.20(f)(2)(A) is intended to simplify the rule text regarding when legs of complex orders must improve prices of orders on the Simple Book, while adding clarity to the rule text through an update in its formatting and aligning such provision with Cboe Option's corresponding complex priority rule. This proposed rule change has no impact on electronic complex order priority while still increasing investor understanding.

Finally, the proposed rule change to the provision regarding complex order legging in Rule 21.20(g) will protect investors, as it merely updates the provision to reflect that the System accepts for electronic processing complex orders with more than four legs. The proposed rule change makes no changes to which or how complex orders may leg into the Simple Book but rather updates this provision to reflect current functionality and align with Cboe Options corresponding rule.[22]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to allow for complex orders in any ratio to be submitted to the Exchange will impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all Options Members. Options Members will have the discretion to submit complex orders with any ratio for trading on the Exchange. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it relates to the execution of orders on the Exchange and will continue to protect Priority Customer Orders on the Simple Book. The Exchange believes the proposed rule change may promote competition, as market participants will have additional flexibility to execute their trading and hedging strategies in any ratio, and in the same manner that is already permitted on the Exchange's affiliated options exchange, Cboe Options. Also, other options exchanges are welcome to modify their systems to permit higher/lower ratio orders to execute electronically or on their trading floors.

The proposed nonsubstantive rule changes are not intended for competitive purposes, but rather to clarify certain provisions and correct certain language. The Exchange does not believe that the proposed nonsubstantive rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all changes will apply in the same manner to all investors. The proposed nonsubstantive rule changes have no impact on trading and thus will not change how any investors' complex orders are processed or executed on the Exchange. As noted above, the proposed rule change makes no changes to electronic complex order priority, which orders can initiate a COA, or how complex orders may leg into the Simple Book. The Exchange does not believe that the proposed nonsubstantive rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule changes have no impact on how complex orders trade, as they make primarily clarifying updates, corrections, and other nonsubstantive changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6)[25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange notes that complex orders with any ratio currently are eligible for electronic processing on Cboe Options, and that the proposal does not introduce any new or novel functionality.[27] The Exchange states that waiver of the operative delay will benefit investors by providing them with the flexibility to submit bona-fide multi-legged trading or hedging strategies in any ratio to the Exchange. In addition, the Exchange states that the proposed non-substantive rule changes clarify certain provisions and correct certain language, and that waiver of the operative delay with respect to these changes will protect investors and the public interest by providing investors with additional transparency regarding the Exchange's rules as soon as possible.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the proposal will benefit investors by providing investors with an additional venue for trading complex orders with any ratio, including complex orders with a ratio less than one-to-three or greater than three-to-one. As discussed above, the

[20] Specifically, Rule 21.20(d)(3) provides that the COA response time interval terminates early (A) when the System receives a non-COA-eligible order on the same side as the COA-eligible order that initiated the COA but with a price better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to Rule 21.20(d)(5) and posts the new order to the COB; (B) when the System receives an order in a leg of the complex order that would improve the SBBO on the same side as the COA-eligible order that initiated the COA to a price equal to or better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to Rule 21.20(d)(5), posts the new order to the Simple Book, and updates the SBBO; or (C) if the System receives a Priority Customer Order that would join or improve the SBBO on the same side as the COA in progress to a price equal to or better than the COA price, in which case the System terminates the COA and processes the COA-eligible order pursuant to Rule 21.20(d)(5), posts the new order to the Simple Book, and updates the SBBO.

[21] *See supra* note 12.

[22] *See supra* note 9.

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] *See supra* note 3.

Commission approved a Cboe Options proposal allowing complex orders with any ratio to trade electronically and to be quoted, as well as executed, in $0.01 increments.[28] The Commission notes that the priority provisions in proposed Exchange Rule 21.20(f)(2)(A)(iv)(b) for complex orders with a ratio less than one-to-three or greater than three-to-one—which require each component leg of such an order with a Priority Customer order at the BBO to execute at a price that improves the price of the Priority Customer order(s) on the Simple Book—is consistent with Cboe Options Rule 5.33(f)(2)(A)(iv)(b). Accordingly, the Exchange's proposal to allow market participants to submit complex orders with any ratio to the Exchange does not raise new or novel regulatory issues. The Commission believes that the proposed non-substantive changes to Exchange Rules 21.20(b), 21.20(f)(2)(A), and 21.20(g) will clarify and help to ensure the accuracy of the Exchange's rules by correcting, updating, and streamlining the Exchange's rules. The Commission notes that these proposed changes are consistent with the rules of Cboe Options.[29] Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.[30]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–033, and should be submitted on or before August 15, 2022.

For the Commission, by the Division of Trading and Markets, pant to delegated authority.[31]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15773 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

[28] *See supra* note 3.

[29] *See* Cboe Options Rules 5.33(b), 5.33(f)(2)(A), and 5.33(g).

[30] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–064, OMB Control No. 3235–0067]

Submission for OMB Review; Comment Request: Extension: Form S–11

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form S–11 (17 CFR 239.18) is the registration statement form used to register securities issued by real estate investment trusts or by issuers whose business is primarily that of acquiring and holding for investment interests in real estate under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information filed with the Commission permits verification of compliance with securities law requirements and assures public availability and dissemination of such information. Information provided is mandatory. We estimate Form S–11 takes approximately 727.1044776 hours per response and is filed by approximately 67 issuers annually. In addition, we estimate that 25% of the 727.1044776 hours per response (181.7761 hours) is prepared by the issuer for an annual reporting burden of 12,179 hours (181.7761 hours per response × 67 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 24, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington,

DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 19, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15784 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–643, OMB Control No. 3235–0691]

Submission for OMB Review; Comment Request: Extension: Form Custody

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the extension of the previously approved collection of information provided for in Form Custody (17 CFR 249.639) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Section 17(a)(1) of the Exchange Act provides that broker-dealers registered with the Commission must make and keep records, furnish copies of the records, and make and disseminate reports as the Commission, by rule, prescribes. Pursuant to this authority, the Commission adopted Rule 17a–5 (17 CFR 240.17a–5), which is one of the primary financial and operational reporting rules for broker-dealers.[1] Paragraph (a)(5) of Rule 17a–5 requires every broker-dealer registered with the Commission to file Form Custody (17 CFR 249.639) with its designated examining authority (''DEA'') within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the broker-dealer's annual report if that date is not the end of a calendar quarter. Form Custody is designed to elicit information about whether a broker-dealer maintains custody of customer and non-customer assets, and, if so, how such assets are maintained.

The Commission estimates that there are approximately 3,534 broker-dealers registered with the Commission. As noted above, all broker-dealers registered with the Commission are required to file Form Custody with their DEA once each calendar quarter. Based on staff experience, the Commission estimates that, on average, it would take a broker-dealer approximately 12 hours to complete and file Form Custody, for an annual industry-wide reporting burden of approximately 169,632 hours.[2] Assuming an average cost per hour of approximately $319 for a compliance manager, the total internal cost of compliance for the respondents is approximately $54,112,608 per year.[3]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by August 24, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 19, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15783 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–091, OMB Control No. 3235–0088]

Submission for OMB Review; Comment Request: Extension: Rule 15Ba2–5

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 15Ba2–5 (17 CFR 240.15Ba2–5), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

On July 7, 1976, effective July 16, 1976 (*see* 41 FR 28948, July 14, 1976), the Commission adopted Rule 15Ba2–5 under the Exchange Act to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately one respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated one annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is approximately four hours. The approximate internal compliance cost per hour is $25, resulting in a total internal cost of compliance of approximately $100 per year (*i.e.,* 4 hours × $25).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

[1] Rule 17a–5 is subject to a separate PRA filing (OMB Control Number 3235–0123).

[2] 3,534 brokers-dealers x 4 times per year × 12 hours = 169,632 hours.

[3] 169,632 hours times $319 per hour = $54,112,608. $319 per hour for a compliance manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff for an 1800-hour work-year, multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by August 24, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 19, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15782 Filed 7–22–22; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No SSA–2022–0035]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new collection and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2022–0035].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0035].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 23, 2022. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Application for Child's Insurance Benefits—20 CFR 404.350–404.368, 404.603, & 416.350—0960–0010. Title II of the Social Security Act (Act) provides for the payment of monthly benefits to children of an insured retired, disabled, or deceased worker. Section 202(d) of the Act discloses the conditions and requirements the applicant must meet when filing an application. SSA uses the information on Form SSA–4–BK to determine entitlement for children of living and deceased workers to monthly Social Security payments. Respondents are guardians completing the form on behalf of the children of living or deceased workers, or the children of living or deceased workers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–4–BK (Death Claim) paper	1,178	1	12	236	* $28.01	0	*** $6,610
SSA–4–BK/(Death Claim) MCS Interview	227,999	1	11	41,800	* 28.01	** 24	*** 3,725,330
SSA–4–BK (Life Claim) Paper	2,180	1	12	436	* 28.01	0	*** 12,212
SSA–4–BK (Life Claim) MCS Interview	284,245	1	11	52,112	* 28.01	** 24	*** 4,644,338
Totals	515,602			94,584			*** 8,388,490

** We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure on the average FY 2022 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment(s)—416.204—0960–0416. SSA conducts redeterminations of disability to determine whether Supplemental Security Income (SSI) recipients: (1) have met and continue to meet all statutory and regulatory requirements for SSI eligibility and (2) are receiving the correct SSI payment amount. SSA makes these rederterminations through periodic use of Form SSA–8203–BK. SSA conducts this legally mandated information collection in field offices via personal contact (face-to-face or telephone interview) using the automated SSI Claim System.

The respondents are SSI recipients or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8203–BK (paper version)	44,396	1	20	14,799	* $19.86	** 21	*** $602,513
SSA–8203–BK (SSI Claims system)	1,918,702	1	19	607,589	* 19.86	** 21	***25,403,621

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Totals	1,963,098			622,388			*** 26,006,134

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

We based this figure by averaging the average FY 2022 wait times for field offices, and teleservice center based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Request to Withdraw a Hearing Request; Request to Withdraw an Appeals Council Request for Review; and Administrative Review Process for Adjudicating Initial Disability Claims—20 CFR parts 404, 405, and 416—0960–0710. Claimants have a statutory right under the Act and current regulations to apply for Social Security Disability Insurance (SSDI) benefits SSI payments. SSA collects information at each step of the administrative process to adjudicate claims fairly and efficiently. SSA collects this information to establish a claimant's right to administrative review, and determine the severity of the claimant's alleged impairments. SSA uses the information we collect to determine entitlement or continuing eligibility to SSDI benefits or SSI payments, and to enable appeals of these determinations. In addition, SSA collects information on Forms HA–85 and HA–86 to allow claimants to withdraw a hearing request or an Appeals Council review request. The respondents are applicants for Title II SSDI or Title XVI SSI benefits; their appointed representatives; legal advocates; medical sources; and schools.

Type of Request: Revision of an OMB-approved information collection.

Regulation sections	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
404.961, 416.1461, 405.330, and 405.366	12,220	1	20	4,073	* $19.86	** $80,890
404.950, 416.1450, and 405.332	1,040	1	20	347	* 19.86	** 6,891
404.949 and 416.1449	2,868	1	60	2,868	* 19.86	** 56,958
405.334	20	1	60	20	* 19.86	** 397
404.957, 416.1457, and 405.380	21,041	1	10	3,507	* 19.86	** 69,649
405.381	37	1	30	19	* 19.86	** 377
405.401	5,310	1	10	885	* 19.86	** 17,576
404.971 and 416.1471(HA–85;						
HA–86)	1,606	1	10	268	* 19.86	** 5,322
404.982 and 416.1482	1,687	1	30	844	* 19.86	** 16,762
404.987 & 404.988 and 416.1487 & 416.1488 and 405.601	12,425	1	30	6,213	* 19.86	** 123,390
404.1740(b)(1)	150	1	2	5	* 19.86	** 99
416.1540(b)(1)	150	1	2	5	* 19.86	** 99
404.1512, 404.1740(c)(4), 416.912, and 416.1540(c)(4)	150	1	2	5	* 19.86	** 99
405.372(c)	5,310	1	10	885	* 19.86	** 17,576
405.1(b)(5)						
405.372(b)	833	1	30	417	$* 19.86	$** 8,282
405.505	833	1	30	417	* 19.86	** 8,282
405.1(c)(2)	5,310	1	10	885	$* 19.86	$** 17,576
405.20	5,310	1	10	885	* 19.86	** 17,576
Totals	76,300			22,548		** 447,801

We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Electronic SSDI and SSI Wage Reporting: myWageReport, SSA Mobile Wage Reporting, and Supplemental Security Income Telephone Wage Reporting—20 CFR 404.1520(b), 404.1571–1576, 404.1584–1593, & 416.701–416.732—0960–0715. SSA requires SSDI beneficiaries or their representative payees to report changes when beneficiaries return to work, when their amount of work increases, or when their earnings increase. Similarly, SSA requires recipients of SSI, their deemors, and representative payees to report changes in work and monthly wages. SSA allows SSDI beneficiaries, SSI recipients, deemors, and representative payees to report earnings via electronic means, though the methods available depend on the type of benefits received. SSDI users may report wages using an internet reporting system called myWageReport. myWageReport is a secure internet reporting tool within the mySSA portal that enables SSDI beneficiaries to submit pay stub information to SSA. In addition to myWageReport, SSI users have two other electronic options, the SSA Mobile Wage Reporting application (SSAMWR) and the SSI Telephone Wage Reporting System (SSITWR). The SSITWR allows callers to report their wages by speaking their responses through voice recognition technology, or by keying in responses using a telephone key pad. The SSAMWR allows recipients to report their wages through the mobile wage reporting application on their smartphone. SSITWR and SSAMWR systems collect the same information and send it to SSA over secure channels. To ensure the security of the information provided, SSITWR and SSAMWR ask respondents

to provide information SSA can compare against our records for authentication purposes. Once the system authenticates the identity of the respondents, they can report their wage data. The respondents are SSDI beneficiaries, SSI recipients, SSI deemors, or representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **	Total annual opportunity cost (dollars) ***
Training/Instruction *	108,280	1	108,280	35	63,163	**$19.86	***$1,254,417
myWageReport	3,557	12	42,684	7	4,980	** 19.86	*** 98,903
SSITWR	16,341	12	196,092	5	16,341	** 19.86	*** 324,532
SSAMWR	88,382	12	1,060,584	6	106,058	** 19.86	*** 2,106,312
Totals	216,560		1,407,640		190,542		*** 3,784,164

* SSI respondents complete training and a modality of collection. SSA is not able to break down the number of new wage reporters who receive training and long-time wage reporters who did not receive training; therefore, the actual number may be less than the estimate we provided. SSA collects management information data based on the number of transactions; the number of respondents has been extrapolated from that number. We do not collect MI on unique reporters.

** We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Government-to-Government Services Online website Registration Form; Government-to-Government Services Online website Account Modification/Deletion Form—20 CFR 401.45—0960–0757. The Government-to-Government Services Online (GSO) website allows various external organizations to submit files to a variety of SSA systems and, in some cases, receive files in return. The SSA systems that process data transferred via GSO include, but are not limited to, systems responsible for disability processing and benefit determination or termination. SSA uses the information on Form SSA–159, GSO website Registration Form, to register the requestor to use the GSO website. Once we receive the SSA–159, SSA provides the user with account information and conducts a walkthrough of the GSO website as necessary. Established organizations may submit Form SSA–159 to register additional users as well. The established requesting organizations can also complete Form SSA–160, GSO website Account Modification/Deletion Form, to modify their online accounts (*e.g.,* address change). Respondents are State and local government agencies, and some private sector business entities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–159	1,354	1	15	339	* $21.13	** $7,163
SSA–160	430	1	15	108	* 21.13	** 2,282
Totals	1,784			447		** 9,445

* We based these figures on average Information and Record Keeping Analysts' hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes434199.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Application Status—20 CFR 401.45—0960–0763. Application Status provides users with the capability to check the status of their pending Social Security claims via the National 800 Number Automated Telephone Service. Users need their SSN and a confirmation number to access this information. SSA systems determine the type of claim(s) the caller filed based upon the information provided. Subsequently, the automated telephone system provides callers with the option to choose the claim for which they wish to obtain status. If the caller applied for multiple claims, the automated system allows the caller to select only one claim at a time. Once callers select the claim(s) they are calling about, an automated voice advises them of the status of their claim. The respondents are current Social Security claimants who wish to check on the status of their claims.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden hours (hours)	Average theoretical hourly cost (dollars) *	Average wait for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Application Status	790,821	1	3	39,541	* $19.86	** 19	*** $5,758,764

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure by averaging the average FY 2022 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Report of Adult Functioning-Employer—20 CFR 404.1512 and 416.912—0960–0805. Under the authority provided in sections 205(a), 223(d)(5)(A), 1631(d)(1), and 1631(e)(1) of the Act, the agency may collect information from each applicant for, or recipient of (collectively referred to as ''claimant''), disability insurance benefits (DIB) or SSI payments. We use this information as evidence to help us determine eligibility or continued eligibility for DIB or SSI. These sections of the Act grant us the authority to establish procedures for collecting and verifying this evidence. Sections 20 CFR 404.1512 and 20 CFR 416.912 of the Code of Federal Regulations provide detailed requirements for the types of evidence we request claimants provide showing how their impairment(s) affects their ability to work (*e.g.,* medical, work experience, daily activities, efforts to work). When SSA's Disability Determination Service adjudicative team determines that SSA needs additional information to process an applicant's or claimant's case, we use Form SSA–3385, Report of Adult Functioning—Employer, to collect information from a claimant's current or former employer on an as needed basis, to collect information regarding the claimant's job performance as evidence to help inform the disability eligibility for the claimant. We send the SSA–3385 with a pre-addressed and stamped envelope to a claimant's direct supervisor, or another person who has direct knowledge of the claimant's job performance and ask that individual to provide information about the claimant's day-to-day functioning in a work setting. The respondent completes Form SSA–3385 and sends it back to SSA in the enclosed envelope. Once SSA receives the SSA–3385, the field office scans the form into the claimant's electronic folder. Then the Disability Determination Service adjudicative team uses this information to evaluate the claimant's impairment-related functional limitations to determine eligibility or continued eligibility for SSDI or SSI. The respondents are current or former employers who are contacted only when the adjudicative team decides additional information is necessary and the employer may be a good source for the information.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Form SSA–3385	3,601	1	20	1,200	* $28.01	** $33,612

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 24, 2022. Individuals can obtain copies of this OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Enterprise Scheduling System (ESS)—0960 NEW. The Enterprise Scheduling System (ESS) will provide a better respondent and employee experience. The first ESS release is specific to allowing self-scheduling for enumeration services. ESS subsequent releases will expand services for other appointment needs. Through ESS respondent self-scheduling and technician scheduling, SSA will collect specific information about respondents (*e.g.,* respondent: name, address, zip code, telephone number, and email address). In addition, we ask the respondent to consent to receive optional electronic messaging or opt out; electronic message preference (email/text), if respondents provide consent; language preferences (English/Spanish); respondent's preferred office to receive service; and appointment (day and time preference) to schedule an in-office appointment to process a request for an original SSN or replacement Social Security card. In addition, we will ask respondents scheduling their initial appointment through a technician to create a one-time passcode to securely allow online updates to their appointment. The technician will document the one-time passcode with the respondent's other appointment preferences. Respondents will use ESS to complete required screens and fields to select a date and time for an appointment at an SSA field office (FO) to provide the proofs necessary to obtain a replacement or original SSN card. Respondents can complete the online collection themselves. If respondents encounter issues with ESS, they may contact SSA by phone to complete scheduling the appointment through a technician. We will integrate ESS with VIPr Mobile check-in functions, so ESS respondents will have the option to check-in for their appointment using Mobile check-in on their personal device, instead of checking in at the kiosk. Using VIPr, SSA employees can request walk-in visitors and individuals with appointments to come into the office. The respondents are individuals looking to schedule their own SSA visit using ESS.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
ESS—Internet	3,000,000	1	3	150,000	* $19.86		*** $2,979,000
ESS—Technician	150,000	1	3	7,500	* 19.86	** 19	*** 1,092,300
Totals	3,150,000			157,500			*** 4,071,300

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on the average FY 2022 wait times for Teleservice Centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: July 20, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–15832 Filed 7–22–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11793]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''58th Carnegie International: Is it morning for you yet?'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''58th Carnegie International: Is it morning for you yet?'' at the Carnegie Museum of Art, Pittsburgh, Pennsylvania, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–15764 Filed 7–22–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11797]

Notice of Determinations; Culturally Significant Objects Being Imported for Conservation, Scientific Research, and Exhibition—Determinations: Five 'Ain Ghazal Neolithic (c. 7000 BC) Sculptural Objects

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary conservation, scientific research, and exhibition or display in the permanent collection gallery of the J. Paul Getty Museum at the Getty Villa, Pacific Palisades, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary conservation, scientific research, and exhibition or display within the United States as aforementioned are in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW, (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–15788 Filed 7–22–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11795]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Madayin: Eight Decades of Aboriginal Australian Bark Paintings From Yirrkala'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Ma*d*ayin: Eight Decades of Aboriginal Australian Bark Paintings from Yirrkala'' at the Hood Museum of Art at Dartmouth College, Hanover, New Hampshire; the American University Museum at the Katzen Arts Center, American University, Washington, District of Columbia; The Fralin Museum of Art at the University of Virginia, Charlottesville, Virginia; the Asia Society Museum, New York, New York; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–15768 Filed 7–22–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2003–15196]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 13, 2022, NJ Transit (NJT) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 213.233, *Track inspections.* The relevant FRA Docket Number is FRA–2003–15196.

Specifically, NJT requests an extension of its existing waiver for a reduced frequency of the required visual track inspections for FRA Class 3 and 4 track carrying passenger traffic and constructed with continuous welded rail. NJT proposes to continue conducting one visual track inspection per week, instead of the two inspections per week that are required in 49 CFR part 213, and to continue supplementing its visual inspections with Track Geometry Measurement System (TGMS) inspections over the affected main tracks and sidings four times per year. In support of its petition, NJT states that the TGMS inspections are conducted to the standards for the next higher class of track, allowing NJT to promptly detect and repair those conditions prior to the conditions becoming defects. Additionally, NJT explains that the use of TGMS has had a positive effect on the quality and safety of NJT's track structure.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by September 8, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–15803 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0066]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated June 21, 2022, Oregon Coast Scenic Railroad (OCSR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 230.17, *One thousand four hundred seventy-two (1472) service day inspection.* FRA assigned the petition Docket Number FRA–2022–0066.

Specifically, OCSR requests relief for steam locomotive MCRR #25, which is used in public tourist excursions. OCSR seeks to extend the period in which the locomotive's 1472 service day inspection is due from August 25, 2022, to December 20, 2022 (the end of the 2022 running season). OCSR states that MCRR #25 is OCSR's primary locomotive for passenger excursions, which typically sees 80–100 service days, but the COVID–19 pandemic in 2020 limited the service days to 30. In support of its request, OCSR states that the locomotive would run no more than 50 service days during the additional months of relief.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by September 8, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2022–15804 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0087]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this provides

the public notice that on June 28, 2022, Illinois Central Railroad Company, for itself and on behalf of the U.S. railroad subsidiaries operating under the Canadian National Railway Company (CN), resubmitted a petition to the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices*. The relevant FRA Docket Number is FRA–2020–0087.

Specifically, CN resubmits a request to use software technology to implement a virtual three-dimensional simulation as an alternative to satisfy the ''hands-on'' portion of periodic refresher training required by 49 CFR 232.203(b)(8). Refresher training is required at intervals not to exceed 3 years, and must consist of classroom and hands-on training, as well as testing. CN cites FRA's January 10, 2022, denial [1] of its previous petition and states that its June 28, 2022, resubmission addresses the concerns raised in FRA's decision letter. In support of its petition, CN explains that the proposed ''systematic, blended training curriculum'' ''exceeds the training objectives'' required by the regulation ''and is designed to increase user proficiency'' and ''reduc[e] air brake defects across the CN network.'' CN notes that it ''only plans to use this requested waiver for refresher training of employees in train and engine service,'' and not for any other craft.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov*.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Communications received by September 8, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–15800 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2007–28700]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 10, 2022, Kansas City Southern Railway Company (KCSR), jointly with its affiliate Kansas City Southern de Mexico (KCSM), petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards), and 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices (EOTDs)). The relevant FRA Docket Number is FRA–2007–28700.

Specifically, KCSR requested an extension of its relief from 49 CFR 232.205, *Class I brake test-initial terminal inspection,* and certain provisions of 49 CFR part 215, for freight cars received in interchange from KCSM at the U.S./Mexico border crossing and international bridge in Laredo, Texas, to permit required inspections to be conducted in KCSR's Laredo Yard, approximately 9 miles north of the bridge.

The petition notes that KCSM operates some trains over KCSR's line from the international rail bridge crossing to KCSR's Laredo Yard for purposes of interchange. KCSR asks that this waiver also be applied explicitly to trains operated by KCSM. The petition notes that ''[w]hether a train is labeled as a KCSR train or a KCSM train'' once it ''crosses the border, it is still the same train—same locomotives, same EOTDs, and same cars inspected by the same KCSM mechanical forces.'' KCSR and KCSM ''are commonly owned by their parent company, Kansas City Southern,'' and ''have substantial overlap in their administrative and operational management, operate according to similar procedures and rules, and utilize the same or similar equipment.'' KCSM operates trains to KCSR's Laredo Yard ''pursuant to an interchange agreement with KCSR.''

The petition seeks to continue moving trains from the rail bridge to KCSR's Laredo Yard after performing a Class III brake test at the bridge, rather than performing a Class I initial terminal inspection. KCSR explains that a full Class I initial terminal inspection will be performed at Laredo Yard on every train before it is moved beyond the yard. In support of its petition, KCSR states that the waiver contributes to border security and that no incidents have been attributed to this relief in the past fourteen years.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov*.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Communications received by September 8, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments

[1] *https://www.regulations.gov/document/FRA-2020-0087-0006.*

received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–15801 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–14]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On April 28, 2022, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before August 24, 2022.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, at email: *Hodan.Wells@dot.gov* or telephone: (202) 868–9412.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On April 28, 2022, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 87 FR 25346. FRA received no comments related to the proposed collection of information.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Positive Train Control (PTC) and Other Signal Systems.

OMB Control Number: 2130–0553.

Abstract: On November 15, 2021, President Joseph R. Biden signed into law the Infrastructure Investment and Jobs Act (IIJA).[1] Section 22414 of the IIJA impacts FRA's existing Form FRA F 6180.152, the Biannual Report of PTC System Performance, which is one part of the existing information collection request under OMB Control No. 2130–0553. Section 22414 of the IIJA establishes the same reporting requirement as FRA's existing regulations, using the same FRA form number (Form FRA F 6180.152) and content requirements. 49 U.S.C. 20157(m); 49 CFR 236.1029(h). However, the statutory reporting cadence is quarterly, not biannual as FRA's regulations currently require.

During a recent rulemaking, FRA collected public comment on this FRA reporting requirement. *See* 85 FR 82400 (Dec. 18, 2020) (Notice of Proposed Rulemaking); 86 FR 40154 (July 27, 2021) (Final Rule) (amending 49 CFR 236.1029(h) and creating Form FRA F 6180.152). During the comment period, FRA received comments from the following entities and two individuals, which were all generally supportive: the American Public Transportation Association; the Association of American Railroads and the American Short Line and Regional Railroad Association (jointly filed); the National Railroad Passenger Corporation (Amtrak); and New Jersey Transit.

Feedback from the public and industry has already been incorporated into the existing Form FRA F 6180.152 that OMB approved in October 2021. *See* 49 CFR 236.1029(h). The substance of the form remains unchanged in light of the statutory requirements IIJA imposes, as the content required by FRA's existing regulations and Section 22414 of the IIJA is identical in substance. To implement Section 22414 of the IIJA, as codified at 49 U.S.C. 20157(m), the existing OMB-approved Form FRA F 6180.152 would need to be modified only to refer to the new quarterly reporting frequency.

Accordingly, FRA is hereby proposing to modify Form FRA F 6180.152 to align with the statutory quarterly framework under 49 U.S.C. 20157(m). The modified form would refer to the following quarterly reporting deadlines under 49 U.S.C. 20157(m)(3): April 30 (covering the period from January 1 to March 31), July 31 (covering the period from April 1 to June 30), October 31 (covering the period from July 1 to September 30), and January 31 (covering the period from October 1 to December 31 of the prior calendar year). *See* 49 U.S.C.

[1] Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (Nov. 15, 2021). The IIJA was funded in relevant part by the Consolidated Appropriations Act of 2022, which was signed into law on March 15, 2022.

20157(m)(3). To be clear, in the interim, before OMB approves these statutory modifications to Form FRA F 6180.152, host railroads would continue to comply with the following biannual reporting deadlines for Form FRA F 6180.152 under FRA's existing regulations, 49 CFR 236.1029(h)(3): July 31 (covering the period from January 1 to June 30), and January 31 (covering the period from July 1 to December 31 of the prior calendar year). Railroads would transition to the quarterly frequency once OMB approves the modified Form FRA F 6180.152.

The only other modification FRA proposes to make to Form FRA F 6180.152 is to lock the formatting of instructions and headings in the form so users cannot manipulate those components of the form. FRA is placing the proposed, modified Form FRA F 6180.152 in Docket No. FRA–2022–0002 for review and interested persons are invited to submit comments on or before August 24, 2022.

For a detailed discussion regarding the reporting metrics in the proposed Quarterly Report of PTC System Performance (Form FRA F 6180.152), please see FRA's Final Rule outlining the comments received and corresponding content requirements under 49 CFR 236.1029(h). *See* 86 FR 40154, 40157–59, 40163–68 (July 27, 2021); *see also* 49 U.S.C. 20157(m). FRA may not alter the existing reporting requirements in Form FRA F 6180.152 as they are now statutorily mandated. As a reminder, modified Form FRA F 6180.152 would be identical in substance to existing, OMB-approved Form FRA F 6180.152 (Biannual Report of PTC System Performance) that the public commented on during the 2020–2021 PTC rulemaking. *See* 85 FR 82400 (Dec. 18, 2020) (Notice of Proposed Rulemaking); 86 FR 40154 (July 27, 2021) (Final Rule). The only material changes to Form FRA F 6180.152 FRA is proposing are those necessary to shift from the biannual framework under FRA's regulations, 49 CFR 236.1029(h), to the new quarterly framework under 49 U.S.C. 20157(m)(3).

Under the currently approved biannual framework, FRA estimated that each performance report (Form FRA F 6180.152), covering a six-month period, would take 48 hours to prepare. *See* 86 FR at 40169–71. Under the new statutory quarterly framework, FRA estimates that, on average, each report, covering a shorter period (three months), would take 32 hours to prepare. This estimate is based on the fact that under the quarterly framework, the reporting period would be half as long and, correspondingly, it would take approximately half as long (*i.e.,* 24 hours) to compile the performance-related data for that period, plus an additional 8 hours to account for any additional administrative burdens in completing the form. Railroads will collect, analyze, and report 365 days' worth of data about their PTC systems' performance under either reporting framework (biannual or quarterly), and FRA estimates that shifting the frequency from biannual (under the existing regulation) to quarterly (under the recent legislation) would result in an increase of 73 reports per year and a burden increase of 1,168 hours total.

In addition, FRA notes that the Statutory Notification of PTC System Failures (Form FRA F 6180.177) expired by law on December 31, 2021, so FRA proposes to remove that form from this information collection request. *See* 49 U.S.C. 20157(j). That adjustment would result in a decrease of 144 reports per year and a burden decrease of 144 hours.

Type of Request: Revision to a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.152.

Respondent Universe: 742 railroads and entities.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 4,567,826.

Total Estimated Annual Burden: 51,993 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $4,329,155.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520; 49 U.S.C. 20157.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2022–15810 Filed 7–22–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On March 28, 2022, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, requested public comment for 60 days on a proposal to extend for three years, without revision, the Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule (FFIEC 102), which is currently an approved collection of information for each agency. The comment period for the March 2022 notice expired on May 27, 2022. No comments were received and the agencies will proceed with the extension, without revision, of the FFIEC 102. In addition, the agencies are giving notice that they are sending the collections to OMB for review.

DATES: Comments must be submitted on or before August 24, 2022.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0325, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''1557–0325'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

Viewing Comments Electronically: Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0325'' or ''Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule (FFIEC 102).'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

Board: You may submit comments, which should refer to ''FFIEC 102,'' by any of the following methods:

• Agency Website: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include ''FFIEC 102'' in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *www.federalreserve.gov/generalinfo/foia/proposedregs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments, which should refer to ''FFIEC 102,'' by any of the following methods:

• *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: comments@FDIC.gov.* Include ''FFIEC 102'' in the subject line of the message.

• *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3007, 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 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officers for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the FFIEC 102 reporting forms and instructions can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490, or for persons who are hearing impaired, TTY, (202) 649–5597. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On March 28, 2022, the agencies requested public comment on a proposal to extend for three years, without revision, the FFIEC 102. The comment period expired on May 27, 2022, and no comments were received. The agencies will proceed with the extension without revision of the FFIEC 102, as proposed, and are sending the collections to OMB for review.

Report Titles: Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule.

Form Numbers: FFIEC 102.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

OCC

OMB Number: 1557–0325.

Estimated Number of Respondents: 16 national banks and federal savings associations.

Estimated Average Time per Response: 12 hours per quarter.

Estimated Total Annual Burden: 768 hours.

Board

OMB Number: 7100–0365.

Estimated Number of Respondents: 42 state member banks, bank holding companies, savings and loan holding companies, and intermediate holding companies.

Estimated Average Time per Response: 12 hours per quarter.

Estimated Total Annual Burden: 2,016 hours.

FDIC

OMB Number: 3064–0199.

Estimated Number of Respondents: 1 insured state nonmember bank and state savings association.

Estimated Average Time per Response: 12 hours per quarter.

Estimated Total Annual Burden: 48 hours.

General Description of Reports

The Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule (FFIEC 102) is filed quarterly with the agencies and provides information for market risk institutions, defined for this purpose as those institutions that are subject to the market risk capital rule as incorporated

into Subpart F of the agencies' regulatory capital rules [1] (market risk institutions). Each market risk institution is required to file the FFIEC 102 for the agencies' use in assessing the reasonableness and accuracy of the institution's calculation of its minimum capital requirements under the market risk capital rule and in evaluating the institution's capital in relation to its risks. Additionally, the market risk information collected in the FFIEC 102: (a) permits the agencies to monitor the market risk profile of, and evaluate the impact and competitive implications of, the market risk capital rule on individual market risk institutions and the industry as a whole; (b) provides the most current statistical data available to identify areas of market risk on which to focus for onsite and offsite examinations; (c) allows the agencies to assess and monitor the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk capital rule; and (d) assists market risk institutions in validating their implementation of the market risk framework.

Statutory Basis and Confidential Treatment

The quarterly FFIEC 102 information collection is mandatory for market risk institutions: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a (b) (savings and loan holding companies), 12 U.S.C. 5365 (U.S. intermediate holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (savings associations). The FFIEC 102 information collections are not given confidential treatment.

Request for Comment

The agencies invite comment on the following topics related to these collections of information:

(a) Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 19, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–15888 Filed 7–22–22; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[1] 12 CFR 3.201 (OCC); 12 CFR 217.201 (Board); and 12 CFR 324.201 (FDIC). The market risk capital rule generally applies to any banking institution with aggregate trading assets and trading liabilities equal to (a) 10 percent or more of quarter-end total assets or (b) $1 billion or more.

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Departmental Offices Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before August 24, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Office of Financial Research (OFR)

Title: Ongoing Data Collection of Centrally Cleared Transactions in the U.S. Repurchase Agreement Market.

OMB Number: 1505–0259.

Form Number: OFR SFT 1–1, 1–2 & 1–3.

Description: Regulations issued in 2019 established a data collection covering centrally cleared transactions in the U.S. repurchase agreement (''repo'') market. This collection requires daily reporting to the Office of Financial Research (''Office'') by covered central counterparties (''CCPs''). The collected data will be used to support the work of the Financial Stability Oversight Council (the ''Council''), its member agencies, and the Office to identify and monitor risks to financial stability, and to support the calculation of certain reference rates.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1 respondent.

Estimated Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 756 responses.

Estimated Time per Response: 2 hours 40 minutes.

Estimated Total Annual Burden Hours: 2,016 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–15852 Filed 7–22–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Availability of the Final Programmatic Environmental Impact Statement of the Department of Veterans Affairs Housing Loan Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of availability.

SUMMARY: The Department of Veterans Affairs (VA) announces the availability of the Final Programmatic Environmental Impact Statement (PEIS) for VA's Housing Loan Program (HLP). The Final PEIS identifies, analyzes, and

documents the potential physical, environmental, cultural, socioeconomic, and cumulative impacts of continued administration and operation of VA's HLP. The comprehensive HLP, which is managed by VA's Veterans Benefits Administration (VBA), administers VA-guaranteed housing loan benefits and other housing-related benefits that assist eligible Veterans, surviving spouses, active-duty personnel, Selected Reservists, and National Guardsmen (collectively referred to as Veterans) in purchasing, constructing, repairing, adapting, or improving a home. In preparing the Final PEIS, VA has considered public comments received on the Draft PEIS, which was published in July 2021.

DATES: VA will publish a Record of Decision no sooner than 30 days after publication of the U.S. Environmental Protection Agency's Notice of Availability for this Final PEIS in the **Federal Register**.

ADDRESSES: The Final PEIS is available at the VA website at the following link: *https://www.benefits.va.gov/homeloans/environmental_impact.asp.* Printed copies of the document may be obtained by contacting VA at *VAHLPNEPA.VBAVACO@va.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Byrum, Lead Management Analyst, Loan Guaranty Service, Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8862 (this is not a toll-free number) or *VAHLPNEPA.VBAVACO@va.gov.*

SUPPLEMENTARY INFORMATION: The Final PEIS was developed pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508), and VA's NEPA regulations titled ''Environmental Effects of the Department of Veterans Affairs Actions'' (38 CFR 26).

The most significant element of the HLP is the provision of housing benefits that assist eligible Veterans in financing the purchase, construction, repair, or improvement of a home for their personal occupancy. See 38 U.S.C. 3701 *et seq.* VBA provides Federal assistance in the form of loans made, insured, or guaranteed by VA. VBA is also responsible for the management, marketing, and disposition of real estate-owned properties that VA acquires following the foreclosure of certain VA-guaranteed loans and loans held in VA's portfolio. Under the HLP, VA also provides direct loans to Native American Veterans to purchase homes on trust, tribal, or communally owned lands, and the HLP extends grants for home adaptations to Veterans with service-connected disabilities through the Specially Adapted Housing program. The HLP provides what can be, for some Veterans, their sole opportunity to obtain crucial housing loans and grants.

Through the PEIS, VA evaluated the potential physical, environmental, cultural, socioeconomic, and cumulative effects of the HLP to assist and inform future agency planning and decision making related to the HLP. Environmental topics addressed in the Final PEIS include the following: aesthetics; air quality; biological resources; cultural resources; floodplains, wetlands, and coastal zones: geology and soils; hydrology and water quality; infrastructure and community services; land use and planning; noise; and socioeconomics and environmental justice. The PEIS also identifies and analyzes potential cumulative impacts, which are the potential incremental impacts on the environment resulting from continued administration and operation of the HLP in combination with other past, present, and reasonably foreseeable future actions from other relevant Federal and non-Federal programs.

The PEIS is atypical in that it addresses an existing program, and VA has no specific or immediate need to change its operational structure or procedures to address environmental impacts. Furthermore, the making of loan guaranties, direct loans, and grants do not typically result in direct environmental impacts. In this case, the primary environmental impacts of concern for VA would be the potential indirect impacts from homeowner actions and the potentially significant, cumulative impacts of small incremental actions on local and regional resources.

The Final PEIS considers comments made on the Draft PEIS that officially began on July 16, 2021 and ended on August 30, 2021. Based on the information provided in the Final PEIS, VA has identified the continued operation and active management of the HLP as the preferred alternative.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 6, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–15824 Filed 7–22–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Calculation of Average Wait Time for New and Established Patients

AGENCY: Department of Veterans Affairs.

ACTION: Notice and request for comment.

SUMMARY: Providing veterans with meaningful information to make informed decisions about their health care is a top priority for the Department of Veterans Affairs (VA). VA has published average wait times for primary care, mental health, and specialty care appointments at each of its medical centers since 2014. Since that time, VA has received feedback from veterans, caregivers, veterans service organizations, oversight authorities, and Congress, which led VA to revise the wait time metrics presented on the Access to Care website to better reflect veterans' experience. This notice describes this revised methodology. Additionally, VA is requesting public comment on the revised wait time metrics presented on the Access to Care website.

DATES: Comments must be received on or before 60 days after date of publication in the **Federal Register**.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments received will be available at regulations.gov for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Director, Policy and Planning, Office of Integrated Veteran Care (OIVC), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. *VHA16IVCAccessAction@va.gov* or 303–370–1637 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 206 of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146) requires the Department of Veterans Affairs (VA) to publish in the **Federal Register**, and on a publicly accessible internet website of each medical center of the Department, the wait-times for the scheduling of an

appointment in each Department facility by a veteran for the receipt of primary care, specialty care, and hospital care and medical services based on the general severity of the condition of the veteran. Whenever the wait-times for the scheduling of such an appointment changes, VA is required to publish the revised wait-times on a publicly accessible internet website of each VA medical center by not later than 30 days after such change and in the **Federal Register** by not later than 90 days after such change. This notice announces VA's updates to the definition and calculation methodology for average wait times and publication of information on the use of Third Next Available Appointment (TNAA) for those VA medical centers that have implemented the new electronic health record.

To further improve user experience, VA has also upgraded the way average wait times are calculated and displayed on the website. Importantly, average wait times are never used to determine a veteran's eligibility for community care, and none of the changes on the website, as explained in this notice, affect a veteran's eligibility for community care. Rather, the average wait times that VA displays on its website represents a guide that can assist veterans in making informed health care decisions.

Average wait times for all VA medical centers and clinics (except those that have transitioned to VA's new Electronic Health Record (EHR)) are now calculated to include additional steps in the appointment process that had not been captured in the past. As of the date of the publication of this notice, the VA medical centers and clinics that have adopted the new EHR include: Spokane, WA; Walla Walla, WA; Columbus, OH and White City, OR. Averages are representative of general performance and may not represent individual experience, but the upgraded calculation makes the average wait times that VA displays on its website more reflective of the complete process of requesting and receiving care.

For purposes of the discussion below, veterans are considered new patients if they have not been seen by a provider or a clinical service at the same medical center for the same, or a related, health care need in the past three years. If they had an appointment in a clinical service at the same medical center for the same or similar health care need in the past three years (either in person or via phone/video), they are considered an established patient.

The revised calculation includes the following changes:

- For *new patient* appointments, the average wait time is calculated from the earliest recorded date in the scheduling system, to the date the appointment is completed, or the date it is scheduled to occur if it is not yet completed.
  - For example in many cases, veterans who need a new type of care will have a referral entered by their provider into the medical record during a visit, and this starts the care coordination process. For appointments with a referral, this referral date is the starting point used for measuring average wait times, and the end point is the date care is received or the date it is scheduled to occur if not yet completed.
  - For appointments without a referral, the average wait time starts with the earliest recorded date in the process of receiving care, typically the date a scheduler works with a veteran to coordinate a future appointment, and it ends on the date care is received or the date it is scheduled to occur if not yet completed.
- For *established patient* appointments, average wait times are measured from the date agreed upon between a veteran and provider for future care and ends on the date care is received, or the date that care is scheduled to occur if it has not yet occurred.

VA sites that have implemented the new EHR will display information known as Third Next Available Appointment (TNAA).[1] Other major health systems also use this measure, and it reflects availability for upcoming appointments so veterans can anticipate what their experience will be when they request care.

TNAA is a measure of appointment availability that displays the number of days between today's date and the date of the third-next appointment available in VA's scheduling system. The technology in our new EHR system allows us to use this more modern, industry standard measure at these sites. This measure is considered a more accurate measure of elective service availability than the next available appointment or second-next available appointment.

VA is transitioning to use of TNAA for several reasons, including that this measure informs veterans of their likely experience when seeking care. This will also ensure consistency in measuring appointment availability across VA medical centers as the enterprise transitions to a new EHR.

Note: As described above, averages that reflect a small number of appointments—for example, in a geographic area where only a few veterans seek a certain type of subspecialty care in any given month—may show average wait times that are skewed high or low due to the small number. The best way for veterans to find out when they can be seen is always to contact the local facility or use the online ''Make an Appointment'' button on *www.accesstocare.va.gov.*

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 19, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–15790 Filed 7–22–22; 8:45 am]

BILLING CODE 8320–01–P

[1] Brar, Sumeet & Hopkins, Michael & Margolius, David. (2019). Time to Next Available Appointment as an Access to Care Metric. The Joint Commission Journal on Quality and Patient Safety. 45. 10.1016/j.jcjq.2019.07.007.

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Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for Fans and Blowers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2021–BT–TP–0021]

RIN 1904–AF17

Energy Conservation Program: Test Procedure for Fans and Blowers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking, request for comment, and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to establish a test procedure for fans and blowers, including air-circulating fans, and to adopt through reference the relevant industry test standards as the DOE test procedure for measuring the fan electrical input power (''FEP'') and for determining the fan energy index (''FEI''). DOE also proposes to establish supporting definitions, requirements for alternative energy use determination methods, and sampling requirements to determine the represented values of FEP and FEI. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than September 23, 2022. See section V, ''Public Participation,'' for details.

DOE will hold a webinar on Tuesday, August 2, 2022, from 1:00 p.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2021–BT–TP–0021. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–TP–0021, by any of the following methods:

(1) *Email: FansBlowers2021TP0021@ee.doe.gov.* Include the docket number EERE–2021–BT–TP–0021 in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/65.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9879 Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *amelia.whiting@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following industry standard into 10 CFR parts 429 and 431:

ANSI/AMCA Standard 214–21, ''Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers.''

Copies of AMCA 214–21 can be obtained from AMCA International at 30 West University Drive, Arlington Heights, IL 60004–1893, (847) 394–0150, or by going to *www.amca.org.*

DOE proposes to incorporate by reference the following industry standards into 10 CFR part 431:

American National Standard Institute (ANSI)/Air Movement and Control Association (AMCA) Standard 99–16 ''Standards Handbook.''

ANSI/AMCA Standard 210/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 51–16, ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating.''

ANSI/AMCA 230–15 with errata, ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification'', with technical errata sheet for ANSI/AMCA standard 230–15 density corrections.

ANSI/AMCA Standard 240–15 ''Laboratory Methods of Testing Positive Pressure Ventilators for Aerodynamic Performance Rating.''

Copies of AMCA 99–16, AMCA 210–16, AMCA 214–21, AMCA 230–15, with errata and AMCA 240–15, can be obtained from AMCA International at 30 West University Drive, Arlington Heights, IL 60004–1893, or by going to *www.amca.org.*

International Organization for Standardization (ISO) 5801:2017, ''Fans—Performance testing using standardized airways,'' approved 2017. ISO 80079–36:2016, ''Explosive atmospheres—Part 36: Non-electrical equipment for explosive atmospheres—Basic method and requirements,'' approved 2016.

Copies of ISO 5801:2017–2017 and ISO 80079–36:2016 can be obtained from the International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, or by going to *www.iso.org.*

See section IV.M of this document for a further discussion of these standards.

Table of Contents

I. Authority and Background

On August 19, 2021, DOE published a coverage determination classifying fans and blowers as a covered equipment under 42 U.S.C. 6311(2)(A) and 42 U.S.C. 6312(b). 86 FR 46579 (''August 2021 Final Coverage Determination''). DOE does not currently have a test procedure or energy conservation standards for fans and blowers. The following sections discuss DOE's authority to establish a test procedure for fans and blowers and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. EPCA provides that DOE may include a type of industrial equipment, including fans and blowers, as covered equipment if it determines that to do so is necessary to carry out the purposes of Part A–1. (42 U.S.C. 6311(2)(B)(ii) and (iii); 42 U.S.C. 6312(b)). EPCA specifies the types of equipment that can be classified as industrial equipment. (42 U.S.C. 6311(2)(B)) The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation. (42 U.S.C. 6312(a)) As stated, on August 19, 2021, DOE published a final determination determining that fans and blowers meet the three statutory criteria for classifying industrial equipment as covered (42 U.S.C. 6311(2)(A)), because fans and blowers are a type of industrial equipment (1) which in operation consume, or are designed to consume, energy; (2) are to a significant extent distributed in commerce for industrial or commercial use; and (3) are not covered under 42 U.S.C. 6291(a)(2). 86 FR 46579, 46586. DOE also determined that coverage of fans and blowers is necessary to carry out the purposes of Part A–1. 86 FR 46579, 46588.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316; 42 U.S.C. 6296)

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.[3] (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered equipment established under EPCA supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a); 42 U.S.C. 6316(b); 42 U.S.C. 6297) With respect to industrial equipment for which coverage is established under 42 U.S.C. 6312(b), *e.g.,* fans and blowers, the preemption provisions in EPCA apply beginning on the date on which a final rule establishing an energy conservation standard is issued by the Secretary,

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1 and hereafter referred to as ''Part A–1''.

[3] There are currently no energy conservation standards for fans and blowers.

except that any State or local standard prescribed or enacted or the equipment before the date on which the final rule is issued shall not be preempted until the energy conservation standard established by the Secretary for the equipment takes effect. (42 U.S.C. 6316(a)(10)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

If the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b))

B. Background

As discussed, on August 19, 2021, DOE published in the **Federal Register** a final coverage determination classifying fans and blowers as covered equipment. 86 FR 46579. DOE determined that the term ''blower'' is interchangeable with the term ''fan''. 86 FR 46579, 46583. DOE defines a fan (or blower) as a rotary bladed machine used to convert electrical or mechanical power to air power, with an energy output limited to 25 kilojoule (''kJ'') per kilogram (''kg'') of air. A fan (or blower) consists of an impeller, a shaft and bearings and/or driver to support the impeller, as well as a structure or housing. A fan (or blower) may include a transmission, driver, and/or motor controller. 10 CFR 431.172.

Prior to the August 2021 Final Coverage Determination, DOE published a notice of intent to establish an Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') Working Group (''Working Group'') for fans and blowers. 80 FR 17359 (April 1, 2015). The Working Group [4] commenced negotiations at an open meeting on May 18, 2015 and held 16 meetings and three webinars to discuss scope, metrics, test procedures, and standard levels for fans.[5] The Working Group concluded its negotiations on September 3, 2015, and, by consensus vote,[6] approved a term sheet containing recommendations for DOE on the scope of a test procedure, and energy conservation standards for fans. The term sheet containing the Working Group recommendations (''term sheet'') is available in the fans energy conservation standard rulemaking docket. (Docket No. EERE–2013–BT–STD–0006, No. 179) [7] ASRAC approved the term sheet on September 24, 2015. (Docket No. EERE–2013–BT–NOC–0005; Public Meeting Transcript, No. 58, at p. 29) Comments received on issues related to the test procedure during the Working Group negotiations and not resolved in the term sheet are discussed in this proposed rulemaking. Discussion of these comments will include a reference to Docket No. EERE–2013–BT–NOC–0005.

On January 10, 2020, DOE received a notice of petition received from the Air Movement and Control Association (''AMCA''), Air Conditioning Contractors of America, and Sheet Metal & Air Conditioning Contractors of America (''the Petitioners'') requesting that DOE establish test procedures for certain categories of commercial and industrial fans based on an industry test method in development, AMCA 214, which was published with a request for public comment on April 23, 2020; [8] 85 FR 22677 (''April 2020 Notice of Petition''). As part of the April 2020 Notice of Petition, DOE sought data and information pertinent to whether an amended test procedures would (1) accurately measure energy efficiency, energy use, or estimated annual operating cost of fans during a representative average use cycle; and (2) not be unduly burdensome to conduct. 85 FR 22677, 22679.

On October 1, 2021, DOE published a request for information (''RFI'') pertaining to potential test procedures for fans and blowers. 86 FR 54412 (''October 2021 RFI''). In the October 2021 RFI, DOE identified a variety of issues on which it sought input to determine whether, and if so how, potential test procedures for fans and blowers, including air circulating fans, would (1) comply with the requirements in EPCA that test procedures be reasonably designed to produce test results which reflect energy use during a representative average use cycle, and (2) not be unduly burdensome to conduct. *Id.* In response to requests from stakeholders,[9] DOE extended the comment period 14 days to November 15, 2021. 86 FR 59308 (Oct. 27, 2021).

DOE also received comments related to the test procedure from its February 8, 2022, Energy Conservation Standards for Fans and Blower RFI (''February 2022 ECS RFI''). 87 FR 7048. Discussion of these comments will include a

[4] The Working Group was comprised of representatives from AAON, Inc.; AcoustiFLO LLC; AGS Consulting LLC; AMCA; AHRI, Appliance Standards Awareness Project; Berner International Corp; Buffalo Air Handling Company; Carnes Company; Daikin/Goodman; ebm-papst; Greenheck; Morrison Products; Natural Resources Defense Council; Newcomb & Boyd; Northwest Energy Efficiency Alliance; CA IOUs; Regal Beloit Corporation; Rheem Manufacturing Company; Smiley Engineering LLC representing Ingersoll Rand/Trane; SPX Cooling Technologies/CTI; The New York Blower Company; Twin City Companies, Ltd; U.S. Department of Energy; and United Technologies/Carrier.

[5] Details of the negotiation sessions can be found in the public meeting transcripts that are posted to the docket for the energy conservation standard rulemaking at: *www.regulations.gov/docket?D=EERE-2013-BT-STD-0006.*

[6] At the beginning of the negotiated rulemaking process, the Working Group defined that before any vote could occur, the Working Group must establish a quorum of at least 20 of the 25 members and defined consensus as an agreement with less than 4 negative votes. Twenty voting members of the Working Group were present for this vote. Two members (Air-Conditioning, Heating, and Refrigeration Institute and Ingersoll Rand/Trane) voted no on the term sheet.

[7] The references are arranged as follows: (commenter name, comment docket ID number, page of that document). If one comment was submitted with multiple attachments, the references are arranged as follows: (commenter name, comment docket ID number. Attachment number, page of that document). The attachment number corresponds to the order in which the attachment appears in the docket. The parenthetical reference provides a reference for information located in DOE Docket No. EERE–2021–BT–TP–0021. If the information was submitted to a different DOE docket, the DOE Docket number is additionally specified in the reference.

[8] At the time of the petition, AMCA 214–21 was available as a draft version (AMCA 214).

[9] AMCA requested at 21-day extension (AMCA, No. 2 at p. 1).

reference to the docket (EERE–2022–BT–STD–0002).

Stakeholders that submitted written comment in response to the April 2020 Notice of Petition, the October 2021 RFI, and the February 2022 ECS RFI are listed in Table I–1 of this document.

TABLE I–1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE APRIL 2020 NOTICE OF PETITION AND OCTOBER 2021 RFI

Organization(s)	Reference in this NOPR	Organization type	April 2020 notice of petition [10]	October 2021 TP RFI [11]	February 2022 ECS RFI [12]
Air-Conditioning, Heating, and Refrigeration Institute.	AHRI	Trade Association	X	X	
Air Movement and Control Association International.	AMCA	Trade Association	X	X	
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council.	ASAP, ACEEE, NRDC.	Efficiency Organizations.	X	X	
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, Northwest Energy Efficiency Alliance.	ASAP, ACEEE, NRDC, NEEA.	Efficiency Organizations.			X
China World Trade Organization/Technical Barriers to Trade.	China WTO/TBT	Government Agency	X		
Cooling Technology Institute	CTI	Trade Association	X		
N/A	Corvino	Individual		X	
Daikin Applied	Daikin	Manufacturer	X		
ebm-papst Inc	ebm-papst	Manufacturer	X		X
Greenheck Group	Greenheck	Manufacturer	X		
Harry Graves	Graves	Individual	X		
Johnson Controls	Johnson Controls	Manufacturer	X		
Lennox International Inc	Lennox	Manufacturer	X		
Marley Engineering Products LLC	MEP	Manufacturer		X	
Morrison Products Inc	Morrison	Manufacturer		X	
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.		X	
Northwest Energy Efficiency Alliance and Northwest Power and Conservation Council.	NEEA and NWPCC	Efficiency Organizations.	X		
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	Utilities		X	X

Note: ''X'' indicates the notice(s) that each stakeholder commented on.

In response to the April 2020 Notice of Petition, Lennox commented that DOE should reject the fan test procedure petition because no coverage determination had been finalized. (Docket No. EERE–2020–BT–PET–0003, Lennox, No. 5 at p. 1) AHRI and Johnson Controls commented that DOE would first need to establish fans as covered equipment before initiating a test procedure rulemaking. (Docket No. EERE–2020–BT–PET–0003, AHRI, No. 14 at p. 3; Johnson Controls, No. 10 at p. 1) In response to the October 2021 TP RFI, AHRI and Morrison commented that they appreciate DOE's efforts to define fans and blowers and commented that DOE should finalize the coverage determination process to determine if a stand-alone commercial and industrial fans regulation is ''necessary or appropriate'' to the achievement of EPCA's purposes. (AHRI, No. 10 at p. 3; Morrison, No. 8 at p. 2)

DOE is publishing this NOPR following the publication of the August 2021 Final Coverage Determination.

Corvino commented that there is a need for fan test procedures and suggested that DOE investigate costs related to testing. (Corvino, No. 3 at p. 1) MEP commented generally that the steps required to create new regulations place a tremendous burden upon the industry, especially for newly covered products. MEP asserted that the first efficiency rulemaking places a burden on the industry in preparation for the rulemaking that is larger than the average burden attributed to subsequent rulemakings during the life cycle cost analysis used in determining the minimum allowable efficiencies. (MEP, No. 5 at p. 2)

DOE analyzes the costs of any potential test procedure, as discussed in section III.M. DOE is proposing test procedures for fans and blowers. DOE is not proposing to establish energy conservation standards for such covered equipment in this proposed rule. To the extent that DOE were to propose energy conservation standards for fans and blowers, DOE would conduct a manufacturer impact analysis in that rulemaking.

[10] *See* Docket No. EERE–2020–BT–PET–0003.

[11] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for fans and blowers. Unless otherwise noted, all comments referenced in this notice are available in DOE's docket for this test procedure rulemaking. (Docket No., EERE–2021–BT–TP–0021 which is maintained at *www.regulations.gov/docket EERE-2021-BT-TP-0021/*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[12] *See* Docket No. EERE–2022–BT–STD–0002.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to establish a test procedure for fans and blowers in subpart J of part 431 and to modify part 429, as follows:

(1) Establish the scope of the test procedure for fans and blowers as to include standalone and embedded fans and blowers (*i.e.,* fans and blowers incorporated into other equipment), with fan shaft input power equal to or greater than 1 horsepower and fan airpower equal to or less than 150 horsepower that are either: (1) axial inline fans; (2) axial panel fans; (3) centrifugal housed fans; (4) centrifugal unhoused fans; (5) centrifugal inline fans; (6) radial-housed fans; or (7) power roof/wall ventilators (''PRVs''); air-circulating fans; and excluding some fans that are exclusively embedded in other products of equipment; and excluding radial housed unshrouded fans with diameter less than 30 inches or a blade width of less than 3 inches, safety fans, induced flow fans, jet fans, and cross-flow fans.

(2) Define ''axial inline fan'', ''axial panel fan'', ''centrifugal housed fan'', ''centrifugal unhoused fan'', ''centrifugal inline fan'', ''radial-housed fan'', ''power roof ventilator'', ''cross-flow fan'', ''induced flow fan'', ''jet fan'', ''basic model,'' ''safety fan,'' ''air circulating fan,'' and related terms. Define terms related to heat rejection equipment;

(3) Adopt through reference in newly proposed appendix A to subpart J of 10 CFR part 431 (''appendix A'') certain provions of ANSI/AMCA 214–21, ''Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers'' (''AMCA 214–21''), with modifications, as the test procedure for determining FEP and FEI of fans and blowers other than circulating fans;

(4) Adopt through reference in newly propsoed appendix B to subpart J of 10 CFR part 431 (''appendix B'') certain provisions of AMCA 214–21, with modifications, as the test procedure for determining FEP and FEI of air circulating fans;

(5) Adopt through reference certain provisions of the following industry standards referenced by AMCA 214–21: ANSI/AMCA 210–16, (''AMCA 210–16'') ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating''; ANSI/AMCA 230–15, (''AMCA 230–15 with errata'') ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification'' with errata; and ISO 5801:2017, ''Fans—Performance testing using standardized airways'';

(6) Establish fan and blower sampling requirements and provisions related to determining represented values in 10 CFR 429.64;

(7) Establish an alternative effiency determination method (''AEDM'') for fans and blowers in 10 CFR 429.70; and

(8) Establish enforcements provisions for fan and blower basic models.

The proposal is summarized in Table II.2.

TABLE II.2—SUMMARY OF PROPOSALS IN THIS TP NOPR, THEIR PROPOSED LOCATION WITHIN THE CODE OF FEDERAL REGULATIONS, AND THE APPLICABLE PREAMBLE DISCUSSION

Topic	Location in CFR	Summary of proposals	Applicable preamble discussion
Scope	10 CFR 431.174	Establish the scope of the test procedure for fans and blowers as to include standalone and embedded fans and blowers (*i.e.,* fans and blowers incorporated into other equipment), with fan shaft input power equal to or greater than 1 horsepower and fan airpower equal to or less than 150 horsepower that are either: (1) axial inline fans; (2) axial panel fans; (3) centrifugal housed fans; (4) centrifugal unhoused fans; (5) centrifugal inline fans; (6) radial-housed fans; or (7) power roof/wall ventilators (''PRVs''); air-circulating fans; and excluding some fans that are exclusively embedded in other products of equipment; and excluding radial housed unshrouded fans with diameter less than 30 inches or a blade width of less than 3 inches, safety fans, induced flow fans, jet fans, and cross-flow fans.	Section III.A.
Definitions	10 CFR 431.172	Define ''axial inline fan'', ''axial panel fan'', ''centrifugal housed fan'', ''centrifugal unhoused fan'', ''centrifugal inline fan'', ''radial-housed fan'', ''power roof ventilator'', ''cross-flow fan'', ''induced flow fan'', ''jet fan'', ''basic model,'' ''safety fan,'' ''air circulating fan,'' and related terms. Define terms related to heat rejection equipment;	Section III.B.
Test Procedure	10 CFR 431.174	Establish FEI as the metric for fans and blowers, incorporate by reference AMCA 214–21, AMCA 210–16, AMCA 230–15 (with errata) and provide additional instructions for determining the FEI (and other applicable performance characteristics) for fans and blowers.	Sections III.C, III.D, and III.F.
Sampling Plan	10 CFR 429.66	Specify the minimum number of fans or blowers to be tested to rate a basic model and determine representative values.	Section III.K.
AEDM	10 CFR 429.70	Establish requirements for applying an alternative energy use determination method.	Section III.J.
Enforcement Provisions.	10 CFR 429.110 & 10 CFR 429.134.	Establish a method for determining compliance of fan and blower basic models.	Section III.L.

DOE's proposed test method for fans and blowers includes measurements of pressure, flow rate, and fan shaft or electrical input power, all of which are required to calculate FEP and FEI, as well as other quantities to characterize rated fans and blowers performance (*e.g.,* speed). DOE has tentatively determined that the relevant sections of AMCA 214–21, AMCA 210–16 and AMCA 230–15 with errata, in conjunction with the additional provisions proposed in this test procedure, would produce test results that reflect the energy efficiency and energy use of a fan or blower during a representative average use cycle. (42 U.S.C. 6314(a)(2)) Additionally, DOE has tentatively determined that the proposed test procedure, which is based on the relevant industry testing standard, would not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) DOE's analysis of the burdens associated with the proposed test procedure is presented in section III.M of this document.

III. Discussion

In the following sections, DOE proposes to establish test procedures and related definitions for fans and blowers in subpart J of part 431, to establish sampling plans for this equipment, to establish an alternative energy determination method for this equipment, and to establish enforcement provisions for this equipment. In the following section, DOE provides relevant background information, explains why the proposal merits consideration, discusses relevant public comments, and proposes a potential approach.

A. Scope of Applicability

This rulemaking applies to fans and blowers. A fan or blower is defined as a rotary bladed machine that is used to convert electrical or mechanical power to air power with an energy output limited to 25 kilojoule (''kJ'')/kilogram (''kg'') of air. 10 CFR 431.172. It consists of an impeller, a shaft and bearings and/or driver to support the impeller, as well as a structure or housing. *Id.* A fan or blower may include a transmission, driver, and/or motor controller. *Id.* As discussed, DOE has classified fans and blowers as covered equipment. 86 FR 46579. ''Covered equipment'' consists of certain industrial equipment, which in turn excludes covered products, other than industrial equipment that is a component of a covered product. (42 U.S.C. 6311(1) and (2)(A)(iii)). DOE explained in the coverage determination that the fans and blowers, the subject to this rulemaking, do not include ceiling fans and furnace fans, as defined at 10 CFR 430.2. *See* 86 FR 46579, 46586.

In the August 2021 Final Coverage Determination, DOE did not establish definitions for specific categories of fans and blowers. DOE stated that it would consider specific categories of fans and blowers and the scope of applicability of test procedures and energy conservation standards in their respective rulemakings. 86 46579, 46585.

This section discusses the fans and blowers that DOE is proposing to include in the scope of applicability of the test procedure as well as proposed exemptions.

1. Proposed Test Procedure Scope

This section discusses fans and blowers, other than air circulating fans, proposed for inclusion in the scope of applicability of the test procedure. Air circulating fans are discussed in section III.A.4 of this document.

The Working Group recommended that the test procedure be applicable to certain classifications of fans and blowers, listed in Table III–1 of this document. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #1 at p. 1) The Working Group did not provide definitions for the specified classifications of the fans and blowers identified for inclusion in the scope of a test procedure. AMCA 214–21 provides terms and associated definitions for certain classifications of fans and blowers that DOE has tentatively determined correspond to the Working Group recommendation. The Working Group further recommended that the test procedure apply only to fans with a fan shaft power equal to or greater than 1 horsepower (''hp'') and fan air power [13] equal to or less than 150 hp. The Working Group recommended that airpower be calculated using static pressure for unducted fans (''static airpower'') and total pressure for ducted fans (''total airpower'').[14] (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #5, at p. 4)

On February 24, 2022, the California Energy Commission (''CEC'') published a proposed rulemaking for fans and blowers that includes terms and definitions that DOE has tentatively determined correspond to the Working Group recommendations.[15] CEC proposes to cover the following fan categories: axial inline, axial panel, centrifugal housed, centrifugal unhoused, centrifugal inline, radial housed, and power roof/wall ventilators, and to define these terms largely based on the definitions in AMCA 214–21, with revisions to indicate a fan's intended application and if a fan's inlet or outlet can be (optionally, as applicable) ducted. In addition, the CEC proposal considers fans and blowers that have a rated fan shaft power greater than or equal to 1 horsepower, or, for fans without a rated shaft input power, an electrical input power greater than or equal to 1 kW, and a fan output power less than or equal to 150 horsepower.[16]

The classification of fans and blowers recommended by the Working Group for coverage under a test procedure and the corresponding terms and definitions in AMCA 214–21 and the proposed CEC regulations are presented in Table III–1 of this document.

TABLE III–1—SCOPE RECOMMENDED BY THE WORKING GROUP, CORRESPONDING TERMS AND DEFINITIONS

Working group scope recommendations	Corresponding term and definition in AMCA 214–21	Corresponding CEC definitions
Axial cylindrical housed fan.	''Axial inline fan'' means a fan with an axial impeller and a cylindrical housing with or without turning vanes.	''Axial-inline fan'' means a fan with an axial impeller and a cylindrical housing with or without turning vanes. Inlets and outlets can optionally be ducted.
Panel fan	''Axial panel fan'' means an axial fan, without cylindrical housing, that is mounted in a panel, an orifice plate or ring.	''Axial-panel fan'' means a fan with an axial impeller mounted in a short housing, non-cylindrical, that can be a panel, ring, or orifice plate. The housing is typically mounted to a wall separating two spaces, and the fans are used to increase the pressure across this wall. Inlets and outlets are not ducted.

[13] The air power of a fan is the fan's output power. It is proportional to the product of the fan airflow rate and the fan pressure.

[14] The terms ''ducted'' and ''unducted'' refer to the recommended test configuration used when conducting a fan test. Appendix C of the term sheet specifies which fan categories are typically ducted (*i.e.,* tested using a ducted outlet and for which the FEI is calculated on a total pressure basis): axial cylindrical housed, centrifugal housed, excluding inline and radial, inline and mixed flow, radial housed; and which fan types are considered unducted (*i.e.,* tested with a free outlet and for which the FEI is calculated on a static pressure basis): panel, centrifugal unhoused, excluding inline and radial, and power roof ventilators.

[15] All documents related to this rulemaking can be found in the rulemaking Docket 22–AAER–01 accessible at: *www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-11.*

[16] *See* Proposed regulatory language for Commercial and Industrial Fans and Blowers available in the following Docket: 22–AAER–01 at: *efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-AAER-01.*

TABLE III–1—SCOPE RECOMMENDED BY THE WORKING GROUP, CORRESPONDING TERMS AND DEFINITIONS—Continued

Working group scope recommendations	Corresponding term and definition in AMCA 214–21	Corresponding CEC definitions
Centrifugal housed fan, excluding inline fan and radial fan.	''Centrifugal housed fan'' means a fan with a centrifugal or mixed flow impeller in which airflow exits into a housing that is generally scroll-shaped to direct the air through a single fan outlet. A centrifugal housed fan does not include a radial impeller*.	''Centrifugal housed fan'' means a fan with a centrifugal or mixed flow impeller in which airflow exits into a housing that is generally scroll-shaped to direct the air through a single fan outlet. Inlets and outlets can optionally be ducted. It does not include a radial impeller.
Centrifugal unhoused fan, excluding radial fan.	''Centrifugal unhoused fan'' means a fan with a centrifugal or mixed flow impeller in which airflow enters through a panel and discharges into free space. Inlets and outlets are not ducted. This fan type also includes fans designed for use in fan arrays that have partition walls separating the fan from other fans in the array**.	''Centrifugal unhoused fan'' means a fan with a centrifugal or mix-flow impeller in which airflow enters through a panel and discharges into free space. Inlets and outlets are not ducted. This fan type also includes fans designed for use in fan arrays that have partition walls separating the fan from other fans in the array.
Inline and mixed-flow fan.	''Centrifugal inline fan'' means a fan with a centrifugal or mixed flow impeller in which airflow enters axially at the fan inlet and the housing redirects radial airflow from the impeller to exit the fan in an axial direction.	''Centrifugal inline fan'' means a fan with a centrifugal or mixed-flow impeller in which airflow enters axially at the fan inlet and the housing redirects radial airflow from the impeller to exit the fan in an axial direction. Inlets and outlets can optionally be ducted.
Radial housed fan	''Radial-housed fan'' means a fan with a radial impeller in which airflow exits into a housing that is generally scroll-shaped to direct the air through a single fan outlet. Inlets and outlets can optionally be ducted.	''Radial-housed fan'' means a fan with a radial impeller in which airflow exits into a housing that is generally scroll-shaped to direct the air through a single fan outlet. Inlets and outlets can optionally be ducted.
Power roof ventilator	''Power roof/wall ventilator (PRV)'' means a fan with an internal driver and a housing to prevent precipitation from entering the building. It has a base designed to fit over a roof or wall opening, usually by means of a roof curb.	''Power roof ventilator (PRV)'' or ''power wall ventilator (PWV)'' means a fan with an internal driver and a housing to prevent precipitation from entering the building. It has a base designed to fit over a roof or wall opening, usually by means of a roof curb.

*The inclusion of ''scroll-shaped'' in this definition excludes inline fans.
**Radial fans are housed and therefore not included in this definition.

In response to the April 2020 Notice of Petition, ebm-papst commented in favor of a broader test procedure scope and stated that any limitation on scope should be made in future labeling requirements, certification requirements, or energy conservation standards. ebm-papst stated that AMCA 214–21 was designed for fans above 0.745 mechanical kilowatts shaft power (equivalent to 1 hp) or 0.890 electrical kilowatts, and below 112 kilowatts (equivalent to 150 hp) air power, and that these requirements should be the only scope restrictions on the test procedure. (Docket No. EERE–2020–BT–PET–0003, ebm-papst, No. 9)

In response to the April 2020 Notice of Petition for Rulemaking, AHRI commented that the scope of the DOE test procedure should ideally align with the scope of AMCA 214 as finalized and that AHRI was working with AMCA to resolve scope concerns in AMCA 214 (Docket No. EERE–2020–BT–PET–0003, AHRI, No. 14 at p. 2).

In this NOPR, DOE proposes to include all fans and blowers that are included within the scope of AMCA 210–16 (referenced by AMCA 214–21) and proposes that the test procedure would be applicable to the following fans and blowers, as proposed in section III.A.10 of this document and subject to the exclusions discussed in section III.A.2 of this document: (1) axial inline fan; (2) axial panel fan; (3) centrifugal housed fan; (4) centrifugal unhoused fan; (5) centrifugal inline fan; (6) radial-housed fan; and (7) power roof/wall ventilator (''PRV'').[17]

DOE is proposing that the scope of the test procedure cover fans and blowers with a fan shaft input power equal to or greater than 1 horsepower and a fan static or total air power equal to or less than 150 horsepower.

DOE has tentatively determined that the 1 hp fan shaft power lower limit may not be a practical unit of measurement for all fans because some fans are designed such that the measurement of the shaft input power is not feasible, and the only feasible measurement is the FEP, which is measured in units of kW. For example, some fans incorporate the bare-shaft and the motor in the same enclosed housing and do not provide access to the fan shaft (*i.e.,* between the motor and the fan), where the measurement of the fan shaft power would be conducted. DOE relied on the motor efficiency equations provided in Section 6.4.2.3 of AMCA 214–21 to convert the fan shaft power into electrical input power[18] and has tentatively determined that 0.89 kW is appropriate to establish a standardized equivalent to the 1 hp fan shaft input power limit. Additionally, Section 6.5.3.1.3 ''Fan Efficiency Requirements'' of ANSI/ASHRAE/IES 90.1, ''Energy Standard for Buildings except Low-Rise Residential Buildings (2019)'' (''ASHRAE 90.1–2019'') relies on the value of 0.89 kW as the corresponding threshold to a value of 1 hp of shaft input power.

Accordingly, DOE proposes that the test procedure would be applicable to a fan or blower with duty points[19] with the following characteristics: (1) a fan shaft input power equal to or greater than 1 horsepower and a fan static or total air power equal to or less than 150 horsepower, or (2) a FEP equal to or greater than 0.89 kW and a fan static or total airpower equal to or less than 150 horsepower.

DOE further proposes to establish the 150 hp upper limit in terms of total airpower for fans and blowers that use a total pressure basis FEI and would be required to be tested with a ducted outlet according to the proposed provisions adopted through reference to AMCA 214–21. For fans and blowers that use a static pressure basis FEI and that would be required to be tested using a free outlet under the provisions of AMAC 214–21 proposed to be adopted by reference, DOE proposes to establish the airpower limit in terms of

[17] PRVs include: Centrifugal PRV exhaust fans; Centrifugal PRV supply fans; and Axial PRVs, as defined in AMCA 214–21.

[18] The electrical input power is equal to the fan shaft input power divided by the motor efficiency.

[19] A duty point is characterized by a given airflow and pressure and has a corresponding operating speed.

static airpower. Table III–9 of this document lists the fan and blower categories that rely on a total or static pressure basis in accordance with AMCA 214–21.

DOE proposes the lower 1 hp limit to match the technical applicability of the AMCA 214–21 and AMCA 210–16 test procedures. DOE is proposing the upper air power limit at this time because fans that operate above the proposed upper limit are typically custom orders and are too large to be tested in a laboratory setting. In addition, these limits are in line with the Working Group recommendations and the CEC scope. DOE may consider methods for test for these fans in a future rulemaking.

Finally, to define total airpower, DOE proposes to rely on the definition of ''fan output power'' in AMCA 210–16. DOE proposes to define ''total airpower'' as the total power delivered to air by the fan; it is proportional to the product of the fan airflow rate, the fan total pressure, and the compressibility coefficient and is calculated in accordance with Section 7.8.1 of AMCA 210–16. See the definition of ''fan output power'' in Section 3.1.31 of AMCA 210–16 and calculation formulas in Section 7.8.1 of AMCA 210–16. DOE also proposes to define ''static air power'' as the static power delivered to air by the fan; it is proportional to the product of the fan airflow rate, the fan static pressure, and the compressibility coefficient and is calculated in accordance with Section 7.8.1 of AMCA 210–16, using static pressure instead of total pressure.

Fan and blower categories proposed to be exempted from the scope of this test procedure are discussed in section III.A.2 of this document.

DOE requests comment on the fans and blowers, other than air circulating fans, proposed for inclusion in the DOE test procedure.

DOE requests comment on the proposed limits based on fan airpower, fan shaft input power and fan electrical input power for fans other than air circulating fans. Specifically, DOE requests comment on the proposed definitions of ''static airpower'' and ''total airpower'' used to characterize the upper 150 horsepower limit for fans other than air circulating fans.

2. Proposed Fan and Blower Exclusions

DOE proposes to explicitly exclude certain fans and blowers from the scope of the test procedure.

The Working Group recommended to exclude circulating fans (also known as air circulating fans), induced flow fans, jet fans, and cross-flow fans. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #2, at pp. 2–3) The Working Group also recommended to exclude safety fans due to low operating hours and specific design features that impair efficiency (*e.g.,* high tip clearance), and a subset of radial fans that are used for material handling applications [20] (*e.g.,* to move paper dust, sand).[21] (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #2, at pp. 2–3) Table III–2 of this document presents the exclusions recommended by the Working Group.

TABLE III–2—FAN CATEGORIES RECOMMENDED FOR EXCLUSION BY THE WORKING GROUP

Fan category recommended for exclusion by the working group *	Definition in AMCA 214–21
Radial housed unshrouded fan with diameter less than 30 inches or a blade width of less than 3 inches.	Included in the definition ''radial housed fan'' as noted in Table III–1.
Safety fan	Not defined in AMCA 214–21.
Induced flow fan	''Induced flow fan'' means a type of laboratory exhaust fan with a nozzle and windband; the fan's outlet airflow is greater than the inlet airflow due to induced airflow. All airflow entering the inlet exits through the nozzle. Airflow exiting the windband includes the nozzle airflow plus the induced airflow.
Jet fan	''Jet fan'' means a fan designed and marketed specifically for producing a high velocity air jet in a space to increase its air momentum. Jet fans are rated using thrust. Inlets and outlets are not ducted but may include acoustic silencers.
Cross-flow fan	''Cross-flow fan'' means a fan with a housing that creates an airflow path through the impeller in a direction at right angles to its axis of rotation and with airflow both entering and exiting the impeller at its periphery. Inlets and outlets can optionally be ducted.**

* **Note:** the Working Group also recommended to exclude circulating fans, (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #2, at pp. 2–3) which are defined in AMCA 214–21 as a fan that is not a ceiling fan that is used to move air within a space that has no provision for connection to ducting or separation of the fan inlet from its outlet. The fan is designed to be used for the general circulation of air. Circulating fans are discussed in Section III.A.4 of this document.

** Excluded from AMCA 214–21 and defined in ANSI/AMCA Standard 208, ''Calculation of the Fan Energy Index for calculating FEI'' (''AMCA 208–18'').

The Petitioners requested that the scope of any future DOE test procedure be consistent with the scope described in the term sheet, and requested to exclude fans that cannot be tested per AMCA 210–16 (*i.e.,* the physical test method referenced in AMCA 214–21).[22] The Petitioners also requested that the scope of the test procedure be consistent with ASHRAE 90.1–2019. (Docket No. EERE–2020–BT–PET–0003, The Petitioners, No. 1, attachment ''AMCA Petition to DOE Cover Letter and Petition [sic] 2020110'' at pp. 7–8)

Table III–3 of this document compares the scope exclusions requested by the Petitioners in accordance with the commercial and industrial fan and blower requirements in ASHRAE 90.1–2019 and the scope of exclusions as recommended by the Working Group (other than embedded fans and blowers). DOE reviewed the fan and blower exclusions to Section 6.5.3.1.3 of ASHRAE 90.1–2019 ''Fan Efficiency Requirements'' as listed in Table III–3 of this document and has tentatively

[20] Specifically, radial housed unshrouded fans, which means a radial housed fan for which the impeller blades are attached to a backplate and hub (*i.e.,* open radial blade), or to a hub only (*i.e.,* open paddle wheel), and with an open front at the impeller's inlet. These are different than radial shrouded fans, for which the impeller blades are attached to a backplate and to a ring or ''shroud'' at the impeller's inlet.

[21] The discussions of the Working Group related to these exclusions can be found in the meeting transcripts, available in the fans energy conservation standard rulemaking docket. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 161 at pp. 63–70; Public Meeting Transcript, No. 85 at pp. 60–62).

[22] For example, circulating fans, ceiling fans, desk fans, jet tunnel fans, and induced flow fans (*e.g.,* used in laboratory exhaust systems). This is consistent with the scope of the terms sheet.

determined that these exclusions are covered by the exclusions recommended by the Working Group.

TABLE III–3—EXCEPTIONS TO SECTION 6.5.3.1.3 OF ASHRAE 90.1–2019 ''FAN EFFICIENCY REQUIREMENTS''

[Other than for embedded fans and blowers]

Exceptions to Section 6.5.3.1.3 of ASHRAE 90.1–2019 ''Fan Efficiency Requirements''	Included in the exclusions recommended by the Working Group?
Fans that are not embedded fans with a motor nameplate horsepower of less than 1.0 hp or with a fan nameplate electrical input power of less than 0.89 ''kW''.	Yes.
Ceiling fans	Yes (Note: ceiling fans are not within the scope of the definition of fans and blowers).
Fans used for moving gases at temperatures above 482 °F	Yes (safety fans).
Fans used for operation in explosive atmospheres	Yes (safety fans).
Reversible fans used for tunnel ventilation	Yes (jet fans, safety fans).
Fans outside the scope of AMCA 208–18	Yes (AMCA 208–18 references the scope of AMCA 210–16).
Fans that are intended to operate only during emergency conditions	Yes (safety fans).

In response to the April 2020 Notice of Petition, Greenheck commented in support of a scope consistent with the term sheet and with ASHRAE 90.1–2019. (Docket No. EERE–2020–BT–PET–0003, Greenheck, No. 6.1 at p. 2) Johnson Controls commented in support of the exclusions requested by the Petitioners. (Docket No. EERE–2020–BT–PET–0003, Johnson Controls, No. 10 at pp. 1–2)

In its proposed rulemaking for commercial and industrial fans and blowers, the CEC proposes to exclude the following categories of fans: (1) safety fans (see section III.B.3 of this document for more details on this definition), (2) ceiling fans as defined in 10 CFR 430.2; (3) circulating fans; (4) induced-flow fans; (5) jet fans; (6) cross-flow fans; (7) embedded fans as defined in ANSI/AMCA 214–21; [23] (8) fans mounted in or on motor vehicles or other mobile equipment; (9) fans that create a vacuum of 30 in. water gauge or greater; [24] and (10) air curtain unit.[25] See Table III–4 of this document; section III.A.3 of this document for a discussion of embedded fans and air curtain units; and section III.A.5 of this document for a discussion of fans mounted in or on motor vehicles or other mobile equipment.

TABLE III–4 FANS RECOMMENDED FOR EXCLUSION BY THE WORKING GROUP AND THE CORRESPONDING CEC PROPOSED EXCLUSIONS

Fans recommended for exclusion by the working group *	Corresponding term and definition proposed for exclusion in CEC proposed regulatory text
Radial housed unshrouded fan with diameter less than 30 inches or a blade width of less than 3 inches.	Not excluded by the CEC proposed regulatory text.
Safety fan	''Safety Fan'' See section III.B.3 of this document.
Induced flow fan	''Induced-flow fan'' means a type of laboratory exhaust fan with nozzle and windband; the fan's outlet airflow is greater than the inlet airflow due to induced airflow. All airflow entering the inlet exits through the nozzle. Airflow exiting the windband includes the nozzle airflow as well as the induced airflow.
Jet fan	''Jet fan'' means a fan designed and marketed specifically to produce a high-velocity air jet in a space to increase its air momentum. Jet fans are rated using thrust. Inlets and outlets are not ducted but may include acoustic silencers.
Cross-flow fan	''Cross-flow fan'' means a fan with a housing that creates an airflow path through the impeller, in a direction at right angles to the axis of rotation and with airflow both entering and exiting the impeller at the periphery. Inlets and outlets can optionally be ducted.

* **Note:** The Working Group also recommended to exclude circulating fans, which are also excluded from the CEC proposed regulation and defined as a fan that is not a ceiling fan that is used to move air within a space, that has no provision for connection to ducting or separation of the fan inlet from its outlet. The fan is designed to be used for the general circulation of air. Circulating fans are discussed in Section III.A.4 of this document.

DOE reviewed the exclusions recommended by the Working Group, the exclusions requested by Petitioners, the exclusions provided in the proposed CEC regulations, and comments received. DOE is proposing to exclude from the proposed DOE test procedure the following fans and blowers: (1) radial housed unshrouded fans with a diameter less than 30 inches or a blade width of less than 3 inches; (2) safety fans; (3) induced flow fans; (4) jet fans; and (5) cross-flow fans.

Based on input from AMCA during the ASRAC negotiations, DOE has tentatively determined that radial housed unshrouded fans with a diameter less than 30 inches or a blade width of less than 3 inches are designed for materials handling applications.

[23] As defined in ANSI/AMCA 214–21: ''A fan that is part of a manufactured assembly where the assembly includes functions other than air movement.''

[24] CEC proposed excluding these fans because AMCA 214–21 is not applicable to this equipment. See CEC's Initial Statement of Reason, available at: *efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-AAER-01*.

[25] The CEC defines an air curtain unit as equipment providing a directionally controlled stream of air moving across the entire height and width of an opening that reduces the infiltration or transfer of air from one side of the opening to the other and/or inhibits the passage of insects, dust, or debris.

These fans have specific design features (*e.g.,* built to resist the impact and erosive wear from large quantities of various materials passing through the fan housing) that generally limit the opportunity for improved efficiency. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 85 at p. 60). Furthermore, testing these fans based on the test method for clean air fans would not provide a measurement of energy use or energy efficiency that is representative of an average use cycle. For these reasons, DOE proposes to exclude radial housed unshrouded fans with a diameter less than 30 inches or a blade width of less than 3 inches at this time.

DOE proposes to exclude safety fans at this time, which operate intermittently and may have specific design features that generally limit the opportunity for improved efficiency.

DOE also proposes to exclude induced flow fans; jet fans; and cross-flow fans because a test using AMCA 210–16 would not provide a measurement of energy use or energy efficiency that is representative of an average use cycle, as described further in the following paragraphs.

Induced flow fans are used for laboratory exhaust applications, and their performance is tested based on AMCA Standard 260–20, ''Laboratory Methods of Testing Induced Flow Fans for Rating.'' AMCA 260–20 is an adjunct to AMCA 210–16 in order to accommodate the induced flow fans' unique characteristics, namely the impact of the windband on performance. The windband is a component of induced flow fans used to direct the fume exhaust and maximize plume height and the amount of air mixed with the lab exhaust to increase the dilution ratio. Induced flow fans produce a high plume of air at the outlet in order to exhaust laboratory fumes and hazardous chemicals in such a manner that diminishes the likelihood that exhausted air will be re-entrained into the building's intake air. Their performance does not only depend on the flow of air that they provide, but also on the ''effective plume height,'' which is the plume rise provided by the induced flow fan added to the stack height of the fan (*i.e.,* from the roof to the outlet of the windband). DOE has tentatively determined that a test using AMCA 210–16 would not provide a measurement of energy use or energy efficiency during a representative average use cycle for induced flow fans and proposes to exclude these fans from the scope of the test procedure at this time.

Jet fans are typically used in vehicular tunnels to provide ventilation and improve air quality. Jet fans can also be used in the event of a fire in the tunnel to remove the smoke and fumes from the source of the incident, if necessary, by reversing their airflow. Jet fan performance is characterized by thrust and horsepower and not based on the airflow and pressure they can provide. AMCA 250–22 [26] provides methods of measuring thrust, volume airflow, and power and includes provisions for deriving efficiency in terms of ''thrust power ratio''. Therefore, DOE has tentatively determined that a test using AMCA 210–16 would not provide a measurement of energy use or energy efficiency during a representative average use cycle of jet fans and proposes to exclude these fans from the scope of the test procedure.

Cross-flow fan performance is related to the ability to produce a wide, uniform airflow as opposed to the airpower output, which is what is accounted for in AMCA 210–16. Therefore, DOE has tentatively determined that cross-flow fans would necessitate consideration of a different metric to better capture the energy use of these under a representative cycle of use. Therefore, DOE proposes that cross-flow fans will not be addressed in its test procedure at this time.

DOE is considering including an exclusion, consistent with the findings of the CEC, for fans that create a vacuum of 30 inches water gauge or greater. DOE has tentatively determined that a test using AMCA 210–16 may not result in a measurement of energy use or energy efficiency during a representative average use cycle for fans that are exclusively used to create a vacuum rather than produce airflow. DOE requests additional information on fans exclusively used to create a vacuum and on the 30 inches water gauge criteria used by the CEC.

DOE requests comment on its proposed exclusions from the proposed scope of applicability of the test procedure, listed as follows: (1) radial housed unshrouded fans with a diameter less than 30 inches or a blade width of less than 3 inches; (2) safety fans; (3) induced flow fans; (4) jet fans; and (5) cross-flow fans. DOE seeks additional information to support exclusion from the scope of potential test procedures.

DOE seeks comment and input on the applicability of AMCA 214–21 and AMCA 210–16 to fans that create a vacuum of 30 inches water gauge or greater. DOE requests comment on the 30 inches water gauge limit used by the CEC.

3. Proposed Exclusion of Embedded Fans and Blowers

In addition to the specific exclusions discussed in the prior section, DOE has also considered excluding certain ''embedded'' fans from the scope of the test procedure. Fans can be distributed in commerce as standalone equipment or can be distributed in commerce incorporated into other equipment that requires a fan to operate.

Section 3.25.3 of AMCA 214–21 defines a ''standalone fan'' as ''a fan in at least a minimum testable configuration. This includes any driver, transmission or motor controller if included in the rated fan. It also includes any appurtenances included in the rated fan, and it excludes the impact of any surrounding equipment whose purpose exceeds or is different than that of the fan.'' [27] Section 3.25.4 of AMCA 214–21 defines the term ''embedded fan'' in section 3.25.4 as ''a fan that is part of a manufactured assembly where the assembly includes functions other than air movement.''

The Working Group recommended excluding certain embedded fans. See Table III–5 of this document. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendations #2 and #3 at pp. 2–4)

TABLE III–5—EMBEDDED FANS RECOMMENDED FOR EXCLUSION BY THE WORKING GROUP

Fans embedded in:
Single-phase central air conditioners and heat pumps rated with a certified cooling capacity less than 65,000 British thermal units per hour (''Btu/h''), that are subject to DOE's energy conservation standard at 10 CFR 430.32(c).
Three-phase, air-cooled, small commercial packaged air-conditioning and heating equipment rated with a certified cooling capacity less than 65,000 Btu/h, that are subject to DOE's energy conservation standard at 10 CFR 431.97(b).

[26] ANSI/AMCA 250–22: Laboratory Methods of Testing Jet Tunnel Fans for Performance. Available at *www.amca.org.*

[27] Additionally, AMCA 214–21 defines a minimum testable configuration as ''A fan having at least an impeller; shaft and bearings and/or driver to support the impeller; and its structure or its housing''. *See* Section 3.53 of AMCA 214–21.

TABLE III–5—EMBEDDED FANS RECOMMENDED FOR EXCLUSION BY THE WORKING GROUP—Continued

Residential furnaces that are subject to DOE's energy conservation standard at 10 CFR 430.32(y).
Transport refrigeration (*i.e.,* Trailer refrigeration, Self-powered truck refrigeration, Vehicle-powered truck refrigeration, Marine/Rail container refrigerant), and fans exclusively powered by internal combustion engines.
Vacuum cleaners.*
Heat Rejection Equipment:
• Packaged evaporative open circuit cooling towers.
• Evaporative field-erected open circuit cooling towers.
• Packaged evaporative closed-circuit cooling towers.
• Evaporative field-erected closed-circuit cooling towers.
• Packaged evaporative condensers.
• Field-erected evaporative condensers.
• Packaged air-cooled (dry) coolers.
• Field-erected air-cooled (dry) coolers.
• Air-cooled steam condensers.
• Hybrid (water saving) versions of all of the previously listed equipment that contain both evaporative and air-cooled heat exchange sections.
Air curtains:
Air-cooled commercial package air conditioners and heat pumps (CUAC, CUHP) with a certified cooling capacity between 5.5 tons (65,000 Btu/h) and 63.5 tons (760,000 Btu/h) that are subject to DOE's energy conservation standard at 10 CFR 431.97(b).**
Water-cooled and evaporatively-cooled commercial air conditioners and water-source commercial heat pumps that are subject to DOE's energy conservation standard at 10 CFR 431.97(b).**
Single package vertical air conditioners and heat pumps that are subject to DOE's energy conservation standard at 10 CFR 431.97(d).**
Packaged terminal air conditioners (PTAC) and packaged terminal heat pumps (PTHP) that are subject to DOE's energy conservation standard at 10 CFR 431.97(c).**
Computer room air conditioners that are subject to DOE's energy conservation standard at 10 CFR 431.97(e).**
Variable refrigerant flow multi-split air conditioners and heat pumps that are subject to DOE's energy conservation standard at 10 CFR 431.97(f).**

* Although the term sheet specifies ''vacuum'', the term was intended to designate vacuum cleaners. (Docket No. EERE–2013–BT–STD–0006; AHRI, Public Meeting Transcript, No. 166 at p. 11).

** The recommendation only applies to supply and condenser fans embedded in this equipment.

Stated more generally, the exclusions recommended by the Working Group would exclude from the scope of the test procedure, fans that are embedded in regulated equipment for which the DOE metric captures the energy consumption of the fan.[28]

The Working Group further recommended for fans embedded in non-regulated equipment, and/or embedded in regulated equipment other than listed in appendix B, and/or any fans that are not supply and condense fans in regulated equipment listed in appendix B that the first manufacturer of a testable configuration [29] would be responsible for certifying the standalone fan performance to DOE. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #4 at pp. 4) [30]

The Petitioners requested that the scope of any DOE test procedure be consistent with the scope of the term sheet. Petitioners also requested the test-procedure scope for commercial fans be consistent with ASHRAE 90.1–2019, and additionally exclude embedded fans that are part of equipment listed in Section 6.4.1.1 of ASHRAE 90.1–2019. ASHRAE 90.1–2019 (*See* Table III–7 of this document). (Docket No. EERE–2020–BT–PET–0003, The Petitioners, No. 1, attachment ''AMCA Petition to DOE Cover Letter and Petition [sic] 2020110'' at pp. 7–8)

The additional exclusions for embedded fans that are part of equipment listed in Section 6.4.1.1 of ASHRAE 90.1–2019 as requested by AMCA is included in the fan and blower exclusions to Section 6.5.3.1.3 of ASHRAE 90.1–2019 ''Fan Efficiency Requirements'' as listed in section in Section 6.5.3.1.3 of ASHRAE 90.1–2019 and presented in Table III–6 of this document.

TABLE III–6—EMBEDDED FAN AND BLOWERS EXCLUSIONS TO SECTION 6.5.3.1.3 OF ASHRAE 90.1–2019 ''FAN EFFICIENCY REQUIREMENTS''

Embedded fan and blowers exclusions to Section 6.5.3.1.3 of ASHRAE 90.1–2019 ''Fan Efficiency Requirements''	Included in the exclusion recommended by the Working Group?
Embedded fans and fan arrays with a combined motor nameplate horsepower of 5 hp or less or with a fan system electrical input power of 4.1 kW or less.	No.
Embedded fans that are part of equipment listed under Section 6.4.1.1	See Table III–7.
Embedded fans included in equipment bearing a third party-certified seal for air or energy performance of the equipment package.	No.

[28] The Working Group created a subgroup to propose potential embedded fan exclusions, which were subsequently voted on by the Working Group. The information used by the subgroup to develop the proposal is available in the fans energy conservation standard rulemaking docket. (Docket No. EERE–2013–BT–STD–0006, No. 125.2).

[29] AMCA 214–21 defines the ''minimal testable configuration'' as a fan having at least an impeller; shaft and bearings and/or driver to support the impeller; and its structure or its housing.

[30] As part of this recommendation, the Working Group also recommended that if a manufacturer purchases a standalone fan to incorporate in a product or in equipment, that manufacturer must ensure that the design operating range (or design point) of the embedded fan is within the certified operating range of the standalone fan and disclose the design operating range (or design point) of the embedded fan to the end-user. This issue does not relate to the test procedure and is not discussed in this document.

TABLE III–7—EQUIPMENT LISTED IN SECTION 6.4.1.1 OF ASHRAE 90.1–2019 "MINIMUM EQUIPMENT EFFICIENCIES—LISTED EQUIPMENT—STANDARD RATING AND OPERATING CONDITIONS"

Fans embedded in:	Included in the embedded fan exclusions recommended by the Working Group?
Electrically Operated Unitary Air Conditioners	Partially. This category includes equipment above 760,000 Btu/h. The exclusions in the term sheet apply only to fans embedded in equipment above 65,000 Btu/h and below 760,000 Btu/h (equivalent to 5.5 tons and 63.5 tons, respectively as stated in the term sheet). In addition, the term sheet specifies that the exclusions would apply only to embedded "supply and condenser fans."
Electrically Operated Air-Cooled Unitary Heat Pumps	Partially. This category includes equipment above 760,000 Btu/h. The exclusions in the term sheet apply only to fans embedded in equipment below 760,000 Btu/h. In addition, the term sheet specifies that the exclusion would apply only to embedded "supply and condenser fans."
Air-, water-, and evaporatively cooled Condensing Units	Yes, these fans are below 1 hp. In addition, it is specified in Table 6.8.1–1 of ASHRAE 90.1–2019 that this category only includes equipment greater than or equal to 135,000 Btu/h.
Water-Chilling Packages	No.
Electrically Operated Packaged Terminal Air Conditioners, Packaged Terminal Heat Pumps, Single-Package Vertical Air Conditioners, and Single-Package Vertical Heat Pumps.	Yes. However, the term sheet specifies that the exclusion would apply only to embedded "supply and condenser fans."
Room Air-conditioners and Air-conditioner Heat pumps	Yes. These fans are below 1 hp.
Warm-Air Furnaces and Combination Warm-Air Furnaces/Air-Conditioning Units, Warm-Air Duct Furnaces, and Unit Heaters.	No.
Gas- and Oil-Fired Boilers	Partially. Some of these fans are below 1 hp.
Heat-Rejection Equipment	Yes.
Electrically Operated Variable-Refrigerant-Flow Air Conditioners	Yes. However, the term sheet specifies that the exclusion would apply only to embedded "supply and condenser fans."
Electrically Operated Variable-Refrigerant-Flow and Applied Heat Pumps.	Partially. This category includes ground water source and ground source equipment that is not regulated by DOE and that was not included in the term sheet exclusions. In addition, the term sheet specifies that the exclusion would apply only to embedded "supply and condenser fans."
Floor-Mounted Air Conditioners and Condensing Units Serving Computer Rooms.	Partially. This category includes equipment greater than or equal to 760,000 Btu/h, which are not regulated by DOE.
Commercial Refrigerators, Commercial Freezers, and Refrigeration	Yes, these fans are below 1 hp.
Vapor-Compression-Based Indoor Pool Dehumidifiers	Yes, these fans are below 1 hp.
Electrically Operated direct-expansion dedicated outdoor air system Units, Single-Package and Remote Condenser, without Energy Recovery.	No.
Electrically Operated direct-expansion dedicated outdoor air system Units, Single-Package and Remote Condenser, with Energy Recovery.	No.
Electrically Operated Water-Source Heat Pumps	Partially. This category includes ground water source and ground source equipment that is not regulated by DOE and was not included in the term sheet exclusions. In addition, the term sheet specifies that the exclusion would apply only to embedded "supply and condenser fans."
Heat Pump and Heat Recovery Chiller Packages	No.
Ceiling-Mounted Computer-Room Air Conditioners	Partially. The term sheet only excludes embedded fans in computer room air conditioners that are subject to DOE energy conservation standards.
Walk-In Cooler and Freezer Display Door	Yes, these fans are below 1 hp.
Walk-In Cooler and Freezer Non-Display Door	Yes, these fans are below 1 hp.
Walk-In Cooler and Freezer Refrigeration System	Yes, these fans are below 1 hp.

As previously noted, in response to the April 2020 Notice of Petition, Greenheck commented in support of a scope consistent with the term sheet and with ASHRAE 90.1–2019 (Docket No. EERE–2020–BT–PET–0003, Greenheck, No. 6.1 at p. 2) Johnson Controls commented in support of the exclusions requested by the Petitioners (Docket No. EERE–2020–BT–PET–0003, Johnson Controls, No. 10 at pp. 1).

CTI commented in support of the exclusion of fans used in heat rejection equipment as requested by the Petitioners. CTI commented that this exclusion was included in the term sheet scope recommendation based on the widespread usage of equipment-level energy efficiency metrics; the low potential for energy savings; the potential unintended increases in fan and system energy use ; and the associated design challenges due to the very large size of fans used in heat rejection equipment. (Docket No. EERE–2020–BT–PET–0003, CTI, No. 11 at pp. 1–2)

AHRI commented in support of the Petitioners' request to exclude from the scope of the test procedure condenser fans embedded in commercial and industrial chillers, condensing units, and unregulated packaged air conditioners and heat pumps with cooling capacity greater than 760,000 Btu/h, consistent with Section 6.4.1.1 of ASHRAE 90.1–2019. AHRI also supported the exclusions listed in the

term sheet for heat rejection equipment, including but not limited to air cooled condensers, dry coolers, cooling towers, evaporative condensers, and hybrid wet/dry units. (Docket No. EERE–2020–BT–PET–0003, AHRI, No. 14 at p. 2) Further, AHRI commented in support of additional exclusions to exclude all fans in all regulated equipment and asserted that EPCA does not permit two standards to be applied to regulated equipment. AHRI stated that the list of equipment in Section 6.4.1.1 of ASHRAE 90.1–2019 strictly applies to air distribution equipment and does not include all regulated equipment incorporating fans, such as boilers. (Docket No. EERE–2020–BT–PET–0003, AHRI, No. 14 at p. 2) In addition, AHRI questioned the representativeness of applying a standalone fan metric for embedded fans in regulated equipment.[31] AHRI asserted that the standalone fan metric, after accounting for system effect, would not provide an appropriate basis for comparison of performance. (Docket No. EERE–2020–BT–PET–0003, AHRI, No. 14 at p. 2) Daikin commented in support of all of AHRI's comments on the petition. (Daikin, No. 8 at p. 1).

Lennox commented that fans embedded in DOE regulated HVACR equipment should be excluded from the scope to avoid duplicative burdens for HVACR equipment already subject to DOE regulation. (Docket No. EERE–2020–BT–PET–0003, Lennox, No. 5 at p. 3)

Several interested parties commented in support of an equipment level approach (*i.e.,* system approach) that would regulate the HVACR equipment rather than what they described as a component level approach. CTI commented that energy conservation standards based on already established equipment-level metrics are more effective at reducing energy consumption compared to energy savings obtained by using a fan efficiency metric, and at a lower regulatory burden. (Docket No. EERE–2020–BT–PET–0003, CTI, No. 11 at p. 2) Daikin commented that DOE had recently stated that it may seek to establish regulatory coverage over equipment, rather than the components in such equipment. (Docket No. EERE–2020–BT–PET–0003, Daikin, No. 8 at p. 1) In addition, Daikin commented that the purpose of the FEI established by AMCA 214 is to help drive fan sizing and better fan selection. Daikin commented that while there were benefits to improving fan sizing and incentivizing better fan selection for standalone fans, not all possible FEI improvement approaches are practical for embedded fans (*e.g.,* increasing fan size or increasing the number of fans). Daikin stated that certain equipment incorporating embedded fans must comply with multiple safety standards and performance standards. Daikin commented that embedded fans are carefully selected to adhere to such safety and performance standards, and that component sizes or the number of components cannot be altered to meet the needs of a component level test procedure. (Docket No. EERE–2020–BT–PET–0003, Daikin, No. 8 at p. 1)

Daikin generally supported the exclusions requested by the Petitioners, stating that such exclusions should be reflected in the scope of AMCA 214. (Docket No. EERE–2020–BT–PET–0003, Daikin, No. 8 at p. 1). CTI also commented that the exclusions requested by the Petitioners should be reflected in the scope of AMCA 214 and expressed concern that the draft AMCA 214 test standard[32] could allow for the inclusion of embedded fans at some point in the future. CTI further stated that AMCA 214 is not suitable for inclusion in a regulatory program due to testing and accuracy issues. CTI did not provide a description of these issues. (Docket No. EERE–2020–BT–PET–0003, CTI, No. 11 at p. 3)

In response to the October 2021 RFI, AHRI commented that there have been many changes since the conclusion of the Working Group. For example, the introduction of FEI in ASHRAE 90.1, the development of a new test procedure for FEI, and the publication of AMCA 214. AHRI commented that itis chiefly concerned with ensuring that the scope of coverage does not impose double regulation on covered equipment. AHRI commented that AMCA 214–21 does not specifically exclude embedded fans other than in the foreword (which states that ''AMCA Standard 214 primarily is for fans that are tested alone or with motors and drives; it does not apply to fans tested embedded inside of other equipment''); however, AHRI stated that there is no normative procedure for applying a stand-alone fan metric to embedded applications. (AHRI, No. 10 at p. 2)

In response to the October 2021 RFI, AHRI and Morrison commented that any fan and blower regulations should exclude all fans and blowers used in regulated equipment because EPCA does not permit two standards to be applied to a single federally regulated product. AHRI and Morrison cited DOE's discussion in a final rule published July 22, 2009[33] in which DOE stated, ''EPCA authorizes DOE to establish a performance standard or a single design standard. As such, a standard that establishes both a performance standard and a design requirement remain beyond the scope of DOE's legal authority.'' AHRI and Morrison, citing 42 U.S.C. 6313(a)(6)(C), asserted that introducing component regulation on regulated products creates a secondary redesign cycle contrary to EPCA. AHRI and Morrison also asserted that EPCA is clear that DOE is prohibited from setting a new efficiency standard on products within certain defined time limits. Specifically, AHRI and Morrison commented that DOE cannot set new efficiency standards for products manufactured after a date that is the later of (1) the date that is three years after publication of the final rule establishing a new standard; or (2) the date that is six years after the effective date of the current standard for a covered product, citing 42 U.S.C. 6313(a)(6)(C)(iv). AHRI and Morrison commented that introducing a fan regulation on top of a regulation for covered equipment would complicate the regulatory, design and compliance cycles. AHRI and Morrison added that clearly excluding fans in regulated products will help DOE comply with the legally mandated schedule and parameters laid out under EPCA. AHRI and Morrison additionally commented that DOE should maintain consistency in its rulemaking process and seek to establish regulatory coverage over equipment rather than the components in such equipment. (AHRI, No. 10 at pp. 3–4; Morrison, No. 8 at p. 2)

Morrison added that DOE should only regulate standalone fans and not those embedded in equipment since none of the referenced test methods are for embedded fans. Further, Morrison commented that the vast majority of fans manufactured by √Morrison are incorporated in HVAC equipment that already have energy efficiency measures that account for the fan energy, and thus should continue to be out of scope for this regulation. (Morrison, No. 8 at p. 1)

In its proposed regulation, the CEC proposes to exclude embedded fans, as defined in AMCA 214–21, including embedded fans in air curtain units.[34] In

[31] The AMCA 214–21 metric describes fan performance as tested in a standalone configuration (*i.e.* not installed inside other equipment).

[32] AMCA 214–21 had not yet published at the time of these comments.

[33] Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment. 74 FR 36312, 36322 (July 22, 2009).

[34] *See* Proposed regulatory language for Commercial and Industrial Fans and Blowers

its staff report, the CEC stated that its proposal would exclude fans embedded in regulated and nonregulated equipment where the main function is other than the movement of air, as long as the fan is not sold or offered for sale as a standalone product.[35] As reasons for exclusion, the CEC stated that these fans are either manufactured by an original equipment manufacturer (OEM), who embeds the fan in a piece of equipment where the main function is something other than the movement of air, or because they are manufactured for the purpose of being embedded into an appliance after market.[36] The CEC also discussed the potential complexity of testing embedded fans and the accuracy of the results. See section III.D.8 of this document for further discussion related to testing.[37]

DOE proposes to exclude fans embedded in equipment listed in Table III–5, as long as the fan is not distributed in commerce as a standalone product, consistent with the Working Group term sheet scope recommendations related to embedded fans. The equipment listed in Table III–5 includes equipment that is separately regulated by DOE (''covered equipment'') as well as non-covered equipment (*i.e.,* transportation refrigeration equipment, vacuum cleaners, heat rejection equipment, and air curtains).

Fans used in transportation equipment are often designed to accommodate the limited space available and are built following specific construction requirements to withstand shock and vibrations. These design constraints significantly limit potential opportunities for improvements in efficiency. Consistent with the Working Group term sheet (Docket No. EERE–2013–BT–STD–0006–0179, Recommendation #2 at p. 2), DOE proposes to exclude fans that are exclusively embedded in transport refrigeration (*i.e.,* trailer refrigeration, self-powered truck refrigeration, vehicle-powered truck refrigeration, and marine/rail container refrigeration) at this time.

DOE proposes to exclude fans that are exclusively embedded in vacuum cleaners. AHRI initially made this recommendation on the basis that these fans represent low energy savings potential due to their low operating hours. (Docket No. EERE–2013–BT–STD–0006; AHRI, Public Meeting Transcript, No. 166 at p. 11) Fans embedded in vacuums cleaners are not used to produce airflow. Rather, they are used to create a vacuum for material handling purposes (*i.e.,* moving dust, small particles etc.). DOE has tentatively determined that a clean air test using AMCA 210–16 would not result in a measurement of energy use or energy efficiency during a representative average use cycle. For this reason, and consistent with the Working Group term sheet scope recommendations, DOE proposes to exclude fans embedded in vacuum cleaners from the scope of the test procedure.

Fans used in heat rejection equipment are primarily fabricated in-house by the heat rejection equipment manufacturer and that these fans are not sold in a standalone configuration.[38] For this reason, and consistent with the Working Group term sheet scope recommendations, DOE proposes to exclude fans embedded in heat rejection equipment from the scope of the test procedure.

Air curtains are used in entrances to buildings or openings between two spaces conditioned at different temperatures. Their performance does not depend on the airpower alone, but on their ability to create a uniform airstream that separates two spaces from each other. Air curtains are subject to a separate AMCA testing standard.[39] This standard establishes uniform methods for the testing of an air curtain to determine aerodynamic performance in terms of airflow rate, outlet air velocity uniformity, power consumption, and air velocity projection. Air curtains include fans packaged with a motor, filter, outlet section (a nozzle, discharge grille, etc.), and in some cases a mounting plate, and/or an electric heater or water heater. The performance of fans embedded in air curtains is related to airflow rate, outlet air velocity uniformity, and air velocity projection as opposed to the airpower output alone, which is what is accounted for in AMCA 210–16. Therefore, DOE has tentatively determined that fans embedded in air curtain fans would necessitate consideration of a different metric to better capture the energy use of air curtain fans under a representative cycle of use. Therefore, DOE proposes that fans embedded in air curtains not be addressed in the proposed test procedure.

In addition, at this time, DOE proposes that the test procedure would exclude fans in covered equipment in which the fan energy use is already captured in the equipment specific test procedures. DOE is proposing to adopt an exclusion for fans embedded in equipment listed in Table III–5,[40] as long as the fan is not distributed in commerce as a standalone product. DOE proposes to also exclude fans embedded in direct-expansion dedicated outdoor systems (''DX–DOAS'') to reflect the DOE proposed test procedure and metric for DX–DOAS that, if adopted, would incorporate fan energy use. *See* 86 FR 72874, 72889–72890 (December 23, 2021). These proposed exclusions are consistent with the recommendations of the Working Group. The proposed approach would avoid regulating fans for which existing DOE regulations account for their energy use by excluding such fans from the test procedure if distributed solely embedded in the listed equipment. To the extent a fan is distributed in commerce as a stand-alone fan, and therefore is not limited to use in specific equipment, or embedded in equipment in which its energy use is not addressed in a DOE test procedure, such a fan would be subject to the DOE test procedure.

Table III–8 summarizes the exclusively embedded fans proposed for exclusions from the scope of the test procedure.

available in the following Docket: 22–AAER–01 at: *efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-AAER-01.*

[35] *See* CEC Commercial and Industrial Fans and Blowers Staff Report, Docket No. 22–AAER–01, TN# 241951, at p. 16.

[36] *Id.*

[37] See CEC Commercial and Industrial Fans and Blowers Staff Report, Docket No. 22–AAER–01, TN# 241951, at p. 30

[38] In some cases, the heat rejection equipment manufacturer may purchase the impeller and assemble the fan in a housing which is tied to the structure of the heat rejection equipment.

[39] AMCA, Standard 220–21, ''Laboratory Methods of Testing Air Curtains for Aerodynamic Performance Ratings,'' 2021. Available at *www.amca.org.*

[40] DOE notes that while the Working Group recommended to exclude fans in residential furnaces that are subject to DOE's energy conservation standard at 10 CFR 430.32(y), furnace fans are excluded from the definition of ''fan and blower'' and therefore do not need to be listed as a proposed exclusion.

TABLE III–8—EXCLUSIVELY EMBEDDED FANS PROPOSED FOR EXCLUSION FROM THE SCOPE OF THE TEST PROCEDURE

Fans exclusively embedded in:
Direct-expansion dedicated outdoor systems (''DX–DOASes'') subject to any DOE test procedures in appendix B to subpart F of part 431.*
Single-phase central air conditioners and heat pumps rated with a certified cooling capacity less than 65,000 British thermal units per hour (''Btu/h''), that are subject to DOE's energy conservation standard at 10 CFR 430.32(c).
Three-phase, air-cooled, small commercial packaged air-conditioning and heating equipment rated with a certified cooling capacity less than 65,000 Btu/h, that are subject to DOE's energy conservation standard at 10 CFR 431.97(b).
Transport refrigeration (*i.e.,* Trailer refrigeration, Self-powered truck refrigeration, Vehicle-powered truck refrigeration, Marine/Rail container refrigerant), and fans exclusively powered by fan combustion engines.
Vacuum cleaners.
Heat Rejection Equipment:
• Packaged evaporative open circuit cooling towers.
• Evaporative field-erected open circuit cooling towers.
• Packaged evaporative closed-circuit cooling towers.
• Evaporative field-erected closed-circuit cooling towers.
• Packaged evaporative condensers.
• Field-erected evaporative condensers.
• Packaged air-cooled (dry) coolers.
• Field-erected air-cooled (dry) coolers.
• Air-cooled steam condensers.
• Hybrid (water saving) versions of all of the previously listed equipment that contain both evaporative and air-cooled heat exchange sections.
Air curtains.
** Air-cooled commercial package air conditioners and heat pumps (CUAC, CUHP) with a certified cooling capacity between 5.5 tons (65,000 Btu/h) and 63.5 tons (760,000 Btu/h) that are subject to DOE's energy conservation standard at 10 CFR 431.97(b).
** Water-cooled and evaporatively-cooled commercial air conditioners and water-source commercial heat pumps that are subject to DOE's energy conservation standard at 10 CFR 431.97(b).
** Single package vertical air conditioners and heat pumps that are subject to DOE's energy conservation standard at 10 CFR 431.97(d).
** Packaged terminal air conditioners (PTAC) and packaged terminal heat pumps (PTHP) that are subject to DOE's energy conservation standard at 10 CFR 431.97(c).
** Computer room air conditioners that are subject to DOE's energy conservation standard at 10 CFR 431.97(e).
** Variable refrigerant flow multi-split air conditioners and heat pumps that are subject to DOE's energy conservation standard at 10 CFR 431.97(f).

** DX–DOASes are not currently subject to a DOE test procedure. However, there is an ongoing rulemaking to establish a test procedure for DX–DOASes that DOE anticipates will be finalized before the final rule of the fans and blowers rulemaking. Information about this rulemaking can be found at *regulations.gov* under the Docket Number EERE–2017–BT–TP–0018.

* The exclusion only applies to supply and condenser fans embedded in this equipment.

As discussed, DOE is proposing to exclude embedded fans that are not distributed in commerce as standalone fans. DOE acknowledges that in a number of instances, a standalone fan purchased by a manufacturer for incorporation into a unit of listed equipment may be indistinguishable based on physical features from a fan that is purchased by a manufacturer for incorporation into non-listed equipment or from a fan used as a standalone fan. During the ASRAC negotiations, AHRI conducted a survey of its members to determine the number of fans purchased versus manufactured by the equipment manufacturer. (Docket No. EERE–2013–BT–STD–0006, AHRI, No. 125.3, at p. 1) AHRI estimated that over 80 percent of all fans that are used as components across all commercial regulated equipment are manufactured by the equipment manufacturer. *Id.* This percentage was higher for commercial air-conditioning and heat pump equipment and was estimated to be between 94 and 99 percent. *Id.*

In order to provide additional specificity as to the fans that would be subject to the embedded fan exclusion, DOE proposes to use the term ''exclusively embedded fans'' to designate the fans covered by the embedded fan exclusion. DOE proposes to define ''exclusively embedded fan'' as: a fan or blower that is manufactured and incorporated into a product or equipment manufactured by the same manufacturer and that is exclusively distributed in commerce embedded in another product or equipment. Based on this information, DOE has tentatively determined that the vast majority of fans used as components in regulated commercial HVACR equipment would meet the proposed definition of exclusively embedded fan and would not be subject to the test procedure as proposed in this NOPR.

The following examples illustrate how the proposed definition of exclusively embedded fan would impact whether a fan must be tested and certified to DOE:

• If a manufacturer makes a fan and incorporates it into equipment that the manufacturer also makes, that fan would meet the definition of exclusively embedded fan. If the embedded fan is part of equipment listed in Table III–8 of this document, that fan would be excluded from the proposed scope of the test procedure so long as the manufacturer does not also sell that fan as a standalone fan. If the embedded fan is not part of equipment listed in Table III–8 of this document, the embedded fan would be included in the proposed scope of the test procedure and the fan would be subject to the test procedure.

• If Manufacturer A makes (or imports) a fan and then only sells it to Manufacturer B who then only distributes that fan in commerce embedded within a larger piece of equipment, that fan would not meet the definition of exclusively embedded fan (even if the equipment is listed in Table III–8 of this document), as it would be distributed in commerce as a standalone fan by Manufacturer A, and therefore the fan would be subject to the test procedure under the proposal.

• If a fan is exclusively imported as part of a larger piece of equipment, that fan would meet the definition of exclusively embedded fan. If the embedded fan is part of equipment listed in Table III–8 of this document, that fan would be excluded from the proposed scope of applicability of the test procedure. If the embedded fan is not part of equipment listed in Table III–8 of this document, the embedded fan would be included in the proposed

scope of applicability of the test procedure.

DOE requests comment on the proposed exclusively embedded fan exclusions listed in Table III–8 of this document.

DOE seeks information on whether it is common practice for standalone fan manufacturers that supply fans to HVACR equipment manufacturers to test these fans in accordance with AMCA 214–21 or AMCA 210–16 in a standalone configuration, and to provide fan performance data for these fans.

DOE seeks information on whether it is common practice for manufacturers of HVACR equipment that manufacture and incorporate fans into their equipment to test these fans in accordance with AMCA 214–21 or AMCA 210–16 in a standalone configuration, and to provide fan performance data to their customers.

DOE seeks comment on the estimates provided for the percentage of fans that are incorporated in HVACR equipment that are purchased by the HVACR equipment manufacturer vs. manufactured in-house.

DOE seeks comment and input regarding any physical features that could be used to distinguish a fan that is exclusively designed for use in equipment listed in Table III–8 of this document.

DOE seeks comment on the proposed definition of ''exclusively embedded fan''.

4. Air Circulating Fans

In the October 2021 RFI, DOE requested information regarding potential test procedures for fans and blowers, including air circulating fans, specifically air circulating fan heads (''ACFHs''), and requested feedback on definitions provided in AMCA 230–15 and on the scope of any potential test procedure for air circulating fans. 86 FR 54412, 54414–54415. DOE described ACFHs as designed to provide concentrated directional airflow and consisting of a motor, impeller and guard for mounting on a pedestal, wall mount bracket, ceiling mount bracket, I-beam bracket or other mounting means. 86 FR 54412, 54414. DOE stated that ACFHs are different from ceiling fans, which are designed to circulate air rather than provide concentrated directional airflow; and as a result, ACFHs have lower diameter-to-maximum operating speed ratio (expressed in inches per revolutions per minute (''in/RPM'')) than ceiling fans. *Id.* Comments received related to definitions are discussed in section III.B.4 of this document. As discussed in section III.B.4, DOE proposes to define air circulating fans and related terms.

AMCA commented in support of developing test procedures for ACFHs. AMCA recommended that for clarity, repeatability, and market confidence, DOE should harmonize with IEC 60879:2019 ''Comfort fans and regulators for household and similar purposes—Methods for measuring performance,'' and set a simple electrical-input-power threshold by excluding ACFHs less than 125 Watts (''W'') from a commercial and industrial ACFH test procedure. AMCA stated this would cover the vast majority of fans used in commercial and industrial applications and would exclude fans mostly used for residential applications. (AMCA, No. 6 at p. 6) In addition, AMCA commented in support of developing a test procedure for additional categories of air circulating fans defined in AMCA 230–15 (*i.e.,* personnel coolers, box fans, and table fans),[41] using AMCA 230–15 as the basis for a test procedure and including fans of greater than or equal to 125 W electrical input power. AMCA also stated that, should DOE develop energy conservation standards for air circulating fans, all categories of circulating fans should be subject to the same efficiency standard and lower wattage scope limit. (AMCA, No. 6 at p. 6) AMCA commented that impeller diameter is not an appropriate criteria to use to delimit the scope of a potential test procedure for ACF, specifically for ACFHs. AMCA commented that typical impeller diameters for ACFHs offered for sale in the United States range from 12 inches to 36 inches; however, there is no practical reason that an ACFH with a diameter outside that range could not be manufactured and/or sold. AMCA stated that limiting the DOE test procedure to specific diameters could encourage the introduction of fans outside of the covered diameters into the marketplace. AMCA added that typical motor sizes range from 1/10 hp to 2/3 hp, with 1/10, 1/8, 1/4, 1/3, 1/2, and 2/3 hp being the most common; but because there is no mandated test procedure and reporting requirements, fan electrical-input-power data is not readily available for the majority of ACFHs and cannot be estimated using the motor horsepower. AMCA commented that ACFH motors typically are loaded above their nameplate horsepower, such that simply multiplying the published hp by the conversion factor of 746 Watts per hp and dividing by a nominal motor efficiency does not provide a useful input-power estimate. (AMCA, No. 6 at p. 7) AMCA stated that IEC 60879:2019 covers additional product classes, such as ''tower fans'' and ''bladeless fans'' and that these categories of fans should be excluded from the test procedure. (AMCA, No. 6 at p. 6)

ASAP, ACEEE, NRDC commented that additional categories of air circulating fans other than ACFHs, such as personnel coolers, box fans, and table fans, meet the definition of ''fan and blower'' and thus should be included in the test procedure. ASAP, ACEEE, NRDC added that these additional air circulating fan categories are covered in the existing AMCA 230–15 test procedure for air circulating fans, such that it is feasible to include them within the scope of the DOE test procedure. ASAP, ACEEE, NRDC commented that generally, air circulating fans are fans used to circulate air within a confined space for use in agriculture, manufacturing, etc. and estimated the total global market for all fans and blowers to be approximately $20 billion, while agricultural ventilation, a major market for air circulating fans, is expected to reach $1.3 billion by 2027. ASAP, ACEEE, NRDC commented that establishing standardized DOE test procedures and efficiency ratings for air circulating fans will ensure that purchasers have access to comparable information about efficiency, enabling informed purchasing decisions. (ASAP, ACEEE, NRDC, No. 7 at p. 1) ASAP, ACEEE, NRDC supported limiting the definition of air circulating fans to input powers of 125 W and above, stating that this would be consistent with IEC 60879:20195 and fan standards in the European Union. ASAP, ACEEE, NRDC added that a minimum input power cut-off of 125 W is sufficient to reasonably distinguish air circulating fans that are to any significant extent distributed in commerce for industrial or commercial use. (ASAP, ACEEE, NRDC, No. 7 at p. 2)

The CA IOUs recommended that DOE regulate all commercial air circulating fans not currently covered, which could be defined as having a minimum power draw threshold such as 125 W. Additionally, the CA IOUs stated that personnel and agricultural fans that have solid housings or that may not meet the diameter-to maximum

[41] AMCA 230–15 defines ''personnel cooler'' as a fan used in shops, factories, etc., generally supplied with wheels or casters on the housing or frame to aid in portability, and with motor and impeller enclosed in a common guard and shroud; ''box fan'' as a fan used in an office or residential application and having the motor and impeller enclosed in an approximately square box frame having a handle; and ''table fan'' as a fan intended for use on a desk, table or countertop, and which may also be provided with the means for mounting to a wall. *See* Sections 5.1.2 through 5.1.5 of AMCA 230–15.

operating speed ratio [42] should be regulated, but are not considered ACFHs. The CA IOUs further commented that there is support by the industry to regulate all commercial air circulating fans, and they recommended that DOE undertake an additional rulemaking(s) to cover them. (CA IOUs, No. 9 at p. 3)

NEEA recommended that DOE consider evaluating efficiency standards and test procedures for additional categories of air circulating fans, such as industrial personnel coolers, box fans, and table fans that meet the definition of circulating fan. NEAA stated that the RFI focused primarily on ACFHs, and that other, non-ceiling categories of air circulating fans such as industrial personnel coolers, box fans, and table fans fall within the definition of a ''fan'' as defined in the final determination published on August 19, 2021. NEEA asserted that DOE has the authority to develop an efficiency standard for these types of equipment. NEEA supports the development of efficiency standards and test procedures for these industrial equipment categories and recommended that DOE consider regulating other fans listed in AMCA 230–15 under the same standard and utilize the same test procedure. NEEA additionally commented that with this scope expansion, DOE has the potential to influence the market towards more efficient technologies where possible and could realize significant energy savings for these equipment categories. (NEEA, No. 11 at p. 2)

MEP recommended that the definition for an ACFH should include a requirement for polyphase electric current with a fan shaft power greater than 3 hp, to avoid including ''residential fans'' in regulations and to align ACFHs with the upper limit of the small electric motors hp range as presented in § 431.446(a). (MEP, No. 5 at p. 1)

In response to an energy conservation standards RFI published on February 8, 2022 (''February 2022 ECS RFI''; 87 FR 7048), ASAP, ACEEE, NRDC, and NEEA stated that, should very small-diameter (''VSD'') ceiling fans not be included in the scope of the ongoing ceiling fan rulemaking, DOE should cover them as ACFHs under the fans and blowers rulemaking. These commenters supported this by stating that, since the diameter-to-maximum operating speed ratios of VSDs are often less than 0.06, they would not qualify as ceiling fans according to the ceiling fan definition in the proposed ceiling fan scope, but would qualify as ACFHs. They also commented that VSDs and ACFHs have similar physical characteristics. (Docket No. EERE–2022–BT–STD–0002, ASAP, ACEEE, NRDC, and NEEA, No. 6 at pp. 2–3)

In response to the February 2022 ECS RFI, ebm papst stated that fan airflow rate can be reliably determined for air circulating fans using the AMCA 230 testing method, particularly for air circulating fans with an input power greater than 125 W. (Docket No. EERE–2022–BT–STD–0002, ebm-papst, No. 8 at p. 2)

AMCA 230–15 (with errata) does not include any limitation in terms of input power of the air circulating fans that can be tested in accordance with the test procedure. The AMCA committee is considering limiting the scope of AMCA 230–15 (with errata) to air circulating fans with input power of 125 W and above to focus on commercial and industrial fan applications and exclude residential fans such as tower fans and bladeless fans.

DOE has tentatively determined that the proposed test procedure would provide a representative measurement of energy use or energy efficiency during a representative average use cycle for all air circulating fans as defined as proposed in section III.B.4 of this document. Therefore, at this time, DOE proposes to include all categories of air circulating fans in the scope of the proposed test procedure; *i.e.,* including equipment with input power less than 125 W. Should DOE identify additional information to justify excluding fans with input power less than 125 W from the scope (or any other power limit that may be justified), DOE may consider applying a power limit in the final rule as considered by the AMCA committee and supported by stakeholders. In addition, DOE may consider specifying that the 125 W corresponds to the air circulating fan's input power at maximum speed.

MEP recommended that the scope of a DOE test procedure should only include products exclusively used to move air. MEP commented that products that perform additional combustion, humidification, dehumidification, heating, or cooling functions should be excluded from this test procedure. MEP added that the rationale for this recommendation is found in the foreword of AMCA 214–21, which states, ''AMCA Standard 214 primarily is for fans that are tested alone or with motors and drives; it does not apply to fans tested embedded inside of other equipment''. MEP also stated that fans used in supplementary electric heater products and portable electric heaters should also be excluded from the fan regulations, asserting that any inefficiencies of supplementary electric heater products and portable electric heaters would serve to provide heat to a space in addition to that which is supplied by a primary electric heater.[43] (MEP, No. 5 at p. 2)

DOE's proposed test procedure for air circulating fans, if finalized, would apply to the equipment that meets the definition of fan and blower. The air circulating fan would be tested in a standalone configuration (*i.e.,* not incorporated inside other equipment) in accordance with the proposed DOE test procedure, which would be based on AMCA 214–21.

DOE requests comments on the proposed scope of applicability of the test procedure for air circulating fans.

5. Non-Electric Drivers

Some fans operate with non-electric drivers, such as engines or generators, and such fans may be used in non-stationary applications or stationary applications. The Working Group recommended that DOE exclude fans that are exclusively powered by internal combustion engines from the test procedure and related energy conservation standards. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #2, at p. 2)

AMCA 214–21 does not provide for the testing of fans and blowers powered by internal combustion engines. In order to measure the energy efficiency or energy use the energy performance of non-electric drivers during a representative average use cycle, separate test methods would be necessary for each type of driver (*e.g.,* engine, generators). DOE is not currently aware of a relevant industry test procedure and does not have information regarding the test set-up required to test fans powered by internal combustion engines. As such, DOE is not proposing test procedures for fans and blowers powered exclusively by an internal combustion engine at this time, regardless of whether such fan or blower is used in a stationary or non-stationary application.

Certain bare-shaft fans can be powered by either electric drivers (*i.e.,* motors) or non-electric drivers. DOE has tentatively determined that to the extent that such a fan is powered by an electric driver, the proposed test procedure would provide for measurement of the energy efficiency or energy use the

[42] As discussed in section I.A.4 of this document, ACFH have a maximum diameter-to maximum operating speed ratio of 0.06 inches per rotations per minute (''in/RPM'').

[43] MEP referenced Direct Heating equipment rulemakings: 85 FR 77017 and 86 FR 20053.

energy performance of non-electric drivers during a representative average use cycle when powered by an electric driver. As such, DOE is proposing that such a fan would be subject to the proposed test procedure.

DOE requests comment on excluding fans and blowers that are exclusively powered by internal combustion engines from the scope of this test procedure and associated energy conservation standards.

DOE requests feedback and information on the physical features that would help distinguish fans and blowers that are exclusively powered by internal combustion engines from other fans and blowers.

6. Replacement Parts

The Working Group did not address the issue of replacement parts in the term sheet. (Docket EERE–2013–BT–TP–0055; No. 179, Appendix F at p. 19).

Clarage commented that no exemptions should be made for replacement parts. (Docket EERE–2013–BT–STD–0006; Clarage, Public Meeting Transcript, No. 161 at p. 43) The CA IOUs commented that no exemptions should be made for replacement fans (Docket EERE–2013–BT–STD–0006; CA IOUs, Public Meeting Transcript, No. 163 at p. 185)

ebm-papst commented that replacements for identical fan models that are not compliant should be exempt from the regulation for no more than 5 years. (Docket EERE–2013–BT–STD–0006; ebm-papst, No. 152 at p. 3)

Several stakeholders commented that replacement fans for fans embedded in larger pieces of equipment should be exempted from the test procedure and energy conservation standard rulemaking. Ingersoll Rand/Trane commented that replacement fans used as components should be exempted. Ingersoll Rand/Trane stated that replacement fans under the new regulation may not be suitable for the existing equipment, and thus replacement of the equipment may be required in order for the fan to comply. In addition, Ingersoll Rand/Trane expressed safety concerns that could arise from using replacement fans on existing equipment that serves applications such as combustion air, or heating applications. (Docket EERE–2013–BT–STD–0006; Ingersoll Rand/Trane, No. 153 at p. 5) AHRI commented that replacement fans for fans embedded in equipment made before the compliance date should be exempt because the life of the equipment is longer than the life of the fan. In addition, AHRI noted that most replacement fan parts are supplied from the original equipment manufacturers and are not sold in a testable configuration; therefore the exemption of replacement fans is unlikely to create enforcement loopholes. (Docket EERE–2013–BT–STD–0006; AHRI, No. 158 at p. 7)

AMCA commented that no consensus was obtained amongst AMCA's membership regarding an approach for replacement fans. (Docket EERE–2013–BT–TP–0006; AMCA, Public Meeting Transcript, No. 164 at p. 325) In response to the October 2021 RFI, AHRI and Morrison commented that the scope of any fan regulation should be limited to standalone fans and should recognize the utility of replacement parts. These commenters stated that HVACR and water heating equipment are built, tested, rated, and certified as a completed design, which is reliant upon a specific set of components, and that modifying these components changes the performance of the equipment. AHRI and Morrison also commented that in many cases, such as supply air fans for gas fired heat exchangers, hot water coils or electric resistance units, there are a variety of equipment safety and performance standards affected by the precisely engineered fan performance. AHRI and Morrison stated that if a replacement fan is made non-compliant because of new regulations, the continued safe use of the system would be called into question and the negative consequences could be catastrophic. (AHRI, No. 10 at p. 3; Morrison, No. 8 at p. 2) Morrison commented that replacement parts used in HVAC equipment should therefore be out of scope for safety reasons. (Morrison, No. 8 at p. 2)

As discussed, fans and blowers as defined consist of an impeller, a shaft and bearings and/or driver to support the impeller, as well as a structure or housing. They may include a transmission, driver, and/or motor controller. The proposed test procedure would apply to the fan and blower as complete equipment (*i.e.,* inclusive of all the parts listed in the definition) and not to a single component of the fan (*e.g.,* the impeller alone). DOE proposes to include all fans and blowers that: (1) meet the criteria for scope inclusion as described in section III.A.1 of this document, and (2) are not proposed for exclusion as listed in section III.A.2 of this document or Table III–8 of this document, regardless of whether that fan is a replacement fan. DOE is not proposing to include fan parts (*e.g.,* impeller, housing) in the scope of the test procedure, as such components do not meet the definition of fan and blower. At this time, DOE is not proposing energy conservation standards for fans and blowers, and the proposed test procedure would not impact the availability of current models. The proposed test procedure, if final, would not set any energy conservation standards and would not result in any non-compliant fans.

B. Definitions

This section discusses DOE's proposed definitions for specific terms used in the proposed test procedure.

1. Fan and Blower Categories

DOE proposes to define several fan and blower categories to support the scope proposals described in section III.A of this document.

As previously discussed, the classification of fans and blowers recommended by the Working Group for coverage under a test procedure and the corresponding terms and definitions in AMCA 214–21 and in the CEC proposed regulations are presented in Table III–1 of this document. The CEC definitions are similar to the AMCA 214–21 definitions. The inclusion of additional language in the CEC definitions to indicate a fan's intended application or whether a fan's inlet or outlet is (optionally, as relevant) ducted is informative, but does not further distinguish the terms. In addition, for axial panel fans, the CEC definitions specifies that the housing is typically mounted to a wall separating two spaces, and the fans are used to increase the pressure across this wall. Inlets and outlets are not ducted.

DOE proposes to utilize the terminology and definitions specified in AMCA 214–21 to define the categories of fans and blowers proposed in the scope of applicability of the test procedure and tested using AMCA 210–16 as follows: (1) axial inline fan; (2) centrifugal housed fan; (3) centrifugal unhoused fan; (4) centrifugal inline fan; (5) radial-housed fan; and (6) PRVs. (See Table III–1 of this document). DOE proposes to modify the definition of axial panel fan as provided in AMCA 214–21 to distinguish these fans from air circulating axial panel fans.[44] The addition in the CEC definitions specifies that axial panel fans are typically mounted to a wall separating two spaces, and the fans are used to increase the pressure across this wall. This description distinguishes axial panel fans from axial air circulating panel fans, which do not have provisions for connection to ducting or separation of the fan inlet from its outlet. However,

[44] The AMCA 214–21 and CEC definitions for these terms appear in Table III–1 of this document.

the CEC distinction is based on how the fan is installed. Instead, DOE proposes to rely on physical features and to define axial panel fans as follows:

Axial panel fans means an axial fan, without cylindrical housing, that includes a panel, orifice plate, or ring with brackets for mounting through a wall, ceiling, or other structure that separates the fan's inlet from its outlet.

In addition, to support the exclusions proposed in section III.A.2 of this document, and clarify which fans would fall under the proposed exclusions. DOE proposes a definition of ''safety fan'', as discussed in section III.B.3 of this document. DOE also proposes to adopt definitions of the terms ''induced flow fan'' and ''jet fan'' as established in AMCA 214–21. In addition, DOE proposes to define ''cross-flow fan'' as defined in AMCA 208–18. See section III.A.2 of this document.

DOE requests comment on the definitions proposed for the following fan categories: (1) axial inline fan; (2) axial panel fan; (3) centrifugal housed fan; (4) centrifugal unhoused fan; (5) centrifugal inline fan; (6) radial-housed fan; and (7) PRVs, consistent with AMCA 214–21. If any of the definitions are not appropriate, DOE seeks input on how they should be amended and why.

DOE seeks input and comments on the proposed definitions of (1) induced flow fan, (2) jet fan, and (3) cross-flow fan consistent with AMCA 214–21 and AMCA 208–18. If any of the definitions are not appropriate, DOE seeks input on how they should be amended and why.

2. Basic Model

The basic model concept allows manufacturers to group like models for the purpose of making representations of energy efficiency and/or energy use, including for the purpose of demonstrating compliance with DOE's energy conservation standards to the extent DOE has established such standards. The concept of basic model may allow manufacturers to reduce the amount of testing they must do to rate the energy use or efficiency of their product. DOE's current regulations provide equipment-specific basic model definitions, which typically state that models within the same basic model group have ''essentially identical'' energy or water use characteristics; as well as a general definition that provides (with some exceptions noted in the regulatory text) that a basic model means ''all units of a given type of product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.'' *See for example* 10 CFR 430.2; 431.62, 431.152, 431.192, 431.202, 431.222, and 431.292.

DOE proposes to add a definition of basic model specific to fans and blowers that specifies a ''basic model'' as ''all units of fans and blowers manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (*e.g.,* aerodynamic) characteristics that affect energy consumption.''

Fan and blower manufacturers may offer for sale the same bare shaft fan assembled, packaged, or integrated with different motor, transmission, and control combinations. Based on DOE's proposed basic model definition, the same bare shaft fan, sold with different combinations of motor, transmission, and controls (or as a bare shaft fan) could be grouped under the same basic model. In addition, fan manufacturers would be able to elect to group similar individual fan models within the same basic model under the same ratings to reduce testing burden, provided that all representations regarding the energy use of fans within that basic model are identical and are based on the most consumptive unit. *See* 76 FR 12422, 12428–12429 (March 7, 2011).[45] Manufacturers would have the option to certify separate ratings for each combination of bare shaft fan, motor, transmission and/or control in order to make separate representations of the performance of each specific combination.

In view of the substantial number of fans that could be subject to an individual certification requirement for each basic model, the Working Group discussed various options to reduce the burden of certification when the basic models only differed in terms of a single bare shaft fan feature, *e.g.,* number of blades on the impeller, wheel width, or pitch angle as opposed to a different motor, transmission or control combination. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 162 at pp. 24–63. One option discussed was to only require testing and certifying a fan model based on a single value or setting of the bare shaft fan feature, and only publishing one rating for that fan model, without differentiating for the variations in the given bare shaft fan feature. However, because this would provide inaccurate performance information, this option was not further considered. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 162, at pp. 45–46)

A second option that was discussed was to require that manufacturers certify a limited number of basic models and provide DOE with a mathematical formula to enable interpolating results for non-certified models. However, because these formulas can be proprietary algorithms, this option was not further considered. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 162 at p. 38 and at p. 48)

A third option that was discussed was to require manufacturers to certify a limited number of basic models and to provide DOE with a statement that all other fan variations based on changing one of the bare shaft fan's features was also compliant. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 162 at pp. 48, 61) For example, a manufacturer would be required to certify one basic model at the feature-setting corresponding to the highest energy consumption and to submit to DOE a statement certifying that all other fan variations based on changing that one feature were also compliant. Another example would be to require manufacturers to certify the bounds of a range, for example maximum and minimum impeller width, and submit a statement that any fan model in between would be compliant. Under this option, manufacturers would still be allowed to make representations of the FEP and FEI of the non-certified basic models. (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 162 at p. 61)

A fourth option discussed was to allow manufacturers to be able to submit an executable version of their selection programs to DOE for certification instead of submitting a separate compliance statement and certification report for each individual basic model, or variation of a basic model which would constitute a new basic model. In addition, because all manufacturers may not have a selection software, the Working Group discussed that the equivalent alternative would be to have to submit individual

[45] These provision would allow manufacturers to group individual models with essentially identical, but not exactly the same, energy performance characteristics into a basic model to reduce testing burden. Under DOE's certification requirements, all the individual models within a basic model identified in a certification report as being the same basic model must have the same certified efficiency rating and use the same test data underlying the certified rating. The March 7, 2011, final rule also established that the efficiency rating of a basic model must be based on the least efficient or most energy consuming individual model *(i.e.,* all individual models within a basic model must be at least as energy efficient as the certified rating). 76 FR 12422, 12428–12429.

certification statements and reports for each individual basic model and any of their variations that would constitute a new basic model. Test results for each basic model would need to be provided in a tabular format, with the possibility of replacing the tabular format by equations providing equivalent results (Docket No. EERE–2013–BT–STD–0006; Public Meeting Transcript, No. 162, at pp. 62–77)

This fourth and last option was the one recommended by the Working Group. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #26, at p. 13) Specifically, AMCA recommended that DOE use a process similar to the Electronic Catalog Checking System (referred to as ''ECAT'') used by AMCA to check the validity of fans offered for sale in manufacturer selection programs. AMCA suggested that DOE use ECAT or a comparable system to evaluate selection software that represents what manufacturers offer for sale. (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 168 at p. 2) AMCA added that their members are especially concerned with how manufacturers would certify fans with partial-width wheels and reiterated that their preference is to allow submission of selection software, or to tie each sale to a certified full width model with an AEDM to simplify certification of a modified certified fan after production. AMCA explained that very few partial-width wheel fans are likely to ever be produced twice, however, manufacturers offer them for sale using selection programs, displaying and documenting their performance to customers. (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 169 at p. 5)

Some manufacturers may distribute in commerce a fan model that can be ''configured.'' For example, an adjustable-pitch axial fan of a given size may be offered at 30 different blade pitches. Similarly, a centrifugal fan of a given size may be offered in small increments of impeller widths and impeller diameters without changing the housing size. As each blade pitch angle is a variation of the same fan model, DOE proposes that all blade pitches of a certain size adjustable-pitch axial fan may be represented as a single basic model.

Similar to the approach taken for pumps for trimmed impellers (*see* 81 FR 4086, 4092–4093 (January 26, 2016), DOE proposes that, for centrifugal fans, manufacturers represent efficiency at the full-impeller width (*i.e.,* 100 percent impeller width) and full-impeller diameter (*i.e.,* 100 percent impeller diameter). Fan performance information is typically provided at 100 percent impeller width and 100 percent impeller diameter in manufacturer product literature. Additionally, DOE proposes that all variations of a given full-size impeller width and full-size impeller diameter may be considered to be part of a single basic model represented by the fan with the full-size impeller width and full-size diameter. As such, DOE proposes to define ''full-width impeller'' and ''full-diameter impeller'' as ''the maximum impeller width and the maximum impeller diameter with which a given fan basic model is distributed in commerce.'' The grouping of impeller diameter variation under the same basic model would not allow grouping of fans of different full-impeller size together. Rather, the proposal would capture small increments of impeller widths and impeller diameters (without changing the housing or structure of the fan). For example, if a manufacturer offers the same fan model in the following full-impeller sizes: 60, 70, 80, and 90 inches, each full-impeller size would constitute a separate basic model. However, a fan with an impeller trimmed to 69 inches could be grouped with the same 70-inch untrimmed fan.

In summary, DOE proposes to define ''basic model'' as meaning ''all units of fans and blowers manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (*e.g.,* aerodynamic) characteristics that affect energy consumption. In addition: (1) all variations of blade pitches of an adjustable-pitch axial fan may be considered a single basic model; and (2) all variations of impeller widths and impeller diameters of a given full-width impeller and full-diameter impeller centrifugal fan may be considered a single basic model.''

DOE believes this approach will address concerns expressed by commenters regarding the potentially large number of models that would need to be considered.

DOE requests comment on the proposed definition of basic model, with respect to fans and blowers.

3. Safety Fans

DOE proposes a definition of safety fan to support the exclusion for safety fans proposed in section III.A.2 of this document.

In the energy conservation standards framework document published February 1, 2013, DOE presented a definition for safety fans, as follows: ''an axial or centrifugal fan designed for use in applications requiring extra safety measures, such as: (a) those designed to operate in potentially explosive atmospheres; (b) those designed for emergency use only, at short-time duty, with regard to fire safety requirements; (c) those designed specifically to operate where the temperature of gases being moved exceed 500 °F; and (d) those designed for toxic, highly corrosive, or flammable environments with abrasive substances.'' (Docket No. EERE–2013–BT–STD–0006, No. 1, at p. 9) This definition was based on the European Commission Regulation No. EU 327/2011.[46]

The Working Group recommended to exclude safety fans and further included a recommended definition for these fans, consistent with the European definition as follows: fans designed for use in applications requiring extra safety measures, such as: (a) those designed to operate in potentially explosive atmospheres (''ATEX'' fans);[47] (b) those designed for emergency use only, at short-time duty, with regard to fire safety requirements (*e.g.,* smoke extraction fans, emergency reversible tunnel fans); (c) those designed specifically to operate where the temperature of gases being moved exceed 200 °F;[48] or (d) those designed for use in toxic, highly corrosive, or flammable environments [or in environments] with abrasive substances (*e.g.* NQ–1).[49] (Docket No. EERE–2013–

[46] The definition from the European Commission Regulation No. EU 327/2011 is provided in Article 1, Section 3 of the European Commission Regulation No. EU 327/2011 which defines safety fans as (1) Fans designed specifically to operate in potentially explosive atmospheres; (2) Fans designed for emergency use only, at short-time duty, with regard to fire safety requirements; (3) Fans designed specifically to operate: (a) Where temperatures of the gas being moved exceed 100 °C; (b) Where ambient temperatures for the motor, if located outside the gas airstream, driving the fan exceed 65 °C; (c) Where the annual average temperature of the gas being moved and/or the operating ambient temperature for the motor, if located outside the gas stream, are lower than −40 °C; (d) In toxic, highly corrosive or flammable environments or in environments with abrasive substances. *See eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R0327.*

[47] ATEX Directive 2014/34/EU covers equipment and protective systems intended for use in potentially explosive atmospheres or ''Atmosphere Explosive'' (''ATEX'').

[48] The temperature limit in the safety fan definition as written in the term sheet should have been of 200 °C (392 °F), and not 200 °F. As specified in the term sheet, the intent of the Working Group was to align the safety fan definition with the European definition. The limit of 200 °C corresponds to ''high temperature fans'' as defined in EN 12101–3:2002 ''Smoke and heat control systems. Specification for powered smoke and heat exhaust ventilators'', class F200 (resistant to 200 °C during 20 minutes) and to the ''T3'' temperature classification in NFPA 70 (National Electrical Code, NEC) article 500 and 505.

[49] Fans for nuclear applications were discussed during the July 21, 2015 meeting of the Working

Continued

BT–STD–0006; No. 179, Recommendation #2, at p. 2; No. 179, Appendix D, at p. 17)

To help identify safety fans, the Working Group relied on the description of physical characteristics, third party testing, or third party verification terms such as ATEX and NQA–1 to identify nuclear fans. The Working Group stated that the definition recommended in appendix D may be subject to potential edits necessary to accomplish the same intent. *Id.*

After publication of the term sheet, AMCA commented, with regard to safety fans, that fans for nuclear installations should be exempted from the rulemaking scope. (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 169 at p. 3). In addition, AMCA noted that Working Group members agreed that the high temperature limit for fans should be set at 200 °C, rather than 200 °F, which is the temperature limit in the term sheet. (Docket No. EERE–2013–BT–STD–0006; AMCA, No. 169 at p. 4).

As discussed in section III.A.2 of this document, the exceptions to section 6.5.3.1.3 (''Fan Efficiency Requirements'') of ASHRAE 90.1–2019 related to safety fans include: fans used for moving gases at temperatures above 482 °F (equivalent to 250°C); reversible fans used for tunnel ventilation; and fans that are intended to only operate during emergency conditions.

The CEC has proposed the following definition of safety fan: (1) a fan that is designed and marketed to operate only at or above 482 °F (250 °C); (2) a reversible axial fan in cylindrical housing that is designed and marketed for use in ducted tunnel ventilation that will reverse operations under emergency ventilation conditions; (3) a fan bearing an Underwriter Laboratories or Electric Testing Laboratories listing for ''Power Ventilators for Smoke Control Systems''; (4) an open discharge exhaust fan with integral discharge nozzles which develop or maintain a minimum discharge velocity of 3000 feet per minute (''FPM''); (5) a fan constructed in accordance with AMCA type A or B spark resistant construction as defined in ANSI/AMCA Standard 99–16 Standards Handbook; (6) a fan designed and marketed for use in explosive atmospheres and tested and marked according to EN 13463–1:2001 Non-electrical Equipment for Potentially Explosive Atmospheres; or (7) an electric-motor-driven- Positive Pressure Ventilator as defined in ANSI/AMCA Standard 240–15 Laboratory Methods of Testing Positive Pressure Ventilators for Aerodynamic Performance Rating.[50]

Regarding item (1) of the CEC definition, the temperature limit in the CEC definition is 250 °C, compared to 200 °C recommended in the term sheet. This higher temperature aligns with the exceptions to Section 6.5.3.1.3 of ASHRAE 90.1–2019 ''Fan Efficiency Requirements,'' which excludes fans used for moving gases at temperatures above 482 °F (equivalent to 250°C). Items (2), (3), (5),[51] and (6) of the CEC definition describe fans that are used in explosive atmospheres or for smoke extraction. Item (4) of the CEC definition includes the minimum discharge velocity of 3000 FPM, which corresponds to the minimum safe discharge velocity per ANSI Z9.5–2012 ''Laboratory Ventilation,'' [52] which describes fans that are used in laboratory environments. Finally, item (7) of the CEC definition, which relates to positive pressure ventilator fans, describes fans that are used (typically by firefighters) to remove heat and combustion products from a structure. Positive pressure ventilator fans are excluded from AMCA 210–16 and are tested per AMCA 240–15, Laboratory Methods of Testing Positive Pressure Ventilators for Aerodynamic Performance Rating.

Based on a review of the existing industry and regulatory definitions of ''safety fan,'' DOE has tentatively determined that the definition proposed by the CEC is representative of the equipment considered ''safety fans''; *i.e.,* fans that can operate at high temperatures, fans that are used in explosive atmospheres or for smoke extraction, fans that are used in laboratory environments, and fans used to remove heat and combustion products from a structure. Therefore, DOE proposes to adopt a definition in line with the definition proposed by the CEC with the following edits. Regarding item (1) of the CEC definition: DOE proposes not to include the term ''only'' from ''a fan that is designed and marketed to operate only at or above 482 degrees Fahrenheit (250 degrees Celsius)'' because DOE has tentatively determined that a fan that can operate at or above a certain temperature can also operate below. Regarding item (4) DOE has tentatively determined that the definition of safety fans is equivalent to ''laboratory exhaust fans'' as defined in Section 3.52 of AMCA 214–21: fans designed and marketed specifically for exhausting contaminated air vertically away from a building using a high-velocity discharge. DOE is considering replacing item (4) with ''laboratory exhaust fans'' and to define it in accordance with AMCA 214–21. DOE also reviewed item (6) and notes that the referenced industry standard is no longer current has been replaced. In 2008, the International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres replaced EN 13463–1 by ISO 80079–36,'' Explosive atmospheres—Part 36: Non-electrical equipment for explosive atmospheres—Basic method and requirements''.[53] The latest version of ISO 80079–36 is the 2016 edition. Therefore, DOE proposes to reference ISO 80079–36:2016, instead of EN 13463–1:2001. In addition, DOE notes that AMCA 230–15 is under review and DOE proposes to update the reference to the latest version of AMCA 230 available at the time of publication of the test procedure final rule.

DOE requests comments on its proposed definition of safety fans. Specifically, DOE requests comments in whether item (4) of the CEC definition of safety fans is equivalent to ''laboratory exhaust fans'' as defined in Section 3.52 of AMCA 214–21.

4. Air Circulating Fans

In the October 2021 RFI, DOE published a request for information regarding potential test procedures for fans and blowers, specifically for air circulating fans and ACFHs. 86 FR 54412. DOE noted that Section 5.1 of AMCA 230–15 defines an ''air circulating fan'' as ''a non-ducted fan used for the general circulation of air within a confined space.'' 86 FR 54412, 54414. Further, AMCA 230–15 classifies ACFHs as a category of air circulating

Group. (Docket No. EERE–2013–BT–STD–0006, No. 161, Public Meeting transcript, at p. 75) There was a typographic error in the public meeting transcript and the term sheet. The intent of ''NQ–1'' as written in the term sheet was to refer to nuclear fans and refers to ''NQA–1'' or fans that meet the requirements in American Society of Mechanical Engineering (''ASME'') NQA–1 certification program ''Quality Assurance Requirements for Nuclear Facility Applications.''

[50] See CEC Docket No. 22–AAER–01, TN # 241950, Proposed regulatory language for Commercial and Industrial Fans and Blowers, at pp. 7–8.

[51] Fan applications with airstreams of explosive or flammable particles or gases require spark resistant construction in accordance with AMCA spark resistant specifications as described in ANSI/AMCA Standard 99–16 ''Standards Handbook''. Spark resistant construction is intended to prevent any two or more fan components from generating sparks within the airstream by rubbing or striking during operation. AMCA 99–16 defines three classes of spark construction resistant constructions: A, B and C, with level C being the ''entry level'' and level A offering the highest degree of spark resistance.

[52] ANSI/AIHA/ASSE Z9.5–2012, ''Laboratory Ventilation'' provides laboratory ventilation requirements and practices.

[53] *See www.intertek.com/blog/2019-03-14-hazloc/.*

fans and defines ACFHs in Section 5.1.1 of AMCA 230–15 as follows: ''an assembly consisting of a motor, impeller and guard for mounting on a pedestal having a base and column, wall mount bracket, ceiling mount bracket, I-beam bracket or other commonly accepted mounting means.'' Section 5.1.1 of AMCA 230–15. DOE noted that Section 3.15 of AMCA 214–21 defines the term ''circulating fan'' as ''a fan that is not a ceiling fan that is used to move air within a space that has no provision for connection to ducting or separation of the fan inlet from its outlet. The fan is designed to be used for the general circulation of air.'' *Id.* DOE also noted that AMCA 214–21 does not include a definition for ACFH. *Id.* DOE requested feedback on the definitions of air circulating fan and ACFHs as provided in AMCA 230–15, and of other categories of air circulating fans (*i.e.,* personnel coolers, box fans, and table fans). 86 FR 54412, 54414.

AMCA commented that it did not support using the AMCA 230–15 definition of ''air circulating fan'' because it had been updated in AMCA 214–21. In addition, AMCA recommended adding ''air'' to the defined term (*i.e.,* ''air circulating fan''). (AMCA, No. 6 at p. 3)

In response to the February 2022 ECS RFI, ebm papst commented that the descriptions of the different types of ACFs in AMCA 230 were not intended to be used for delineating ACFs into different classes in DOE regulations. (Docket No. EERE–2022–BT–STD–0002, ebm-papst, No. 8 at p. 2)

Since the end of the comment period, the AMCA 230 committee [54]has been considering a revised definition of air circulating fan as follows: a fan that has no provision for connection to ducting or separation of the fan inlet from its outlet using a pressure boundary, operates against zero external static pressure loss, and is not a jet fan (as defined in AMCA 214–21).

DOE reviewed the definition of ''air circulating fan'' in AMCA 214–21 and notes that the description of the intended application is unnecessary and may create confusion with the proposed ceiling fan definition, as discussed further in this section. In addition, as noted previously, DOE does not consider ceiling fans as fans and blowers, and therefore ceiling fans are not included as ''air circulating fans''. For this reason, DOE has determined that it is unnecessary to specify that an air circulating fan is not a ceiling fan within the definition of air circulating fan. DOE also reviewed the definition being considered by the AMCA 230 committee which adds the following terms '' using a pressure boundary'' and ''operates at zero static pressure'' to further specify that air circulating fans do not have any provision for connection to ducting or separation of the fan inlet from its outlet that would create a static pressure differential between the inlet and the outlet of the fan. In addition, DOE agrees that jet fans should be excluded as discussed in section III.A.2 of this document.

Therefore, DOE proposes to define air circulating fan using the definition being considered by the AMCA 230 committee as it provides further specificity and proposes to define air circulating fans as ''a fan that has no provision for connection to ducting or separation of the fan inlet from its outlet using a pressure boundary, operates against zero external static pressure loss, and is not a jet fan.''

Air circulating fans exist in different configurations depending on the impeller design (axial or centrifugal), presence or absence of a guard and/or housing, and the shape of the housing. As discussed, AMCA 230–15 (with errata) includes the following equipment categories discussed in the remainder of this section: (1) ACFHs; (2) personnel coolers; (3) box fans; and (4) table fans.

In response to the October 2021 RFI, AMCA commented that it does not support DOE using the AMCA 230–15 definition of ACFH because AMCA believes the definition seems insufficient to distinguish ACFHs from ceiling fans. AMCA additionally commented that because ACFHs can be sold with mounting kits for installation onto ceilings, I-beams, or other overhead structures, there is confusion in the industry as to whether they meet the statutory definition of ceiling fan. Instead, AMCA recommended adopting a modified ACFH definition as follows: ''An assembly consisting of a motor, impeller and guard for mounting on a pedestal having a base and column, wall mount bracket, ceiling mount bracket, I-beam bracket or other commonly accepted mounting means. ACFH do not have housings with solid walls, such as tubes, boxes or panels. An ACFH has a maximum value of diameter-to-maximum-operating-speed ratio (*e.g.,* 0.06 inches per rotations per minute (''in/RPM'')) to distinguish ACFH from ceiling fans. ACFH are known by other names in the various industries in which they are used, including basket fan, horizontal-airflow fan, and stir fan''. AMCA suggested that the revisions would ensure the definition separates ACFHs from other types of air circulating fans and that including the maximum-value threshold of 0.06 in/RPM would separate ACFHs from ceiling fans. AMCA additionally commented that the suggested revisions further highlight alternative names for ACFHs used in industry. (AMCA, No. 6 at p. 4) AMCA also provided supporting analysis of the performance data of 178 models of air circulating fan heads, all of which had a diameter-to-maximum-operating-speed ratio less than 0.06 in/RPM, as recommended in the ACFH definition. (AMCA, No. 6 at p. 5)

The CA IOUs recommended that DOE add the following sentence to the definition of ACFH to the existing definition in AMCA 230–15 to distinguish ACFHs from ceiling fans and other air circulating fans such as personnel and livestock coolers: ''ACFHs do not have housings with solid walls such as tubes, boxes, or panels. An ACFH has a maximum value of diameter-to-maximum operating speed ratio of 0.06 in/RPM (inch per revolution per minute)''. The CA IOUs explained that the addition would clarify that ACFHs are basket-type fans that do not have solid housings. (CA IOUs, No. 9 at pp. 1–2)

NEEA commented in support of AMCA's analysis of the existing market and of using 0.06 in/RPM as the maximum value for ACFHs. (NEEA, No. 11 at p.1)

AHRI supported the explicit inclusion of ACFHs under fans and blowers, with modifications to the definition of ACFHs as recommended by AMCA. AHRI commented in support of AMCA's proposed additions to the ACFH definition to specify that an ACFH ''do(es) not have housings with solid walls, such as tubes, boxes or panels.'' AHRI commented that the inclusion of this text is important, stating that it not only helps define the product, but it also clearly fits within the scope of AMCA 214–21. AHRI stated that AMCA 214–21 specifies that ''AMCA Standard 214 primarily is for fans that are tested alone or with motors and drives; it does not apply to fans tested embedded inside of other equipment,'' and as such, that it is only necessary to regulate standalone fans. (AHRI, No. 10 at p. 2)

MEP commented that broad definitions result in significant and undue burden on manufacturers that use any type of fan in any of their products, as those manufacturers have to evaluate each product against each proposed aspect of each step in the regulatory process. MEP recommended that DOE establish ACFH as a product

[54] A technical Committee was formed to review AMCA 230–15. For more information see *https://www.cognitoforms.com/AMCA1/_230TechnicalCommitteeInvitation10132021.*

category of fans as defined at 10 CFR 431.172 with the following definition: ''ACFHs are fans powered by poly-phase electric current with a fan shaft power greater than 3 hp and which only provide concentrated directional airflow and where the construction consists of a motor, impeller, guard, and may include connections for mounting or support and which are exclusive of other covered products or fans embedded inside of other equipment or products.'' MEP commented that the definition of ceiling fan is obvious and exclusionary from an ACFH. MEP further stated that AMCA recognizes the definition of ''embedded fan'' in Section 3.25.4 of ANSI/AMCA 214–21 as ''a fan that is part of a manufactured assembly where the assembly includes functions other than air movement'' and recommended that DOE include this qualification in the Federal definition of ACFH to clarify the separation between ceiling fans and other products that use fans for purposes other than air circulation (*e.g.,* combustion, humidification, dehumidification, heating, or cooling to name a few). (MEP, No. 5 at p. 1) .

Since the end of the comment period, the AMCA 230 committee has considered a revised definition of ACFH, under the term ''ACFH, unhoused'' as follows: an air circulating fan without housing, having an axial impeller with a ratio of fan-blade span (in inches) to maximum rate of rotation (in revolutions per minute) less than or equal to 0.06. The impeller may or may not be guarded.

On December 7, 2021, DOE published a supplemental notice of proposed test procedures for ceiling fans. 86 FR 69544 (''December 2021 Ceiling Fans SNOPR''). In the December 2021 Ceiling Fans SNOPR, DOE proposed a definition of ceiling fan that specifies the term ''circulating air'' based on diameter-to-maximum operating speed ratio: a fan for ''circulating air'' is one with a ratio of fan blade span (in inches) to maximum rotation rate (in revolutions per minute) greater than 0.06. 86 FR 69544, 69551. To support this proposed definition, DOE performed an independent analysis and tentatively determined that ACFHs have a diameter-to-maximum operating speed ratio of less than or equal to 0.06 in/RPM. 86 FR 69544, 69550.

ACFHs are air circulating fans without a housing (*i.e.,* cylindrical housing, box housing, or panel). They have an axial impeller which is typically surrounded by a guard and are commonly called ''basket fans''. Therefore, the added specification of ''unhoused'' in the definition from the AMCA 230 committee is helpful to further distinguish these fans. DOE reviewed comments from stakeholders and has tentatively determined that the definition being considered by the AMCA 230 committee would address stakeholder comments and would ensure that ACFH are distinguished from other types of fans and blowers and air circulating fans. Therefore, DOE proposes to define an unhoused ACFH as follows: ''An air circulating fan without housing, having an axial impeller with a ratio of fan-blade span (in inches) to maximum rate of rotation (in revolutions per minute) less than or equal to 0.06. The impeller may or may not be guarded. '' The 0.06 in/RPM threshold is appropriate to differentiate ACFHs from ceiling fans and aligns with the December 2021 Ceiling Fans SNOPR. In addition, the additional description of the absence of a housing would ensure that ACFHs are distinguished from other categories of fans and blowers and air circulating fans. Table fans would be included in the proposed definition of unhoused ACFHs.

As previously noted, air circulating fans also come with housings. To describe air circulating fans with housings, the AMCA 230 committee is considering a definition of housed ACHFs as: an air circulating fan with an axial or centrifugal impeller, and a housing. DOE has tentatively determined that the definition considered by the AMCA 230 committee accurately describes all categories of equipment that fall under housed ACFHs, therefore, DOE proposes to adopt the definition established by the AMCA 230 committee. The AMCA 230 committee is further considering establishing definitions for four categories of housed ACFHs, as follows: (1) an air circulating axial panel fan means an axial air circulating fan without a cylindrical housing or box housing that is mounted on a panel, orifice plate or ring (also commonly known as panel fan, cow cooler, livestock cooler); (2) a box fan means an axial air circulating fan without a cylindrical housing that is mounted on a panel, orifice plate or ring and is mounted in a box housing; (3) a cylindrical air circulating fan means an axial air circulating fan in a cylindrical housing that is not a positive pressure ventilator (''PPV'') (also commonly known as personnel cooler, barrel fan, drum fan, high velocity fan, portable cooler, thermal mixing fan, destratification fan, downblast fan); and (4) a housed centrifugal air circulator means a fan with a centrifugal or radial impeller in which airflow exits into a housing that is generally scroll shaped to direct the air through a single, narrow fan outlet (also commonly known as utility blower, loading dock fan, carpet dryer, floor fan).

DOE reviewed additional air circulating fans with housing distributed in commerce and has tentatively identified four categories of air circulating fans based on the blade design (*i.e.,* axial or centrifugal) and housing configuration (*i.e.,* panel, box, cylindrical, or scroll shaped), matching the equipment segmentation considered by the AMCA 230 committee. In addition, as discussed in section III.B.3, DOE proposes to exclude PPVs and proposes to add this clarification when defining cylindrical air circulating fans. DOE has tentatively determined that the definitions considered by the AMCA 230 committee accurately describes the four categories of equipment that DOE identified as meeting the definition of housed ACFH. Therefore, DOE proposes to adopt the definitions of air circulating axial panel pan, box fan, cylindrical air circulating fan, and housed centrifugal air circulator as considered by the AMCA 230 committee, with the following clarifications: (1) DOE proposes to replace ''air circulating fan'' by ''housed air circulating fan head'' to explicitly indicate that each of these fans are housed ACFHs; (2) replace the term ''circulator'' by '' circulating fan'' for consistency in terminology; (3) remove the examples of additional terms used commonly by industry. Personnel coolers (as defined in AMCA 230–15 (with errata)) would be included under the proposed cylindrical air circulating fan definition.

In response to the February 2022 ECS RFI, the CA IOUs commented that DOE should include panel fans as ACFs and that panel fans are often used as ACFs for air circulation and cooling for residential, commercial, and agricultural spaces. They also stated that most of the ACFs in the Bioenvironmental and Structural System Lab (''BESS Lab'') database are panel fans. (Docket No. EERE–2022–BT–STD–0002, CA IOUs, No. 7 at p. 5–6) ebm papst recommended that the DOE test procedure should clearly state that basket fans (consisting of a motor, axial impeller, and a basket-style guard that partially or completely encloses the rotating parts) should be tested according to AMCA 230. (Docket No. EERE–2022–BT–STD–0002, ebm-papst, No. 8 at p. 2)

As noted previously, DOE proposes to include axial panel air circulating fan as a category of housed ACFH. In addition, DOE notes that basket fans meet the

proposed definition of unhoused ACFH and would therefore be tested in accordance with AMCA 214–21, referencing AMCA 230–15 (with errata) and modifications proposed in this notice.

For all definitions related to air circulating fans, DOE is aware that the revisions being considered by the AMCA 230 committee are subject to change and could further be revised in the next version of AMCA 230. Should the revised version of AMCA 230 publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to revise the definitions in line with the latest AMCA 230 standard, provided the updates in this standard are consistent with the definitions DOE is proposing in this NOPR or the updates are related to topics that DOE has discussed and for which DOE has solicited comments in this NOPR.

DOE requests comment on the proposed definitions for air circulating fan and related terms.

5. Definitions Related to Heat Rejection Equipment

As stated, DOE is proposing to exclude from the scope of the test procedure fans and blowers exclusively embedded in heat rejection equipment, specifically fans and blowers exclusively embedded in packaged evaporative open circuit cooling towers; evaporative field-erected open circuit cooling towers; packaged evaporative closed-circuit cooling towers; evaporative field-erected closed-circuit cooling towers; packaged evaporative condensers; field-erected evaporative condensers; packaged air-cooled (dry) coolers; field-erected air-cooled (dry) cooler; air-cooled steam condensers; and hybrid (water saving) versions of such listed equipment that contain both evaporative and air-cooled heat exchange sections. The Working Group provided the following definitions for these equipment:

- *Packaged evaporative open-circuit cooling tower:* a device which rejects heat to the atmosphere through the direct cooling of a water stream to a lower temperature by partial evaporation;
- *Evaporative field erected open-circuit cooling tower:* a structure which rejects heat to the atmosphere through the direct cooling of a water stream to a lower temperature by partial evaporation;
- *Packaged evaporative closed-circuit cooling tower:* a device which rejects heat to the atmosphere through the indirect cooling of a process fluid stream in an internal coil to a lower temperature by partial evaporation of an external recirculating water flow;
- *Evaporative field erected closed-circuit cooling tower:* a structure which rejects heat to the atmosphere through the indirect cooling of a process fluid stream to a lower temperature by partial evaporation of an external recirculating water flow;
- *Packaged evaporative condenser:* a device which rejects heat to the atmosphere through the indirect condensing of a refrigerant in an internal coil by partial evaporation of an external recirculating water flow;
- *Field erected evaporative condenser:* a structure which rejects heat to the atmosphere through the indirect condensing of a refrigerant in an internal coil by partial evaporation of an external recirculating water flow;
- *Packaged air-cooled (dry) cooler:* a device which rejects heat to the atmosphere from a fluid, either liquid, gas or a mixture thereof, flowing through an air-cooled internal coil;
- *Field erected air-cooled (dry) cooler:* a structure which rejects heat to the atmosphere from a fluid, either liquid, gas or a mixture thereof, flowing through an air-cooled internal coil; and
- *Air-cooled steam condensers:* a device for rejecting heat to the atmosphere through the indirect condensing of steam inside air-cooled finned tubes. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #2, at pp. 2–3)

As discussed in of this document. DOE proposes to exclude fans exclusively embedded in heat rejection equipment, consistent with the recommendation of the Working Group. To support these exclusions, DOE proposes to adopt definitions of the terms used to specify the relevant heat rejection equipment. The proposed definitions are based on the recommendations of the Working Group. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendations #2, at pp. 2–3)

DOE requests comment on the proposed definitions related to heat rejection equipment.

6. Outlet Area

The equations in Section A.2 of AMCA 208–18, discussed in section III.D.10 of this document, require determination of the fan outlet or discharge area. Section 5.5.4 of AMCA 230–15 (with errata), defines the discharge area as the area of a circle having a diameter equal to the blade tip diameter. DOE notes that this definition is only applicable to unhoused ACFHs as the discharge area of a housed ACFH is determined based on the surface area at the exit of the housing and is not based on the fan blade tip diameter. In contrast, Section 3.57 of AMCA 214–21 provides the following definition of outlet area: the area in contact with the fan's outlet. AMCA 99–16 provides the following definitions of fan outlet and fan outlet area: (1) fan outlet means the plane perpendicular to the airstream at the outlet opening of the fan or the manufacturer-supplied evasé or diffuser; (2) fan outlet area means the gross inside area measured at the plane of the outlet opening. For a roof ventilator, it is the gross impeller outlet area for centrifugal types or the gross housing area at the impeller for axial types (see Section 0066 of AMCA 99–16).

The AMCA 230 committee is considering revising the definition of discharge area to include housed ACFHs, and to replace the term ''discharge area'' by ''fan outlet area'', which is a more commonly used term. In addition, the AMCA committee is considering adding diagrams to further clarify how the fan outlet area should be determined for housed ACFHs.

In this NOPR, DOE is proposing a definition for fan outlet area specific to air circulating fans as (*i.e.*, ''air circulating fan outlet area''): (1) for unhoused ACHFs, the area of a circle having a diameter equal to the blade tip diameter; (2) for housed ACFHs, the inside area perpendicular to the airstream, measured at the plane of the opening through which the air exits the fan.

For fans and blowers other than air circulating fans, DOE notes that Annex H of AMCA 210–16 includes requirements for determining where the fan outlet area is measured for different fan categories and also references AMCA 99–16, which includes further diagrams to aid in the determination of the outlet area. DOE has tentatively determined that for fans and blowers other than air circulating fans, the current definition in AMCA 214–21 and the existing requirements in Annex H of AMCA 210–16 are sufficient to determine the outlet area and is not proposing edits. Should DOE receive comments that additional specifications are required, DOE may consider revising the definition of outlet area for fans and blowers other than air circulating fans.

DOE requests comment on its proposed definition of air circulating fan outlet area. DOE additionally requests comment on whether the definition of outlet area for fans and blowers other than air circulating fans should be revised and, if so, how.

C. Industry Standards

DOE's established practice is to adopt industry standards as DOE test procedures, unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle. 10 CFR 431.4; 10 CFR part 430 subpart C appendix A section 8(c).

The Working Group recommended that the test procedure for commercial and industrial fans:

(1) For standalone (non-embedded) fans, be based on a physical test performed in accordance with the latest version of AMCA 210 (*i.e.,* available at the time of publication of any test procedure final rule) (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #7, at p. 5);[55]

(2) Establish methods to determine the ''FEP'' either by: the direct measurement of the electrical input power to the fan, or by the measurement of the mechanical input power to the fan (*i.e.,* a fan shaft power test, which captures the performance of the bare-shaft fan) and by applying default values (*i.e.,* calculation algorithms) to reflect the additional motor, transmission, or motor controller energy use (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #9, at pp. 5–6); and[56]

(3) Allow the use of equations (''fan laws'') to determine the performance of a bare-shaft fan at a non-tested speed, based on the results of a test conducted at a different speed. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #17, at p. 10)

The Working Group also recommended specific test set-up and minimal testable configurations to use for each fan category.[57] (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #7, at p. 5)

The Working Group further made recommendations on calculation algorithms and reference values to use to represent the motor, transmission, and motor controller energy efficiency when testing a fan based on a fan shaft power test. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendations #10 through #15, at pp. 6–9) Additionally, the Working Group recommended that embedded fans be tested in a standalone fan configuration (*i.e.,* outside of the piece of equipment in which they are embedded). Because some components of embedded fans may not be removable without causing irreversible damage to the equipment, the Working Group recommended non-impeller components of the fan that are geometrically similar to the ones used by the fan as embedded in the larger piece of equipment be used to complete the fan testable configuration. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #8, at pp. 5–6) The Working Group also recommended calculating FEP as the ratio of the electrical input power of a reference fan (in this case, a fan that is exactly compliant with any future fan energy conservation standards) to the electrical input power of the actual fan for which the FEP is calculated, both established at the same duty point.[58] In addition, the Working Group recommended using either static or total pressure[59] to characterize the duty point of a fan and to calculate the associated reference FEP, depending on the fan category and the test set-up used.[60] (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendations #18, #19, at pp. 10–11) Finally, the Working Group recommended equations and default values to use when calculating the reference FEP of a fan at a given duty point. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendations #18 through #21, at pp. 10–12)

Since the publication of the term sheet, AMCA has revised and developed test standards consistent with the recommendations of the Working Group:

- In September 2016, AMCA published AMCA 210–16, which updated ANSI/AMCA 210–2007, ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating'', to include a wire-to-air test method, which captures the performance of any motor, transmission, or motor controller present in the fan, in addition to the performance of the bare-shaft fan (*i.e.,* a measurement of the FEP in kW), in addition to the previously existing methods for conducting laboratory tests to determine fan shaft power in hp, airflow in cubic feet per minute (''cfm''), pressure in inches of water gauge (''in. wg.''), and at a given speed of rotation in ''RPM''.
- In April 2017, AMCA published ANSI/AMCA Standard 207–2017 ''Fan System Efficiency and Fan System Input Power''. This publication provides calculation algorithms representing the performance of reference motors, transmissions, and motor controllers. These calculations can be directly applied to the results of a fan shaft power test in accordance with AMCA 210–16 to obtain the FEP of a fan at a given duty point.
- In January 2018, AMCA published ''AMCA 208–18''. This publication defines FEI as the ratio of the electrical input power of a reference fan to the electrical input power of the actual fan for which FEI is calculated, both established at the same duty point. It provides equations to calculate the FEP of a fan of as a function of airflow and pressure (either static or total depending on the fan category considered).

Building on these test standards, AMCA developed a new AMCA 214–21 test method which was approved by ANSI on March 1, 2021. AMCA 214–21 combines provisions of AMCA 210–16, AMCA 207–17, and AMCA 208–18, as well as portions of AMCA 211–13 (R2018), ''Certified Ratings Program Product Rating Manual for Fan Air Performance'' (''AMCA 211–13''), into a single standard.[61] Consistent with the recommendations of the Working Group, AMCA 214–21 provides methods to establish the FEP either by: (1) the measurement of the electrical input power to the fan (*i.e.,* a ''wire-to-air'' test); or by (2) the measurement of the fan shaft power and the application

[55] Currently the latest version of AMCA 210 is AMCA 210–16.

[56] A bare-shaft fan is a fan without a motor or any other drive.

[57] AMCA 214–21 references AMCA 210–2016 as the physical test method to use for fans and blowers (except ACFHs). AMCA 210–16 describes four fan test set-ups (or ''installation categories'') designated by a letter, depending on the ducting at the inlet and outlet of the fan. ''A'': free inlet, free outlet; ''B'': free inlet, ducted outlet; ''C'': ducted inlet, free outlet; and ''D'': ducted inlet, ducted outlet.

[58] A duty point is characterized by a given airflow and pressure and has a corresponding operating speed.

[59] Fan total pressure is the air pressure that exists by virtue of the state of the air and the rate of motion of the air. It is the sum of velocity pressure and static pressure at a point. If air is at rest, its total pressure will equal the static pressure.

[60] Depending on the fan category, the fan performance is represented using a test set-up with a ducted outlet (*i.e.,* using total pressure) or a free outlet (*i.e.,* using static pressure) to reflect typical usage conditions. Fans with ducts attached to the fan's outlet are typically selected based on their performance at a given airflow and total pressure, because both the static pressure and fan velocity pressure are available to overcome system resistance. However, fans with a free outlet are typically selected based on their performance at a given airflow and static pressure, because the velocity pressure cannot be used to overcome system resistance. The Working Group recommended using total pressure for some categories of fans (*i.e.,* axial cylindrical housed fans, centrifugal housed fans, inline and mixed flow fans, and radial housed fans) and static pressure for others (*i.e.,* panel fans, centrifugal unhoused fans, and PRVs).

[61] AMCA 211–13 provides instructions on how to apply fan laws and on how to perform a test when establishing an AMCA-certified rating. Some of these instructions were revised and integrated in AMCA 214.

of calculation algorithms to reflect additional motor, transmission, or control energy use. In each case, the fan power measurements are performed in accordance with AMCA 210–16 or ISO 5801:2017, which is referenced in AMCA 214–21 as an equivalent test procedure to AMCA 210–16. AMCA 214–21 also references laboratory test methods for additional categories of fans such as jet fans, circulating fans, and induced flow fans.[62] Specifically, AMCA 214–21 references AMCA 230–15[63] as the industry test procedure to follow when conducting performance measurements on air circulating fans. In addition, AMCA 214–21 adds specific test instructions to ensure test repeatability and reproducibility. Specifically, AMCA 214–21 defines a single set of test set-ups that must be used when conducting a test to ensure comparability of results (*See* Table III–9). Further, AMCA 214–21 specifies how to select the speed(s) and duty points at which to conduct the test, as well as which accessories to include in the test (*See* Table III–10).

Section 6.3.1 of AMCA 214–21 provides specific equations to be used for bare-shaft fans that can only accommodate a direct-drive transmission (*i.e.,* fans that are directly coupled to the drive). (See DOE's request for comment at the end of this section requesting information on the physical features that could be identified to differentiate bare-shaft fans that can accommodate only a direct-drive transmission from other bare-shaft fans).

AMCA 214–21 establishes the FEP metric, measured in kW, and the FEI metric.[64] FEI is calculated as the ratio of the electrical input power of a reference fan (in this case, a fan with electrical input power calculated using the equations provided in Section 5 of AMCA 214–21) to the electrical input power of the actual fan for which the FEI is calculated, both established at the same duty point. AMCA 214–21 specifies different measurement methods to obtain the FEP and FEI of a fan depending on whether the fan includes a motor (polyphase regulated[65] or not), transmission, or motor controller. (*See* Table III–10). The methods included in AMCA 214–21 are designed to provide flexibility and reduce test burden. Specifically, AMCA 214–21 includes methods to reduce the number of speeds at which the manufacturer performs a test:

- Annex G of AMCA 214–21 allows manufacturers to reduce the number of speeds selected for testing by applying an interpolation method that uses the results obtained at two tested speeds to calculate the FEP of a fan at a speed between the two tested speeds; and
- When establishing the FEP using a fan shaft power test and the calculations described in Sections 6.3, 6.4, and 6.5 of AMCA 214–21, Annex E of AMCA 214–21 allows a reduction in the number of tests needed by allowing either: (1) an interpolation of test results between tested speeds (similar to what was previously described); or (2) use of fan laws[66] to calculate the fan shaft power and corresponding airflow and pressure of a fan at a non-tested speed based on the results (*e.g.,* fan shaft power at a given duty point) at a different speed.

AMCA 214–21 also provides a number of provisions that may reduce the amount of required testing. Specifically, AMCA 214–21 provides:

- The same fan shaft power test can be used for combinations of the same bare-shaft fan and different motor, transmission, or motor controller. (See Section 6.3 of AMCA 214–21).
- A separate fan shaft power and motor test (with or without a motor controller)[67] may be conducted. Methods for combining the results for both tests to calculate the FEP at a given duty point are provided (See Section 6.5 of AMCA 214–21).
- Annex E of AMCA 214–21 uses fan laws to calculate the fan shaft power of a non-tested fan using results from a fan shaft power test of a fan with a smaller impeller diameter.
- Annex E of AMCA 214–21 also provides interpolation methods to calculate the fan shaft power based on two fan tests in which a single geometric feature (*i.e.,* dimension) is varied. Examples include changes in axial fan blade pitch, or centrifugal fan blade width, as well as the distance from an impeller to a separating panel on fans for fan arrays. The interpolation method is applied between two fan tests at the same tested fan speed. The dimension for the calculated fan must be between the dimensions for the two tested fans.

TABLE III–9—AMCA 214–21 TEST CONFIGURATIONS FOR PROPOSED IN-SCOPE FANS AND BLOWERS USING AMCA 210–16 AND AMCA 230–15

[Table 7.1 of AMCA 214–21]

Fan configuration	Test standard	Required		Optional	
		Test configuration *	FEI pressure basis **	Test configuration	FEI pressure basis
Centrifugal housed	AMCA 210–16	B or D	Total	A or C	Static.
Radial housed	AMCA 210–16	B or D	Total	A or C	Static.
Centrifugal inline	AMCA 210–16	B or D	Total	A or C	Static.
Centrifugal unhoused	AMCA 210–16	A	Static	N/A	N/A.
Centrifugal PRV exhaust.	AMCA 210–16	A or C	Static	N/A	N/A.
Centrifugal PRV supply.	AMCA 210–16	B	Total	A	Static.

[62] AMCA 230–15, AMCA 250–12, ''Laboratory Methods of Testing Jet Tunnel Fans for Performance'', and AMCA 260–20, ''Laboratory Methods of Testing Induced Flow Fans for Rating'' for testing circulating fans, jet fans, and laboratory exhaust fans with induced flow.

[63] AMCA 230–15 provides methods for conducting laboratory tests to determine the performance characteristics of circulating fans including the FEP in W, speed in RPM, pressure in inches of mercury, airflow in cfm, thrust in pound force (lbf), efficacy in cfm/W, and overall efficiency in lbf/W.

[64] As discussed, the FEI of a fan at a given operating point is a dimensionless index defined as the FEP (kW) of a theoretical reference fan divided by the FEP (kW) of the fan at the same operating point.

[65] AMCA 214–21 uses the term ''polyphase regulated motor'' to designate a three-phase motor regulated under 10 CFR 431.25.

[66] When applying the fan laws, the results of a tested fan are used to calculate the fan shaft power of a non-tested fan at a higher speed or with a larger diameter than the tested fan. The fan laws are described in section E.1 of Annex E of AMCA 214–21.

[67] AMCA 214–21 references additional industry test methods for motors (with or without a motor controller): Canada Standards Association (''CSA'') C747–09 (R2019), ''Energy efficiency test methods for small motors''; CSA C838–13 (R2018), ''Energy efficiency test methods for three-phase variable frequency drive systems;'' and Institute of Electrical and Electronics Engineers (''IEEE'') 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators.'' See annex F of AMCA 214–21.

TABLE III–9—AMCA 214–21 TEST CONFIGURATIONS FOR PROPOSED IN-SCOPE FANS AND BLOWERS USING AMCA 210–16 AND AMCA 230–15—Continued

[Table 7.1 of AMCA 214–21]

Fan configuration	Test standard	Required		Optional	
		Test configuration *	FEI pressure basis **	Test configuration	FEI pressure basis
Axial inline	AMCA 210–16	D	Total	C	Static.
Axial panel	AMCA 210–16	A	Static	N/A	N/A.
Axial PRV	AMCA 210–16	A or C	Static	N/A	N/A.
Circulating Fans	AMCA 230–15	E	Total	N/A	N/A.

* Each letter corresponds to a test set-up described in Section 7.1 of AMCA 214–21. A: free inlet, free outlet; B: free inlet, ducted outlet; C: ducted inlet, free outlet; D: ducted inlet, ducted outlet.

** This indicates that reference FEP used in the FEI calculation is established using either static or total pressure as indicated in this table and as determined by the required test configuration.

TABLE III–10—AMCA 214–21 TEST OPTIONS

Test description (section 6 of AMCA 214–21)	Driver configuration	Motor controller configuration	Transmission configuration	Test speed(s)	FEP determination method
Wire to air test at all speeds.	Motor	With or without a motor controller.	With or without transmission.	All speeds **	Section 6.1 of AMCA 214–21.
Wire to air test at selected speeds.	Motor	With or without a motor controller.	With or without transmission.	At least two speeds	Section 6.2 of AMCA 214–21.
Fan shaft power test for fans without a motor *.	None	With or without a motor controller.	Without transmission	At least one speed	Section 6.3 of AMCA 214–21.
Fan shaft power test for fans with a regulated motor *.	Electric motors subject to standards at 10 CFR 431.25.	With a variable frequency drive in accordance with section 6.4.1.4 of AMCA 214–21 or without a motor controller.	Direct drive, V-belt drive, flexible coupling, or synchronous belt drive.	At least one speed	Section 6.4 of AMCA 214–21.
Fan shaft power test and motor/motor and controls test *.	Motor	With or without a motor controller.	Direct drive, V-belt drive, flexible coupling, or synchronous belt drive.	At least one speed	Section 6.5 of AMCA 214–21.

* With or without the use of interpolation or fan laws as provided in Annex E.

** All speeds for which FEP values are generated.

The Petitioners suggested reliance on the FEP and FEI metrics and recommended that both metrics be derived using AMCA 214 (Docket No. EERE–2020–BT–PET–0003, The Petitioners, No. 1.3 at pp. 5–7).

In response to the April 2020 Notice of Petition for Rulemaking, AHRI, CTI, Daikin, and Lennox questioned the appropriateness of the AMCA 214 test standard, which was still under review with ANSI at the time the April 2020 Notice of Petition for Rulemaking was published (Docket No. EERE–2020–BT–PET–0003, AHRI, No. 14 at pp. 1–2; CTI, No. 11 at p. 3; Daikin, No. 8 at p. 1; Lennox, No. 5 at p. 3). AHRI requested that DOE delay the establishment of a test procedure until after AMCA 214 was final and published, stating that AHRI was working with AMCA to seek resolution on several technical issues. (Docket No. EERE–2020–BT–PET–0003, AHRI, No. 14 at p. 2). As discussed, AMCA 214 was approved by ANSI on March 1, 2021. DOE reviewed the final version of AMCA 214–21 in the preparation of the October 2021 RFI.

Daikin commented that the draft AMCA 214 test procedure was appropriate for fans distributed in commerce as standalone fans, but is not useful for fans embedded in equipment. (Docket No. EERE–2020–BT–PET–0003, Daikin, No. 8 at p. 1).

NEEA and NWPCC commented in support of establishing a test procedure for commercial and industrial fans and stated that the industry and efficiency advocates have collaboratively participated in developing AMCA 214. (Docket No. EERE–2020–BT–PET–0003, NEEA and NWPCC, No. 12 at p. 2). ASAP, ACEEE, and NRDC commented in support of establishing a test procedure for commercial and industrial fans and commented that AMCA incorporated input from a broad range of stakeholders in developing AMCA 214 (Docket No. EERE–2020–BT–PET–0003, ASAP, ACEEE, NRDC, No. 7 at p. 1).

Greenheck commented that a DOE test procedure based on AMCA 214 would: accelerate the use of the FEI over Fan Efficiency Grade (''FEG'') [68] in state and municipal energy codes and reduce manufacturer burden; reduce burden on consumers, designers, code officials, and manufacturers by preempting costly patchwork state and local fan test procedure regulations; help U.S. manufacturers compete internationally by minimizing the potentially disruptive and inconsistent regulations in Europe (EU ecodesign regulation for industrial fans No 327/2011); provide manufacturers with a more immediate return on investment through national demand for fans with a good FEI rating

[68] FEG is a numerical rating that classifies fans by their aerodynamic ability to convert mechanical shaft power, or impeller power in the case of a direct driven fan, to air power. FEG applies to the efficiency of the fan only and not to the motor and drives. More efficient fan models have a higher FEG rating. See AMCA whitepaper available at *www.amca.org/assets/resources/public/userfiles/file/Nospreads_FanEfficGrades.pdf*.

rather than limited and sporadic demand from individual states and municipalities; and be consistent with the fan FEI requirements in ASHRAE 90.1–2019. In addition, Greenheck stated that this would align with the process used by DOE to regulate other equipment in ASHRAE 90.1–2019 Tables 6.8.1–1 through 6.8.1–20 and would be useful to support future incentive programs based on FEI. Greenheck additionally commented that NEEA was developing an incentive program based on FEI. (Docket No. EERE–2020–BT–PET–0003, Greenheck, No. 6.1 at pp. 1–2).

Several interested parties also commented that a DOE test procedure based on AMCA 214 would provide a basis to assist customers and designers in making purchasing decisions and save energy by informing design decisions. (Docket No. EERE–2020–BT–PET–0003, NEEA and NWPCC, No. 12 at p. 1; ASAP, ACEEE, NRDC, No. 7 at p. 1; Johnson Controls, No. 10 at p. 1). (*See* section III.F III.E for further discussion of these comments).

In response to the October 20221 RFI, AMCA commented in support of the use of AMCA 214–21 and AMCA 230–15 as the basis for the test procedure with the caveat that AMCA 230–15 is entering a revision cycle and that DOE should refer to the latest version of AMCA 230. (AMCA, No. 6 at p. 7) AMCA also stated that an erratum to AMCA 230–15 was published on the AMCA website [69] in May 2021 and a copy was provided to DOE. AMCA also stated that references to ANSI/AMCA Standard 230–15 generally mean ''ANSI/AMCA Standard 230–15 with errata.'' (AMCA, No. 6 at p. 2) AMCA further commented that AMCA 230–15 will undergo a regularly scheduled periodic review and update in 2022 to maintain ANSI approval. AMCA commented that although AMCA is not expecting the physical test method to change in the next revision, the 2021 erratum will be integrated with the standard and improvements will be made to definitions as part of the standards revision process. AMCA recommended that DOE allow the ANSI/AMCA Standard 230 revision committee to complete its work so the new edition of the standard can be referenced in a DOE rulemaking involving ACFH. (AMCA, No. 6 at p. 2) AMCA stated that the majority of the market is single-speed, and recommended that, for regulatory purposes, only ''high speed'' should be required for compliance and check-testing. AMCA asserted that this approach would be more repeatable and reduce regulatory burden. AMCA stated that it generally understood that fans having two or more speeds are run at high speed in commercial and industrial environments, although AMCA did not have data to support its understanding. (AMCA, No. 6 at p. 8)

NEEA recommended that DOE consider AMCA 214–21 to determine the efficiency of fans and blowers and AMCA 230–15 as the test procedure for ACFHs. NEEA commented that these procedures incorporate decisions made during the 2015 ASRAC working group, and thus have consensus from industry, advocacy and governmental organizations as procedures that reflect energy efficiency during a representative average use cycle and are not unduly burdensome to conduct. NEEA commented that they have supported the development of these test procedures and asserted there is momentum in the market for these procedures. NEEA further asserted that these test procedures represent the current best practice for defining and calculating the efficiencies of fans. NEEA stated that AMCA 230 will be in revision soon, and recommended that the new version of the standard be the basis for DOE's regulation once the standard is published. (NEEA, No. 11 at pp. 1–2)

AHRI commented that ACFHs are standalone fans, with performance testing established appropriately using AMCA 230–15 and a FEI metric calculated using AMCA 214–21. (AHRI, No. 10 at p. 2)

The CA IOUs recommended that DOE use the FEI metric from AMCA 214–21 for ACFHs. (CA IOUs, No. 9 at p. 2)

DOE is proposing to incorporate by reference AMCA 214–21 as the prescribed test method for evaluating the energy use of fans and blowers, with modifications discussed in section III.D of this document. AMCA 214–21 references AMCA 210–16 and AMCA 230–15 (with errata) as the physical test method, and further provides provisions for calculating the FEI. This industry-based test procedure, which is already used by industry and referenced by ASHRAE 90.1, can be applied to the range of fans and blowers proposed in scope, including air circulating fans. DOE also proposes to incorporate by reference AMCA 210–16, ISO 5801:2017, and AMCA 230–15 (with errata) (or latest version available at the time of the any final rule),[70] which are the physical test methods referenced in AMCA 214–21 for fans and blowers and air circulating fans. DOE has tentatively determined that AMCA 214–21 provides a representative measurement of energy use or energy efficiency during a representative average use cycle for all fans and blowers in the proposed scope. The proposal to use AMCA 214–21 is consistent with the comments received from stakeholder and with the Working Group recommendations. Although NEEA commented in support of using AMCA 230–15 (with errata), DOE notes that AMCA 214–21 requires testing air circulating fans in accordance with AMCA 230–15.

DOE is also aware that the AMCA 230 committee is currently reviewing AMCA 230–15 (with errata), to determine if any revisions are necessary. DOE understands that should the AMCA 230 committee make any changes to AMCA 230–15 (with errata), AMCA would publish a revised standard, potentially numbered as AMCA 230–22 (or AMCA 230–23, based on the publication year). DOE is participating in the AMCA 230 committee meetings to review and revise AMCA 230–15 (with errata). While this NOPR proposes to reference the requirements from AMCA 230–15 (with errata), it also discusses the revisions being considered by the AMCA 230 committee. DOE requests comment on these revisions as well as any additional revisions under consideration by the AMCA 230 committee that are not discussed in this document. Should the revised version of AMCA 230–15 (with errata), publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to incorporate by reference the latest version of AMCA 230, provided the updates in the final published standard are consistent with the provisions DOE is proposing in this NOPR, or the updates are related to topics that DOE has discussed and solicited comments on in this NOPR. The subsequent sections of this NOPR discuss each substantive change in AMCA 230–15 (with errata), that DOE proposes to incorporate into appendix B, as well as the updates being considered by the AMCA 230 committee.

Estimated costs for the proposed test procedure are discussed in section III.L of this document. DOE seeks information on whether, in general, AMCA 214–21, AMCA 210–16, and AMCA 230–15 (with errata) provide measurements which reflect energy efficiency or energy use during a representative average use cycle of the

[69] See *www.amca.org/LDCF.*

[70] DOE is aware that AMCA 230–15 is currently undergoing periodic review and may be revised in the future. Should a new version become available at the time of any final rule, DOE would incorporate by reference the latest available version of AMCA 230.

fans and blowers (including air circulating fans) proposed to be in scope. If these standards would not provide such measurements, DOE seeks input on how it should be amended and why, and on any other industry test standard that would be more appropriate.

DOE requests comment and supporting data on whether AMCA 214–21 and ISO 5801:2017 produce equivalent test results.

DOE seeks information and data to assist in evaluating the repeatability and reproducibility of AMCA 214–21, AMCA 210–16, and AMCA 230–15 (with errata). DOE seeks input on whether any changes to these standards are needed to increase its repeatability and reproducibility.

DOE seeks information on whether changes to AMCA 214–21, AMCA 210–16, and AMCA 230–15 (with errata) are needed to allow for the determination of more representative energy efficiency ratings, and any cost associated with a suggested change.

DOE requests comment on the physical features that could be identified to differentiate bare-shaft fans that can accommodate only a direct-drive transmission from other bare-shaft fans.

DOE requests comment on any additional revisions under consideration by the AMCA 230 committee that are not discussed in this document.

D. Proposed Adoption of the Test Procedure in AMCA 214–21 and Modifications to the Test Procedure

As discussed previously, DOE is proposing to adopt through reference certain provisions of AMCA 214–21 as the prescribed test method for measuring the energy use and energy efficiency of fans and blowers.

Specifically, for fans and blowers that are not air circulating fans, DOE proposes that testing be performed in accordance with the following sections of AMCA 214–21:

- Section 2 ''References'',
- Section 3 ''Definitions'',
- Section 4 ''Calculation of the FEI for a single duty point'',
- Section 5 ''Reference Fan Electrical Power (FEP_{ref})'',
- Section 6.1 ''Wire-to-Air Testing at the Required Duty Point'',
- Section 6.2 ''Calculated Ratings Based on Wire to Air Testing'',
- Section 6.3 ''Bare Shaft Fans'',
- Section 6.4.1.1 ''Requirements for the fan'',
- Section 6.4.1.2 ''Requirements for the transmission'',
- Section 6.4.1.3 ''Requirements for the motor,
- Section 6.4.2 Calculation of FEP_{act}'',
- Section 6.4.2.1 ''Calculation of transmission efficiency ($\eta_{trans,act}$)'',
- Section 6.4.2.2 ''Calculation of actual motor output power'',
- Section 6.4.2.3 ''Motor efficiency if no VFD is included'',
- Section 7 ''Testing'',
- Section 8.1 ''Laboratory Measurement Only'',
- Section 8.2.1 ''Fan laws and other calculation methods for shaft-to-air testing'',
- Section 8.2.3 '' Calculation to other speeds and densities for wire-to-air testing '',
- Annex D ''Motor Performance Constants (Normative)'',
- Annex E ''Calculation Methods for Fans Tested Shaft-to-Air'',
- Annex G ''Wire-to-Air Measurement—Calculation to Other Speeds and Densities (Normative)'',
- Annex J ''Other data and calculations to be retained'', and
- Annex K ''Proportionality and Dimensional Requirements (Normative)''.

For air circulating fans, DOE proposes that testing be performed in accordance with the following sections of AMCA 214–21:

- Section 2 ''References'',
- Section 3 ''Definitions'',
- Section 4 ''Calculation of the FEI for a single duty point'',
- Section 5 ''Reference Fan Electrical Power (FEP_{ref})'',
- Section 6.1 ''Wire-to-Air Testing at the Required Duty Point'',
- Table 7.1 of Section 7 ''Testing'',
- Section 7.1. ''Test Configurations''
- Section 7.2 ''Setup Selection''
- Section 7.4 ''Run-in requirements''; and
- Annex J ''Other data and calculations to be retained''

As proposed, the test procedure would provide methods to calculate the FEI and FEP of a fan at each of its duty points based on: (1) the fan electrical input measured by a wire-to-air test or, (2) the fan shaft input power measured by a shaft-to-air test (conducted in accordance with AMCA 210–16 or AMCA 230–15 (with errata), and the modifications proposed in this section), and the application of calculation algorithms to represents the performance of the motor. The test procedure would also provide methods to calculate the FEP or fan shaft input power at untested duty points, based on the performance of test duty points and interpolation methods, including the fan laws. The following sections discuss key elements of the proposed test procedure and proposed modification to AMCA 214–21.

1. Motor Efficiency Calculation

For bare shaft fans and fans with an electric motor subject to energy conservation standards at 10 CFR 431.25 (''polyphase regulated motor''), Section 6.3 and 6.4 of AMCA 214–21 specify testing these fans using a shaft-to-air test (*i.e.,* a test that does not include the motor performance). When conducting a shaft-to-air test, the mechanical fan shaft input power is measured and the FEP is then calculated by using a mathematical model to represent the performance of the motor (*i.e.,* its part-load efficiency). The FEP is then used to calculate the FEI of the fan.

AMCA 214–21 provides two different methods to estimate the part-load efficiency of a polyphase regulated motor. A single equation presented in Section 5.3 and section 6.3.3 of AMCA 214 are used to calculate the FEP of the reference fan (''FEP_{ref}'') and the actual FEP of bare-shaft fans (''FEP_{act}''), while a more complex model based on several equations described in Section 6.4.2.3 of AMCA 214 is used to calculate the actual FEP of fans sold with polyphase regulated motors without a variable frequency drive (''VFD''). In support of a final rule published January 25, 2016, for the commercial and industrial pump test procedure, DOE developed a model to estimate the electric motor part-load performance of polyphase regulated motors. 81 FR 4086, 4124–4125. As noted in the commercial and industrial pumps test procedure notice of proposed rulemaking published on April 1, 2015, DOE has designed the calculation-based approach used in the pump test procedure to be conservative (*i.e.,* the model represents a conservative estimate of part-load motor losses and efficiency) [71] 80 FR 17585, 17628 (''Pumps April 2015 TP NOPR'') DOE notes that such approach minimizes the possibility that testing the pump without the motor and using the model to estimate motor performance would result in better energy efficiency ratings than testing the pump inclusive of the motor.

Pumps and fans are powered by the same categories of motors, and DOE compared the motor part-load efficiency resulting from applying the two AMCA 214–21 motor equations with the motor part-load efficiency obtained when using the equation from the DOE pump test procedure. DOE found that the AMCA models resulted in efficiency values that were, on average, one percent higher (when using Sections 5.3 and 6.3.3) and two percent higher (when

[71] The efficiency (Eff) of a motor at a given load (x) relates to the motor horsepower (hp) and losses (L) as follows: Eff = (x. hp)/(x.hp + L)

using Section 6.4.2.3) than the values determined using the equation from the DOE pump test procedure.[72] When using these equations to calculate the FEI of a large sample of fans, DOE found that the impact on FEI was, on average, 1 percent higher than the FEI obtained using the model from the DOE pump test procedure.

Based on this review, DOE tentatively concludes that the impact on the FEI is not significant enough to justify deviating from the established industry test procedure. Therefore, DOE proposes to maintain the equations as provided in Sections 5.3 and 6.4.2.3 of AMCA 214–21 to estimate the part-load motor efficiency when calculating FEP_{ref}, FEP_{act}, and the FEP_{act} of fans sold with electric motors regulated at 10 CFR 431.25 (and without VFDs). Should additional information become available indicating that the FEI ratings resulting from the equations in AMCA 214–21 diverged to a greater extent from the FEI ratings resulting from testing the fan wire-to-air, DOE would consider the use of alternate equations, such as the equations from the DOE pump test procedure.

DOE requests comment on the equations provided in Sections 5.3 and 6.4.2.3 of AMCA 214–21. Specifically, DOE requests comment on whether applying the method outlined in Section 6.4 of AMCA 214–21 and the equations provided in Section 6.4.2.3 of AMCA 214–21 could result in a higher value of FEI than the FEI resulting from a wire-to-air test in accordance with Section 6.1 of AMCA 214–21.

2. Combined Motor and Controller Efficiency Calculation

For fans with a polyphase regulated motor and a controller, AMCA 214–21 allows testing these fans using a shaft-to-air test (*i.e.,* a test that does not include the motor and controller performance). When conducting a shaft-to-air test, the mechanical fan shaft input power is measured and the FEP is then calculated by using a mathematical model to represent the performance of the combined motor and controller (*i.e.,* its part-load efficiency). The FEP is then used to calculate the FEI of the fan.

Section 6.4.2.4 of AMCA 214–21, which relies on Annex B ''Motor Constants if Used With VFD (Normative)'' and Annex C ''VFD Performance Constants (Normative)'', provides a method to estimate the combined motor and controller part-load efficiency for certain electric motors and controller combinations that meet the requirements in Sections 6.4.1.3 and 6.4.1.4 of AMCA 214–21, which specify that the motor must be an electric motor subject to energy conservation standards at 10 CFR 431.25.

Previously, DOE developed a similar model to estimate the combined motors and controller part-load performance in support of the commercial and industrial pump rulemaking, in the case where the motor is polyphase regulated motor. 81 FR 4086, 4128–4130 (January 25, 2016). As noted in the Pumps April 2015 TP NOPR, the model used in the pump test procedure represents a conservative estimate of part-load motor losses (and efficiency).[73] 80 FR 17585, 17628 This minimizes the possibility that using the calculation approach to estimate the motor and controller performance would result in better energy efficiency ratings than when testing the equipment inclusive of the motor and controller.

Pumps and fans are powered by the same categories of motors and controllers and DOE compared the motor part-load efficiency resulting from applying the AMCA 214–21 motor and controller equations with the combined motor and controller part-load efficiency obtained when using the equation from the DOE pump test procedure and found that the AMCA model resulted in combined motor and controller part-load efficiency values that were, on average, four percent higher than when using the DOE model.[74] In addition, DOE reviewed motor and VFD efficiency data from the AHRI certified product database [75] and found existing motor and VFD combinations that performed at a lower efficiency than predicted by the AMCA 214 model. DOE also reviewed the reference motor and controller (''power drive system'') efficiency provided in IEC 61800–9–2:2017 ''Adjustable speed electrical power drive systems—Part 9–2: Ecodesign for power drive systems, motor starters, power electronics and their driven applications—Energy efficiency indicators for power drive systems and motor starters'', which also provides equations to represent the performance of a motor and controller used with fans, and found that the IEC model predicted values of efficiency that were significantly lower (more than 10 percent on average) than the model included in AMCA 214–21.

Based on this analysis, DOE has concerns that the equations described in Section 6.4.2.4 of AMCA 214–21 may not be appropriately representative, resulting in fan FEI ratings that would be higher than FEI ratings obtained using the wire-to-air test method described in Section 6.1 of AMCA 214–21. Therefore, DOE does not propose to allow the use of Section 6.4.2.4 of AMCA 214–21. Instead, DOE proposes that fans with motor and controller be tested in accordance with Section 6.1 of AMCA 214–21. Manufacturers would still be able to rely on a mathematical model (including the same model as described in Section 6.4.2.4 of AMCA 214–21, as long as the model meets the AEDM requirements discussed in section III.J of this document) in lieu of testing to determine the FEI of a fan with a motor and controller, subject to the proposed AEDM discussed in section III.J of this document.

3. Annex A of AMCA 214–21

Annex A provides the reference nominal full-load efficiency values to use for polyphase motors subject to energy conservation standards at 10 CFR 431.25 when calculating the motor part load efficiency in accordance with Section 6.4.2.3 of AMCA 214–21. DOE proposes to replace Annex A of AMCA 214–21 by a reference to Table 5 of 10 CFR 431.25. The values in Annex A and Table 5 of 10 CFR 431.25 are identical, however, referencing the Code of Federal Regulations would ensure that the values of polyphase regulated motor efficiencies remain up to date with any potential future updates established by DOE.

4. Annex E of AMCA 214–21

As previously discussed, Annex E of AMCA 214–21 allows a reduction in the number of tests potentially required by allowing the use of fan laws to calculate the fan shaft power of a non-tested fan using results from a fan shaft power test of a fan with a smaller impeller diameter. Since the publication of AMCA 214–21, AMCA 211–22 ''Certified Ratings Program Product Rating Manual for Fan Air Performance'' was published. Annex I of AMCA 211–

[72] On average, across operating motor loads (25 to 100 percent load) and across all motor horsepowers between 1 and 250 hp, the motor part-load efficiency values obtained using the equations in AMCA 214 were one and two percent higher than the motor part-load efficiency values obtained using the equations from the DOE pump test procedure.

[73] The efficiency (Eff) of a motor at a given load (x) relates to the motor horsepower (hp) and losses (L) as follows: Eff = (x. hp)/(x.hp + L).

[74] On average the combined motor and controller part-load efficiency values obtained using the equation in AMCA 214–21 were 5 percent higher across operating motor loads (25 to 100 percent load) and across all motor horsepowers between 1 and 250 hp, when compared to the combined motor and controller part-load efficiency values obtained using the equations from the DOE pump test procedure.

[75] AHRI Standard 1210, ''Standard for Performance Rating of Variable Frequency Drives,'' certified data from 2016, 2020, and 202. See: *https://www.ahridirectory.org/NewSearch?programId=71&searchTypeId=3.*

22 allows the use of fan laws to additionally interpolate the fan shaft power of a non-tested fan using results from a fan shaft power test of two fans with a smaller and larger impeller diameter (*i.e.,* interpolation between two tested sizes). DOE is considering adding a reference to section I.6 of Annex I of AMCA 211–22 and allowing manufacturer to additionally interpolate the fan shaft power of a non-tested fan between two tested fans sizes. Alternatively, DOE may consider referencing Annex I of AMCA 211–22 in place of Annex E of AMCA 214–21.

DOE requests comments on whether it should add a reference to Section I.6 of AMCA 211–22 or replace Annex E of AMCA 214–21 by Annex I of AMCA 211–22.

5. Section 6.5 of AMCA 214–21 and Annex F

Section 6.5 and Annex F of AMCA 214–21 provide methods to determine the FEP of the actual fan by conducting separate tests for the bare shaft fan and the motor or the combined motor and controller. Annex F specifies the industry test methods [76] to use when testing the motor or the combined motor and controller. As provided in Annex F, the motor and controller, if included, must be tested at the range of speeds and loads over which the fan is to be rated. The measurements result in a map of the input power (kW) versus speed and load and intermediate values can be determined through interpolation (linear interpolation or a polynomial curve fit). The methods in Section 6.5 and Annex F of AMCA 214–21 are applicable to any electric motor (including non-DOE regulated motors that meet the definition of electric motor at 10 CFR 431.12) as long as it can be tested per the industry test procedures included in Annex F.

The test procedure for combined motor and controller in AMCA 214–21 deviates from the methods proposed in the January 2021 electric motors test procedure NOPR. 86 FR 71710, 71743 (December 17, 2021) While Annex F of AMCA 214–21 specifies that testing that combined motor and controllers can be performed using either ANSI/ASHRAE Standard 222, ''Standard Method of Test for Electrical Power Drive Systems'', CSA C838, ''Energy efficiency test methods for three-phase variable frequency drive systems'', or CSA C747, ''Energy efficiency test methods for small motors'', DOE proposed, in the January 2021 electric motors test procedure NOPR, that combined motors and controllers be tested using IEC 61800–9–2:2017, ''Adjustable speed electrical power drive systems—Part 9–2: Ecodesign for power drive systems, motor starters, power electronics and their driven applications—Energy efficiency indicators for power drive systems and motor starters''. 86 FR 71710, 71743 For fans combined with regulated motors, the methods described in Section 6.5 and Annex F of AMCA 214–21 would be less burdensome than multiple wire-to-air tests; however, it would likely be significantly more burdensome than applying the calculation methods described in Section 6.3 of AMCA 24–21, since it would require physical tests of all motors with which the bare shaft fan could be paired. In addition, with the option to allow for an AEDM as discussed in section III.J. of this document, a manufacturer would be able to integrate the methods of Section 6.5 and Annex F of AMCA 214–21 into a mathematical model as long as the proposed AEDM requirements were met.

Therefore, DOE is not proposing to include Section 6.5 and annex F of AMCA 214–21 in the proposed DOE test procedure. Manufacturers would still be able to rely on a mathematical model (including potentially the same model as described in Section 6.5 of AMCA 214–21, as long as the models meet the AEDM requirements discussed in section III.J of this document) in lieu of testing to determine the FEI of a fan with a motor or a motor and controller, provided that the mathematical model meets all the AEDM requirements proposed in section III.J. of this document.

6. Annex H and Annex I of AMCA 214–21

Annex H ''Required Reported Values (Normative)'' of AMCA 214–21 provides reporting requirements. DOE is not proposing to adopt Annex H. DOE may consider proposals to establish reporting requirements for fans and blowers under a separate rulemaking.

Annex I ''Minimum Data Requirements for Published Ratings (Informative)'' provides guidance on what performance information to publish. DOE is not proposing to adopt Annex I. DOE is proposing requirements regarding represented values in section III.K of this document.

7. Section 8.3 of AMCA 214–21

Section 8.3 ''Appurtenances'' provides guidance on how to characterize fan performance in the case of a fan with additional appurtenances beyond what is required by the test procedure. DOE is not proposing to adopt this section as DOE does not propose to establish fan performance with additional appurtenances beyond what is specified by the test procedure in Section 7.3 of AMCA 214–21, which DOE proposes to adopt through reference.

8. Measurement of PRV Performance

As described in Table III–9, AMCA 214–21 requires different test configurations for PRVs that supply air to a building and PRVs that exhaust air from a building. Some PRVs can operate both as supply and exhaust fans. DOE proposes that PRVs that can operate both as supply and exhaust fans be tested in both configurations.

DOE seeks feedback on its proposal that PRVs that can operate both as supply and exhaust fans be tested in both configurations as described in Table III–9 of this document.

9. Exclusively Embedded Fans

As discussed in section III.A.3 of this document, DOE proposes to exclude fans that are exclusively embedded in equipment as listed in Table III–8 of this document. Other exclusively embedded fans would be included in the scope of the test procedure to the extent that they meet the proposed test procedure scope criteria presented in section III.A.1 of this document and do not fall under the proposed exclusions discussed in section III.A.2. of this document.

The Working Group recommended that embedded fans be tested in a standalone fan configuration (*i.e.,* outside of the piece of equipment in which they are embedded). (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #8 at p. 5) DOE interprets this recommendation to apply to exclusively embedded fans because standalone fans that are purchased by an OEM for incorporation into equipment can be tested prior to being embedded. Because exclusively embedded fans included in larger equipment may share structural or functional parts with that equipment, the fan would not be removable without causing irreversible damage to the equipment. To address such embedded fans, the Working Group recommended testing exclusively embedded fans using additional fan components, except for the fan impeller, that are geometrically identical to that of the embedded fan

[76] CSA C747–09 (R2014), ''Energy efficiency test methods for small motors;'' CSA C838–13 (R2018), ''Energy efficiency test methods for three-phase variable frequency drive systems;'' IEEE 112–2017, ''IEEE Standard Test Procedure for Polyphase Induction Motors and Generators'' and ANSI/ASHRAE Standard 222–2018, ''Standard Method of Test for Electrical Power Drive Systems''.

inside the larger piece of equipment. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #8 at p. 5) In addition, the Working Group recommended that embedded fans be certified over their standalone operating range. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #4 at p. 4)

DOE collected fan performance information from OEM and fan manufacturer websites, indicating that OEMs currently test and collect information on embedded fan performance and that OEMs understand a fan's typical operating range in terms of flow and pressure.[77] As previously discussed, the AMCA 214–21 foreword states that, ''AMCA Standard 214 primarily is for fans that are tested alone or with motors and drives; it does not apply to fans tested embedded inside of other equipment.'' To test exclusively embedded fans, DOE therefore proposes, consistent with the Working Group recommendation, that these fans be tested as standalone fans, outside of the equipment in which they are incorporated. In addition, DOE proposes that if any fan components are not removable without causing irreversible damage to the equipment into which the fan is embedded, the manufacturer must use additional fan components, except for the fan impeller, that are geometrically identical to that of the fan embedded inside the larger piece of equipment for testing. This would result in a range of FEI ratings at every operating point at which the fan is capable of operating, including at the flow and pressure point experienced by the fan when embedded inside the equipment.

DOE seeks comment on its proposal to test exclusively embedded fans in a standalone configuration outside of the equipment that incorporates the fan.

10. Wire-to-Air Testing for Air Circulating Fans

Air circulating fans incorporate and are sold with a motor. Accordingly, AMCA 230–15, which is the physical test method referenced in AMCA 214–21 for air circulating fans, only provides a wire-to-air test method. DOE proposes a test procedure for testing air circulating fans based on the methods in Sections 6.1 and 6.2 of AMCA 214–21.

In response to the February 2022 ECS RFI, the CA IOUs commented that ACFs sold without a motor should be included in the DOE test procedure. (Docket No. EERE–2022–BT–STD–0002, CA IOUs, No. 7 at p. 6) In addition, the CA IOUs stated that ACFs with multiple motor options should be tested using a motor capable of running the fan at the fan's maximum allowable speed. They added that doing so will prevent manufacturers from avoiding energy conservation standards by selling incomplete fans. The CA IOUs also suggested that optional motor fans be tested with the least efficient motor and allow for an optional representation of higher-efficiency motors. *Id.*

DOE did not find any circulating fans that were distributed in commerce without an electric motor. However, if an air circulating fan is sold without a motor, it would still meet the definition of an air circulating fan and would be included in the scope of the test procedure. DOE proposes that air circulating fans distributed in commerce without an electric motor be tested using an electric motor as recommended in the manufacturer's catalogs or distributed in commerce with the air circulating fan. If more than one motor is available in manufacturer's catalogs or distributed in commerce with the air circulating fan, DOE proposes requiring that it be tested using the least efficient motor capable of running the fan at the fan's maximum allowable speed.

DOE requests comment on its proposed approach for testing air circulating fans that are distributed in commerce without an electric motor.

11. Total Pressure Calculation for Air Circulating Fans

AMCA 214–21 specifies that air circulating fans must rely on a FEI based on total pressure (sum of the static pressure and velocity pressure) (See Table III–9 of this document). However, AMCA 230–15 does not specify the measurement or calculation of fan total pressure, which is a required input to the FEI calculation.

DOE proposes to add provisions to specify how to calculate fan total pressure and to apply the equations in Section A.2 of AMCA 208–18 when calculating the fan total pressure at a given airflow for fans tested per AMCA 230–15.

DOE requests comment on its proposal to add provisions for calculating the total pressure of air circulating fans based on the equations in Section A.2 of AMCA 208–18.

12. Appurtenances

Section 7.3 of AMCA 214–21 provides instructions on which appurtenances to include as part of the tested fan. It distinguishes between appurtenances that improve or reduce performance. For appurtenances that improve fan performance (including but not limited to inlet bells, diffusers, stators, or guide vanes), AMCA 214–21 specifies that these appurtenances should be included if always supplied with the fan when distributed in commerce. For appurtenances that reduce fan performance, which include, but are not limited to, safety guards, dampers, filters, or weather hoods, AMCA 214–21 states that if the appurtenance is always supplied with the fan when distributed in commerce, then it shall be tested with the fan. If the appurtenance is not always supplied with the fan when distributed in commerce, it shall not be tested with the fan.

For circulating fans, the AMCA 230 committee is considering adding the following provisions as part of the revised version of AMCA 230: any appurtenances sold with the fan shall be included in the minimum testable configuration.

DOE reviewed the provisions related to accessories in AMCA 214–21 and as considered by the AMCA 230 committee and has tentatively determined that testing using the provisions discussed by the AMCA 230 committee would provide results that are more representative of field conditions because consumers are likely to use the fan with the appurtenances they purchase. Therefore, DOE proposes to specify for fans and blowers, including air circulating fans, that any appurtenances sold with the fan must be included during the test.

In addition, for air circulating fans, the AMCA 230 committee is considering additional provisions to include in the next version of AMCA 230 to describe what should be considered as part of the test (*i.e.,* the ''minimum testable configuration''). The committee is considering the following: (1) If sold with the fan, an on/off switch or speed control device would be included in the minimum testable configuration. The power consumption of the on/off switch or speed control device would be included in the active and standby mode power measurements. (2) If multiple control devices are sold with the fan, only the standard fan control device would be used for testing. (3) Optional product features not related to generating air movement would not be energized for the purpose of testing. Optional product features not related to generating air movement include, but are not limited to: misting kits, external sensors not required to operate the fan, and communication devices not required to operate the fan.

For air circulating fans, DOE has tentatively determined that it is unlikely

[77] See for example: *www.trane.com/Commercial/Uploads/Pdf/1020/clchprc003_en_mseriescatalog_1205.pdf; content.greenheck.com/public/DAMProd/Original/10001/AllProducts_catalog.pdf.*

that additional features not related to air movement would remain in the on-position unless intended by the consumer. As such, requiring testing in their ''as-shipped'' configuration would not provide a more representative measure of energy use for air circulating fans. DOE proposes to add clarification that additional features not related to air movement be installed, but either powered off or set at the lowest energy-consuming mode during testing. Further, to avoid confusion as to which controller is used for testing in the case where multiple advanced controllers are offered, DOE proposes to add additional clarification to its specifications for appurtenances. Specifically, DOE proposes to clarify that if the air circulating fan is offered with a default controller, testing would be conducted using the default controller. If the air circulating fan is offered with multiple controllers, testing would be conducted using the minimally functional controller (*i.e.* ''standard controller''). Testing using the minimally functional controller is consistent with the direction to test with additional features not energized during the power consumption measurement. Controller functions other than the minimal functions (*i.e.,* the functions necessary to operate the air circulating fan blades) are akin to additional features that do not relate to the air circulating fan's ability to create airflow. This proposed addition clarifies which controller to select. These proposals are in line with the additional provisions considered by the AMCA 230 committee.

DOE is aware that the revisions considered by the AMCA 230 committee are subject to change and could further be revised in the next version of AMCA 230. Should the revised version of AMCA 230 publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to revise the provisions related to appurtenances in line with the latest AMCA 230 standard, provided the updates in this standard are consistent with the provisions DOE is proposing in this NOPR, or the updates are related to topics that DOE has discussed and for which DOE has solicited comments to in this NOPR.

DOE requests comment on the proposed provisions related to the consideration of appurtenances when testing fans and blowers, including air circulating fans.

DOE requests comment on whether it should consider specifying additional provisions to describe which components should be included in the test.

13. Voltage, Phase and Frequency

Fans and blowers can be rated to operate at 50 or 60 Hz, be supplied by single-phase or multi-phase electricity, and can operate at a single rated voltage (*e.g.* 115 V) or within one or more rated voltage ranges, or a combination of both (*e.g.* 115/208–230V).

Section 7.8 of AMCA 214–21 specifies that for fan electrical power measurement (when conducting a wire-to-air test), the fan must be operated using 60 Hz supply unless that frequency conflicts with nameplate values. The voltage during the test shall match the highest allowable value that corresponds with the relevant nameplate.

In the Unites States, 60 Hz frequency is the most representative, and DOE has tentatively determined that fans rated for operation with only 60Hz power supply would be tested with 60 Hz electricity and that fans capable of operating with 50Hz and 60Hz electricity would also be tested with 60Hz electricity. DOE has tentatively determined that it does not need to consider air circulating fans rated for operation with only 50 Hz power, since these fans are not relevant in the U.S. market.

Regarding the phase and voltage to select for testing, at this time, DOE is proposing to clarify which phase and voltage to use during the test as follows.

DOE proposes to specify to test fans and blowers, including circulating fans, rated for operation with only a single- or multi-phase power supply with single- or multi-phase electricity, respectively. Fans and blowers, including circulating fans, capable of operating with single- and multi-phase electricity, DOE proposes that fans capable of operating with single- and multi-phase electricity must be tested using multi-phase power supply, which is the most common power supply for industrial and commercial equipment. DOE would allow manufacturers of fans and blowers, including circulating fans, capable of operating with single- and multi-phase electricity to test such fans with single-phase power and make representations of efficiency associated with both single and multi-phase electricity if a manufacturer desires to do so.

For fans and blowers other than air circulating fans, DOE does not have any information to evaluate which configuration would be the most representative of an average energy use cycle and DOE proposes to retain the provisions in Section 7.8 of AMCA 214–21 to specify testing at the highest rated voltage and align with existing industry standards. Alternatively, DOE may consider other options such as specifying a voltage for test similar to that proposed below for air circulating fans.

For air circulating fans, DOE does not have any information to evaluate which configuration would be the most representative of an average energy use cycle. Instead, DOE reviewed the provisions related to the supply voltage in the ceiling fan test procedure, which are also tested based on AMCA 230–15 (with errata). Sections 3.43 and 3.4.4 of 10 CFR part 430 appendix U. DOE proposes the same provisions for air circulating fans that it uses for ceiling fan, with additional language to distinguish how to select the supply voltage for fans tested using single-phase and multi-phase electricity.

Specifically, DOE proposes that the supply voltage must be: (1) for air circulating fans tested with single-phase electricity, the supply voltage would be (a) 120 V if the air circulating fan's minimum rated voltage is 120 V or the lowest rated voltage range contains 120 V, (b) 240 V if the air circulating fan's minimum rated voltage is 240 V or the lowest rated voltage range contains 240 V, or (c) the air circulating fan's minimum rated voltage (if a voltage range is not given) or the mean of the lowest rated voltage range, in all other cases; (2) for air circulating fans tested with multi-phase electricity, the supply voltage would be (a) 240 V if the air circulating fan's minimum rated voltage is 240 V or the lowest rated voltage range contains 240 V, or (b) the air circulating fan's minimum rated voltage (if a voltage range is not given) or the mean of the lowest rated voltage range, in all other cases.

DOE is aware that the revisions considered by the AMCA 230 committee are subject to change and could further be revised in the next version of AMCA 230. Should the revised version of AMCA 230 publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to revise the provisions related to frequency, phase, and voltage in line with the latest AMCA 230 standard, provided the updates in this standard are consistent with the provisions DOE is proposing in this NOPR, or the updates are related to topics that DOE has discussed and solicited comments to in this NOPR.

DOE requests comment on the proposed provisions related to

specifying which frequency, phase, and voltage to use during a test.

DOE additionally requests comment on whether the supply voltage requirements proposed for testing air circulating fans and fans and blowers other than air circulating fans would appropriately represent an average use cycle.

14. Test Speeds for Air Circulating Fans

Section 8.2.4 of AMCA 230–15 (with errata) specifies that for air circulating fans with variable speed, performance data is captured and reported at five speeds (20, 40, 60, 80 and 100 percent of maximum speed) evenly spaced throughout the speed range. If there are less than five speeds available, the performance of all speeds is measured. AMCA 230–15 does not explicitly indicate how to test fans with multiple discrete speed settings.

AMCA recommended that DOE require testing only at ''high speed'' for compliance and check-testing asserting that the majority of the market is single-speed. AMCA commented that this would be more repeatable -and reduce regulatory burden. While AMCA provided no supporting data, AMCA commented that fans having two or more speeds generally are run at high speed in commercial and industrial environments. (AMCA, No. 6 at p. 8)

The AMCA 230 committee is considering revising the test speed requirements in AMCA 230–15 (with errata) to indicate that all air circulating fans must be tested at their highest (*i.e.,* maximum) speed and that additional speeds may be captured and reported to more fully define the shape of the fan flow vs. speed curve (for example—additional measurements at 20, 40, 60, and 80 percent of maximum speed).

For single speed air circulating fans, DOE proposes to require that testing be conducted at the single available speed. For multi-speed fans with discrete operating speeds, and for variable-speed fans with continuously adjustable speeds, while DOE believes it is preferable to align the DOE test procedure with the accepted industry test procedures—in this case AMCA 230—as much as possible, DOE does not have data to determine the typical field operating speed(s) of air circulating fan [78] (AMCA did not provide any data to support their claims that air circulating fans are mainly used at high speed) and DOE has tentatively determined that testing at each discrete speed (for multi-speed fans) or at each of the five speeds currently specified in AMCA 230–15 (with errata), rather than only requiring testing at the maximum speed may provide a more holistic representation of an air circulating fan's performance over a range of service levels, which may in turn facilitate easier comparisons for consumers. It would also capture any changes in the efficiency of the motor and associated variable speed control device at part-load conditions. In addition, DOE proposes to clarify that variable-speed air circulating fans with a minimum speed that is greater than 20 percent of the maximum speed, the performance data would be captured and reported in five speeds evenly spaced throughout the speed range, including at minimum and maximum speeds.[79]

DOE is considering several alternative options for specifying the test speeds at which fans with multiple or variable speeds should be tested including testing a high speed only, or testing in accordance with the speed requirements for large diameter ceiling fans in section 3.5 of 10 CFR part 430, appendix U, which specifies that testing must be conducted at maximum speed and at 40 percent speed or the nearest speed that is not less than 40 percent speed. DOE notes that regardless of the proposed tested speeds, performance data at additional speeds may be captured and reported to better define the shape of the fan performance curve (for example, additional measurements at 20, 60, and 80 percent of maximum speed).

DOE is aware that the AMCA 230 committee is considering revisions to how test speeds are specified for air circulating fans and that the options considered by the AMCA 230 committee are subject to change and could further be revised in the next version of AMCA 230. Should the revised version of AMCA 230 publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to revise the provisions related to speed selection in line with the latest AMCA 230 standard, provided the updates in this standard are consistent with the provisions DOE is proposing in this NOPR, or the updates are related to topics that DOE has discussed and solicited comments on in this NOPR.

Finally, DOE notes that AMCA 214–21 has provisions to calculate performance data at non-tested speeds based on wire-to-air test results at different speeds. See Section 6.2 ''Calculated Ratings Based on Wire to Air Testing'' of AMCA 214–21, which references Section 8.2.3 ''Calculation to other speeds and densities for wire-to-air testing'', and Annex G ''Wire-to-Air Measurement—Calculation to Other Speeds and Densities (Normative)''. For air circulating fans, DOE has tentatively determined that these sections do not apply because air circulating fans have a more limited range of operating speeds and DOE is proposing to test at each speed where performance data is required. AMCA 214–21 also includes an annex that only applies to shaft-to-air tests and allows interpolating performance between tested speeds (Annex E of AMCA 214–21). For air circulating fans, DOE has tentatively determined that these sections do not apply because air circulating fans are tested wire-to-air.

DOE seeks feedback on the options presented for specifying the testing speed(s) for air circulating fans and its proposal to test single speed fans at the single available speed, multi-speed fans at each available speed, and variable speed fans at 20, 40, 60, and 80 percent of maximum speed. DOE further requests feedback on its proposal to clarify that if the fan minimum speed is greater than 20 percent of the maximum speed, the performance data would be captured and reported in five speeds evenly spaced throughout the speed range, including at minimum and maximum speeds.

DOE requests data to characterize typical air circulating fan operating speed(s) and time spent at each operating speed.

DOE requests feedback on whether Section 6.2 and Annex E of AMCA 214–21 should be applied to air circulating fans.

15. Determination of Equilibrium

Section 6.1.2 of AMCA 210–16 states that ''statistically stable conditions shall be established before each [test] determination. To test for a stable condition, trial observations shall be made until steady readings are obtained. The range of airflow over which stable condition[s] cannot be established shall be recorded and reported.'' Similarly, Section 8.1.1 of AMCA 230–15 (with errata) specifies that equilibrium conditions must be established before each measurement, with equilibrium achieved once steady readings are

[78] In agricultural applications, DOE has found some data indicating ventilation requirements vary by a factor of 12 depending on the season (cold weather vs. hot weather). However it's unclear if the different ventilation requirements would typically be met by cycling fans on/off at maximum speed or by varying speeds, or through other speed settings. *https://extension.umn.edu/swine-facilities/change-season-ventilation.*

[79] If the fan's maximum speed is 1000 RPM and the fan's minimum speed is 400 RPM, then the following speeds should be reported: 400, 550, 700, 850, and 1000 where each speed is equally spaced of 150 RPM or (1000–400)/4

obtained. DOE notes that while both AMCA 210–16 and AMCA 230–15 require that steady readings must be obtained prior to the start of test, neither test standard provides specific variables with associated tolerances within which equilibrium can be quantified. In order to ensure repeatable and reproducible results from a test method, it is necessary to specify consistent requirements for determining when a fan is and is not at equilibrium before the commencement of testing. It is also necessary to specify a time period over which equilibrium must be established.

(a) Air Circulating Fans

For circulating fans, the AMCA 230 committee is considering selecting three or four values from the options listed in Table III–12 for determining equilibrium prior to testing, namely: fan speed, system input power, barometric pressure, and load differential. To verify that equilibrium has been achieved, readings would need to meet the tolerances specified in Table III–12, after running the fan for at least 5 minutes, with measurements taken at least every 5 seconds.

TABLE III–12—EQUILIBRIUM OPTIONS CONSIDERED BY THE AMCA 230 COMMITTEE WORKING GROUP

Variable	Equilibrium tolerance
Ambient barometric pressure.	±3 percent of mean.
Extraneous airflow before test.	≤50 fpm.
System input voltage *	±2 percent of mean.
System input power **	±2 percent of mean or 1 Watt.
Fan speed	±1 percent of mean or 1 rpm.
Load	±1 percent of mean.
Load differential	±1 percent of mean.

* AMCA 230–15 (with errata) uses the terms system input voltage, electrical input voltage, and voltage interchangeably.

** AMCA 230–15 (with errata) uses the terms systems input power, electrical input power, and power interchangeably to designate the real power (see Section 6.3 of AMCA 230–15 (with errata).

DOE has tentatively determined that ambient air density, extraneous airflow (*i.e.,* test room ventilation), system input voltage, system input current, system input power, fan speed, load, and load differential will impact test results. Therefore, DOE is proposing that measurements of these values would need to fall within the tolerance window listed in Table III–13 prior to initiating the test for fans and blowers, including air circulating fans. As the examples above illustrate, equilibrium must be determined from multiple data points taken over a specified period of time. DOE is proposing that measurements for the variables listed in Table III–13 would be taken at least every 5 seconds over a minimum of 5 minutes. This timeframe provides a minimum of 60 data points from which equilibrium can be verified.

TABLE III–13—PROPOSED TEST VARIABLES AND TOLERANCES FOR DETERMINING EQUILIBRIUM OF AIR CIRCULATING FANS PRIOR TO EACH FAN TEST

Variable	Equilibrium tolerance
Calculated air density	±1 percent of mean.
System input voltage	±2 percent of mean.
System input current	±2 percent of mean.
System input power	±2 percent of mean or 1 W, whichever is greater.
Fan speed	±1 percent of mean or 1 rpm, whichever is greater.
Load	±1 percent of mean.
Load differential	±1 percent of mean.

Fan pressure and horsepower, and therefore fan efficiency, will vary with air density at the fan inlet. Therefore, DOE is proposing that air density, as determined from dry bulb temperature, dew point, and barometric pressure measured over at least 5 minutes, would remain within one percent of the mean air density in order to establish equilibrium prior to fan testing.

DOE's proposed system input voltage, system input current, system input power, load, and load differential tolerances for evaluating equilibrium are two times the equipment accuracy tolerances specified in AMCA 230–15. Doubling equipment accuracy is a typical approach for determining reasonable measurement tolerances. DOE notes that its proposed tolerances for input voltage, input current, load, and load differential are identical to those discussed by the AMCA 230 committee working group, as are the measurement interval and measurement time frame. However, DOE is proposing that system input power would also include a lower limit on wattage (*i.e.,* ±2 percent of mean wattage or 1 W). Additionally, DOE is proposing that fan speed would be within ±1 percent of the mean rpm or 1 rpm, whichever is highest over at least a 5-minute time period in order to establish equilibrium prior to testing. DOE recognizes that measurements at low airflow tend to be variable and this approach provides additional tolerance for fans tested at lower speeds.

DOE recognizes that demonstrating equilibrium for each of the variables listed in Table III–13 of this document may not be realistic for all fans. DOE may consider prioritizing the variables listed in Table III–13 of this document, such that equilibrium must always be demonstrated for a specific number of the highest priority variables. For instance, DOE may require that equilibrium must be demonstrated for more variables at high speed than at low speed. Alternately, DOE may consider specifying a subset of the variables proposed in Table III–13 of this document, similar to what has been discussed by the AMCA 230 committee.

Section 8.1.2 of AMCA 230–15 specifies that the extraneous airflow before, during, and after test should not exceed 50 fpm and that measurements should be taken immediately before and after the test to verify that this condition is met. DOE agrees that extraneous airflow in the test chamber may impact test results and should be recorded prior to and after the test; however, DOE notes that it is unrealistic to conduct extraneous airflow measurement during testing. Therefore, in addition to the maximum extraneous airflow requirement of 50 feet per minute specified in Section 8.1.2 of AMCA 230–15, DOE is proposing to measure and record extraneous airflow for at least one minute prior to establishing equilibrium and for at least one minute at the conclusion of the test, with measurements recorded at a maximum of 5 second intervals. A test would be considered to be concluded at the instant the blades are no longer spinning.

DOE is aware that the revisions considered by the AMCA 230 committee are subject to change and could further be revised in the next version of AMCA 230. Should the revised version of AMCA 230 publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to revise the provisions related to appurtenances in line with the latest AMCA 230 standard, provided the updates in this standard are consistent with the provisions DOE is proposing in this NOPR, or the updates are related to topics that DOE has discussed and for which DOE has solicited comments to in this NOPR.

DOE requests comment on its proposal for determining if an air circulating fan has reached equilibrium prior to initiating testing. Specifically, DOE is soliciting comment on the test variables and related tolerances that it is proposing to incorporate in its equilibrium determination. Additionally, DOE seeks comment on the minimum duration and maximum interval over which equilibrium would need to be verified. DOE also seeks comment on which variables proposed

in Table III–13 that, if not stable prior to test, would have the greatest impact on measured fan performance. Finally, DOE requests comment on its proposal to specify the time and frequency over which extraneous airflow measurements would be recorded.

(b) Fans and Blowers Other Than Air Circulating Fans

Similar to the evaluation described previously for air circulating fans, DOE reviewed the test chamber and test equipment accuracy requirements listed in Section 6 of AMCA 210–16. DOE has tentatively determined that ambient air density, input power (as measured by a reaction dynamometer, torque meter, calibrated motor, or electrical meter) will impact test results. Additionally, ascertaining that fan speed is at steady state prior to testing is critical for ensuring repeatable and reproducible fan performance results. Therefore, DOE is proposing that measurements of these values would need to fall within the tolerance window listed in Table III–14 prior to initiating the test. Equilibrium on input power would be required on a single input power device. Equivalent to the proposal for air circulating fans, DOE is proposing that fan system equilibrium would need to be verified over at least 5 minutes, with measurements recorded on each variable at a maximum of 5 seconds.

TABLE III–14: PROPOSED TEST VARIABLES AND TOLERANCES FOR DETERMINING EQUILIBRIUM OF FANS AND BLOWER OTHER THAN AIR CIRCULATING FANS PRIOR TO EACH FAN TEST

Variable	Equilibrium tolerance
Ambient air density	±1 percent of mean.
Input power by reaction dynamometer.	±4 percent of mean.
Input power by torque meter.	±4 percent of mean.
Input power by calibrated motor.	±4 percent of mean.
Input power by electrical meter.	±2 percent of mean or 1 W, whichever is greater.
Fan speed	±1 percent of mean or 1 rpm, whichever is greater.

For fans other than circulating fans, DOE notes that Section 7.3 of the 2007 edition of ISO 5801 specified that before taking measurements, the fan must be run until it reaches steady operation, which was described as speed fluctuation being no more than ±0.5 percent of the average speed. While this provision is more stringent than DOE's proposal of ±1 percent of the average speed measured over at least 5 minutes, DOE is proposing tolerances on variables in addition to fan speed (as listed in Table III–14) to verify that equilibrium has been achieved.

DOE recognizes that demonstrating equilibrium for each of the variables listed in Table III–14 may not be realistic for all fans. DOE may consider prioritizing the variables listed in Table III–14, such that equilibrium must always be demonstrated for a specific number of the highest priority variables. For instance, DOE may require that equilibrium must be demonstrated for more variables at high speed than at low speed. Alternately, DOE may consider specifying a subset of the variables proposed in Table III–14, similar to what has been discussed in the AMCA 230 committee working group.

DOE requests comment on its proposal for determining if a fan that is not an air circulating fan has reached equilibrium prior to initiating testing. Specifically, DOE is soliciting comment on the test variables and related tolerances that it is proposing to incorporate in its equilibrium determination. Additionally, DOE seeks comment on the minimum duration and maximum interval over which equilibrium would need to be verified. Finally, DOE seeks comment on which variables proposed in Table III–14 that, if not stable prior to test, would have the greatest impact on measured fan performance.

16. Test Figures

AMCA 230–15 (with errata) describes the test set-up that can be used to test various categories of air circulating fans and specifies that air circulating fan heads and table fans, which correspond to unhoused ACFHs, must be tested according to test figures 2A, 2B1, and 2B2. AMCA 230–15 (with errata) also specifies that box fans and personnel coolers, which are both housed ACFHs, must be tested using test figures 3A and 3B. The AMCA 230 Committee reviewed the existing text figures and is considering revising the allowable test figures to reflect that housed air circulating fans could also be tested using test figures 2A, 2B1, and 2B2, and unhoused air circulating fans would be tested using figures 3A and 3B.

DOE has tentatively determined that test figures 2A, 2B1, 2B2, 3A and 3B are appropriate for all air circulating fans. As such, DOE is proposing to specify that any test figures that are specified in AMCA 230–15 (with errata) can be used for testing air circulating fans. Table III–14 of this document summarizes DOE's proposals for which test set-up would be used for each air circulating fan type.

TABLE III–14—TEST FIGURES IN AMCA 230–15

[With errata]

Test figure and description	Applicable air circulating fan category in AMCA 230–15	DOE's proposed applicable air circulating fan category
Test Figure 2A: Horizontal Airflow Setup with Counterweights Pivot Above Test Subject.	Air circulating fan heads and table fans	Any air circulating fan.
Test Figure 2B1: Horizontal Airflow Setup with Load Cell	Air circulating fan heads and table fans	Any air circulating fan.
Test Figure 2B2: Horizontal Airflow Setup with Load Cell Pivot Below Test Subject.	Air circulating fan heads and table fans	Any air circulating fan.
Test Figure 3A: Horizontal Airflow Setup with Load Cell	Box Fan and Personnel Cooler	Any air circulating fan.
Test Figure 3B: Horizontal Airflow Setup with Load Cell	Box Fan and Personnel Cooler	Any air circulating fan.

DOE is aware that the revisions being considered by the AMCA 230 committee are subject to change and could further be revised in the next version of AMCA 230. Should the revised version of AMCA 230 publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to revise the definitions in line with the latest AMCA 230

standard, provided the updates in this standard are consistent with the definitions DOE is proposing in this NOPR or the updates are related to topics that DOE has discussed and for which DOE has solicited comments in this NOPR.

DOE requests comment on the applicability of each test figure in AMCA 230–15 to air circulating fans.

17. Reference Fan Electrical Input Power Calculation

Section 5 of AMCA 214–21 provide the equations necessary to calculate the reference FEP at a given duty point. The reference FEP calculation relies on three equations:

- A reference fan shaft input power equation, used to calculate the reference fan shaft input power at a given duty point. This equation relies on a flow constant (Q_0, equal to 250) and a pressure constant (P_0, equal to 0.4), which represent how efficiency varies as a function of flow and pressure and an efficiency target, which was set to represent a market reference efficiency fan (equal to 0.66 total efficiency target or 0.6 static efficiency target, depending on the FEI pressure basis). *See* Section 5.1 of AMCA 214–21;
- A reference fan transmission efficiency equation, which calculates the reference fan transmission as a function of the reference shaft input power and represents a typical belt drive. *See* Section 5.2 of AMCA 214–21; and
- A reference motor equation as described in section III.D.1 of this document.

In response to the February 2022 ECS RFI, the CA IOUs encouraged DOE to use different flow and pressure constants for the FEI for ACFs than those that are used in either AMCA 214 or the Ceiling Fan Energy Index (''CFEI''). They stated the ACFs do not operate in ''high-pressure, low airflow'' conditions (for which the coefficients developed for the FEI metric in AMCA 214–21 are most applicable) nor do they operate in ''low-pressure, high airflow'' conditions (for which the CFEI metric is most applicable). CA IOUs provided data showing that the FEI from AMCA 214–21 favors larger diameter ACFs, while the CFEI favors smaller diameter, lower airflow ACFs. They further encouraged DOE to collaborate with industry stakeholders to develop new FEI coefficients specifically for ACFs. (Docket No. EERE–2022–BT–STD–0002, CA IOUs, No. 7 at p. 2–5)

DOE collected air circulating fan performance data from the BESS certification database [80] and performed the following analysis to determine the appropriate flow and pressure constants for air circulating fans: (1) DOE used the published fan impeller diameter (in) and flow (cfm) and the total pressure formula discussed in section III.D.10 of this document to calculate the total pressure [81] of each fan in the database; (2) DOE used the published efficacy (cfm/W) and airflow (cfm) data to calculate the FEP of each fan in the database (FEP_{act}); (3) DOE used the formulas in Section 5 of AMCA 214–21 to calculate the reference FEP (FEP_{ref}) of each fan in the database at its corresponding total pressure and flow point; and (4) DOE conducted a regression analysis using the method of least squares to identify the values of the flow constant, Q_0, pressure constant, P_0, and efficiency target, which minimize the sum of squared difference between FEP_{act} and $FEP_{ref.}$. DOE obtained the following results: Q_0 = 3,210 (rounded to the nearest 10); P_0 = 0; and an efficiency target of 0.43. Based on this analysis, DOE has tentatively determined that these constant values for flow and pressure constants are appropriate for air circulating fans and proposes to use the values of Q_0 = 3,210 and P_0 = 0 when calculating the FEI of air circulating fans as part of the test procedure. Should additional data become available to justify different constants, DOE may consider different values of Q_0 and P_0 for air circulating fans.

Figure III–1 through Figure III–3 show air circulating fan performance data from the BESS database as well as the corresponding reference fan performance data calculated using Q_0 = 3,210, P_0=0, and an efficiency target of 0.43. Figure III–3 and Figure III–4 also shows the cfm/w index calculated as the cfm/w value of the fan divided by the average cfm/w value of all fans of the same diameter present in the database.

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[80] Data collected on March 22, 2022, included 507 models of air circulating fans with the following information: Manufacturer, Power Supply, Model Number, Style (*i.e.* basket, box, panel, or tube), Size (in) (*i.e.,* impeller diameter), Guard configuration, Airflow (cfm), Efficacy (cfm/w), Thrust (lbf), Input power (kW), Thrust Efficiency ratio (lbf/kW), 5D Centerline Velocity (fpm). *See bess.illinois.edu.*

[81] DOE notes that for housed air centrifugal fans, DOE relied on the impeller diameter as a proxy for the diameter of the orifice of the housing.

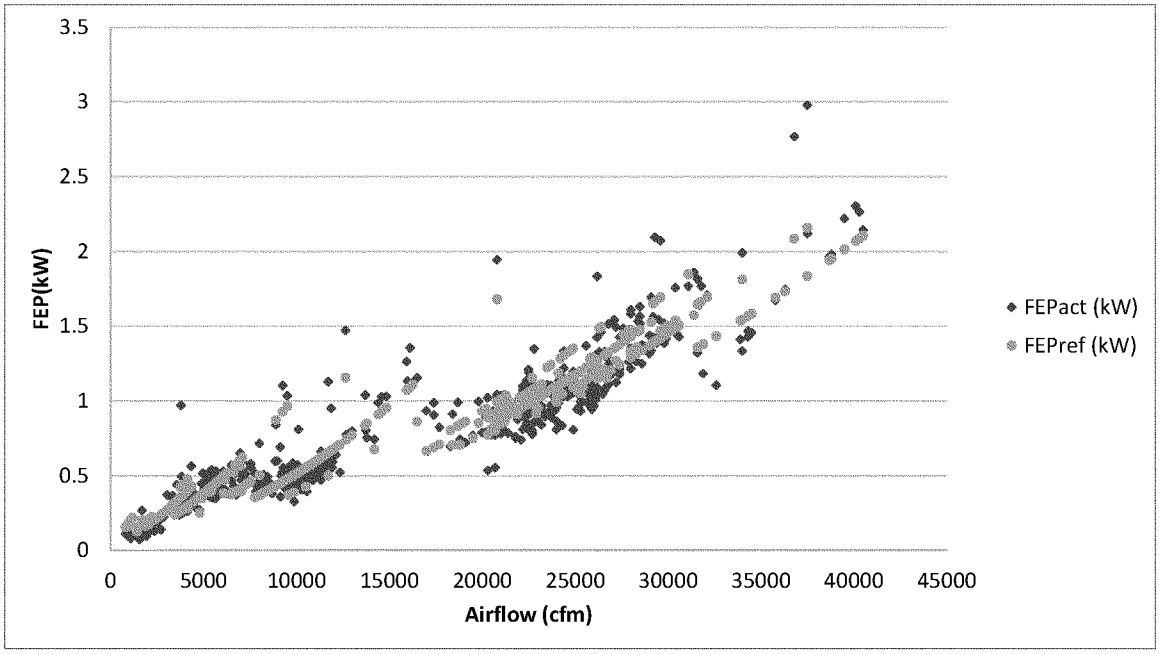

Figure III-1: Fan Electrical Input Power as a Function of Airflow (Q_0=3,210; P_0=0; Efficiency target = 0.43)

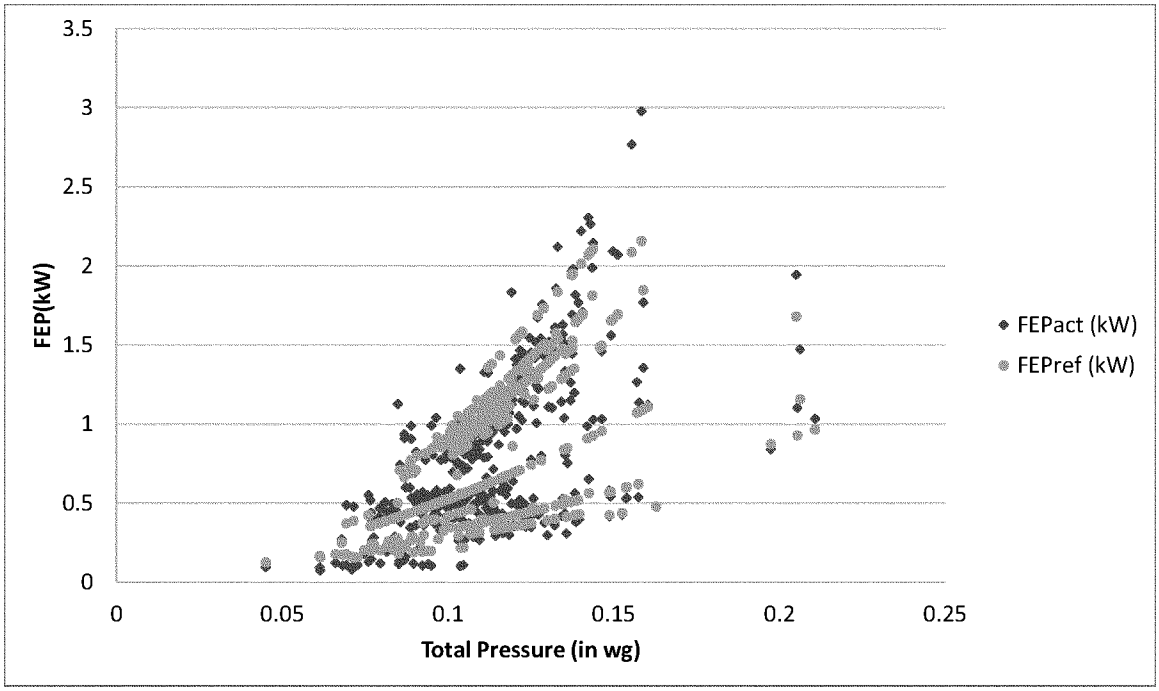

Figure III-2: Fan Electrical Input Power as a Function of Total Pressure (Q_0=3,210; P_0=0; Efficiency target = 0.43)

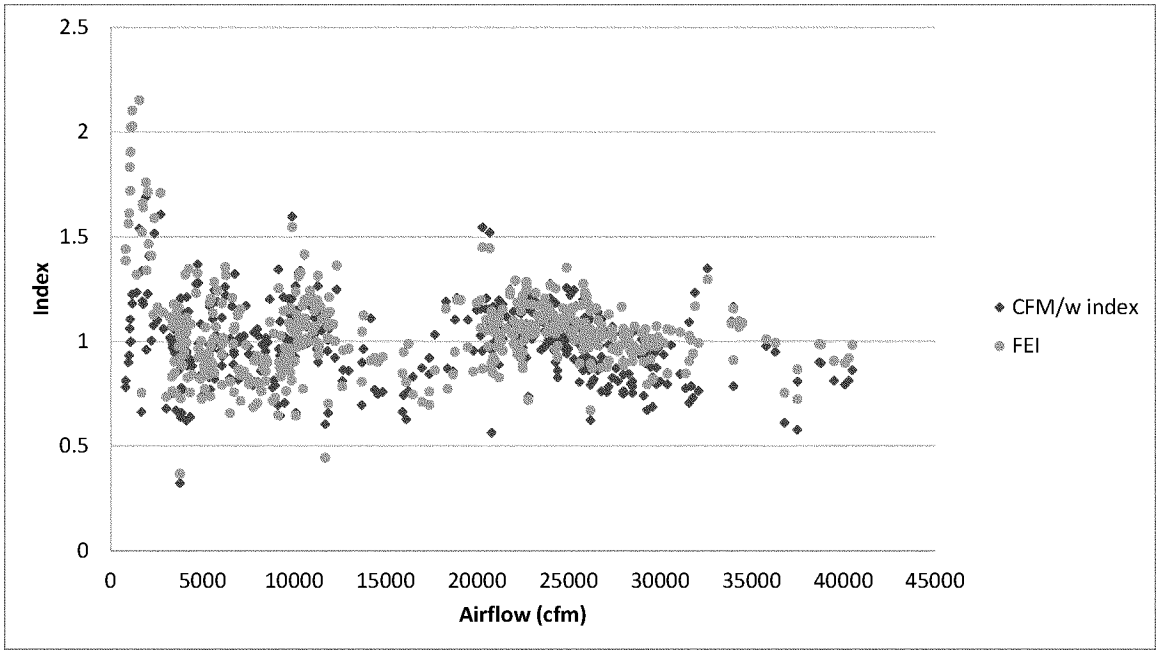

Figure III-3: FEI and cfm/w index as a Function of Airflow (Q_0=3,210; P_0=0; Efficiency target = 0.43)

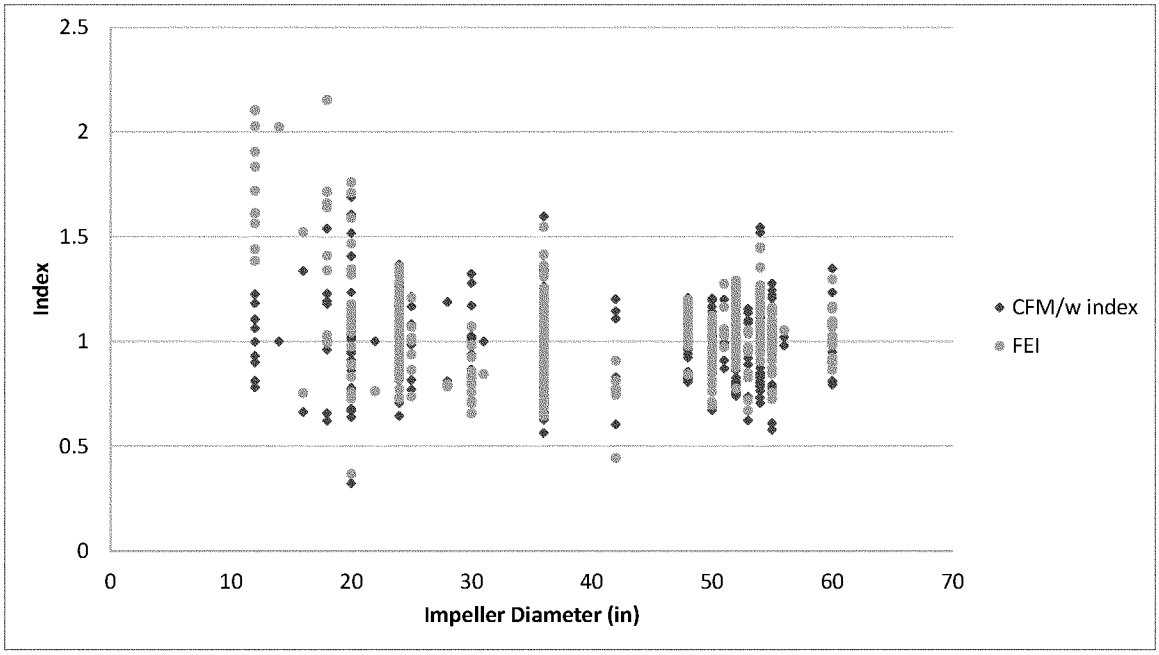

Figure III-4: FEI and cfm/w index as a Function of Impeller Diameter (Q_0=3,210; P_0=0; Efficiency target = 0.43)

Using an efficiency target of 0.43 results in a reference fan that performs better than approximately 50 percent of the market.[82] For general fans and blowers, the current efficiency target of 0.66 is estimated to correspond to a fan that performs better than approximately 20 percent of the market.[83] In line with this approach, DOE has tentatively determined that the efficiency target for air circulating fans that would correspond to a reference fan which performs better than 20 percent of the market is 0.38. Therefore, DOE proposes to use an efficiency target of 0.38 in its calculations for determining air circulating fan FEI. DOE notes that if additional data become available to

[82] This is a direct result of the analysis which looks at minimizing the distance (*i.e.,* the square of the difference) between FEP_{ref} and FEP_{act}.

[83] An efficiency target of 0.66 corresponds to the efficiency level 3 (''EL3'') as analyzed in the November 2016 Notice of Data Availability. Based on the analysis conducted in support of this NODA DOE estimated that 80 percent of fans perform at or above EL3 based on information published in the life-cycle cost spreadsheet, ''LCC Sample'' worksheet. (Docket No. EERE–2013–BT–STD–0006, LCC Spreadsheet, No. 190, at p. 4, cell AD51–AD58)

justify a different efficiency target, DOE may consider a different efficiency target for air circulating fans. Figure III–5 illustrates the impact of changing the efficiency target on the calculated reference fan wire-to-air efficiency, (''Wire-to-air Efficiency ref'') in comparison to the wire-to-air efficiency of actual fans (''Wire-to-air Efficiency act'').

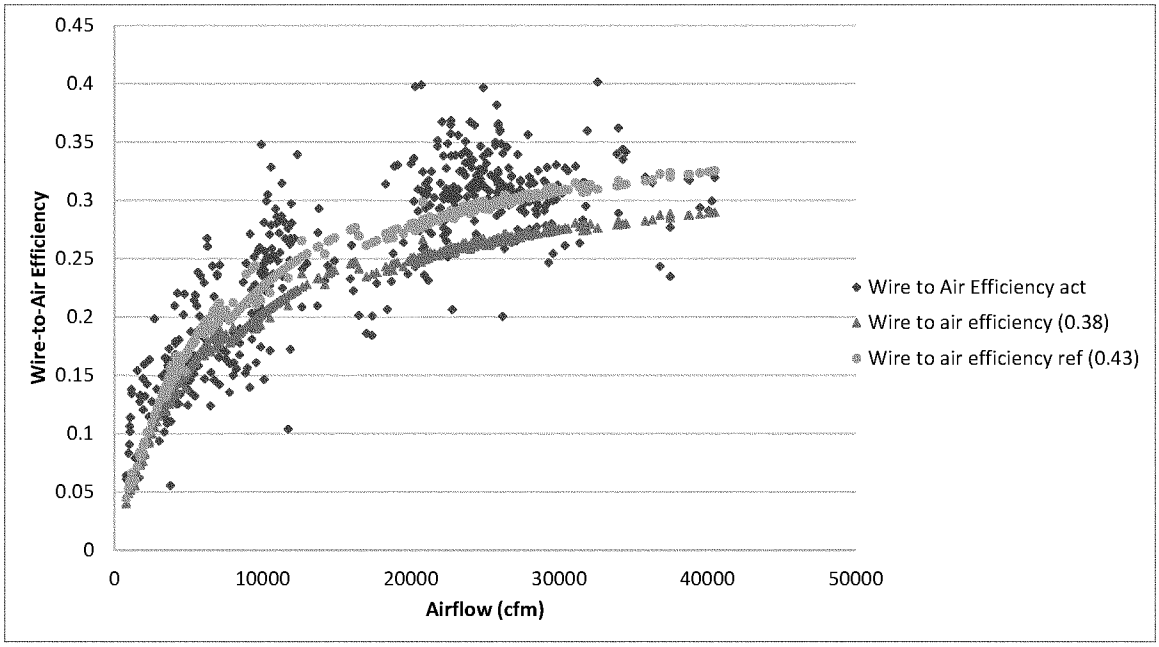

Figure III-5: Wire-to-air Efficiency as Function of Airflow (Q_0=3,210; P_0=0; Efficiency target = 0.43 and 0.38)

Figure III–5 shows the reference fan cfm/w compared against the cfm/w of the actual fans included in the BESS database. Below impeller diameters of 20 inches, DOE notes that most fans in the database have a FEI value greater than 1 (as illustrated by having higher cfm/w values compared to the reference fan, this can also be seen on Figure III–4 where smaller fan impellers tend to have higher FEIs). DOE believes this is because most fans with impeller diameters at or below 20 inches are direct driven, while the reference fan always includes belt losses. DOE may consider calculating the FEP_{ref} value s using the same transmission configuration as the actual fan being evaluated (*i.e.,* include transmission losses in the FEP_{ref} calculation only for fans distributed in commerce with a belt transmission). However, DOE has tentatively determined that using the same reference fan for all fan configurations results in a FEI that can be compared across transmission configurations and that different FEI calculations depending on the transmission configuration may be confusing to the consumer. Therefore, at this time, DOE proposes to calculate FEP_{ref} inclusive of the belt losses.

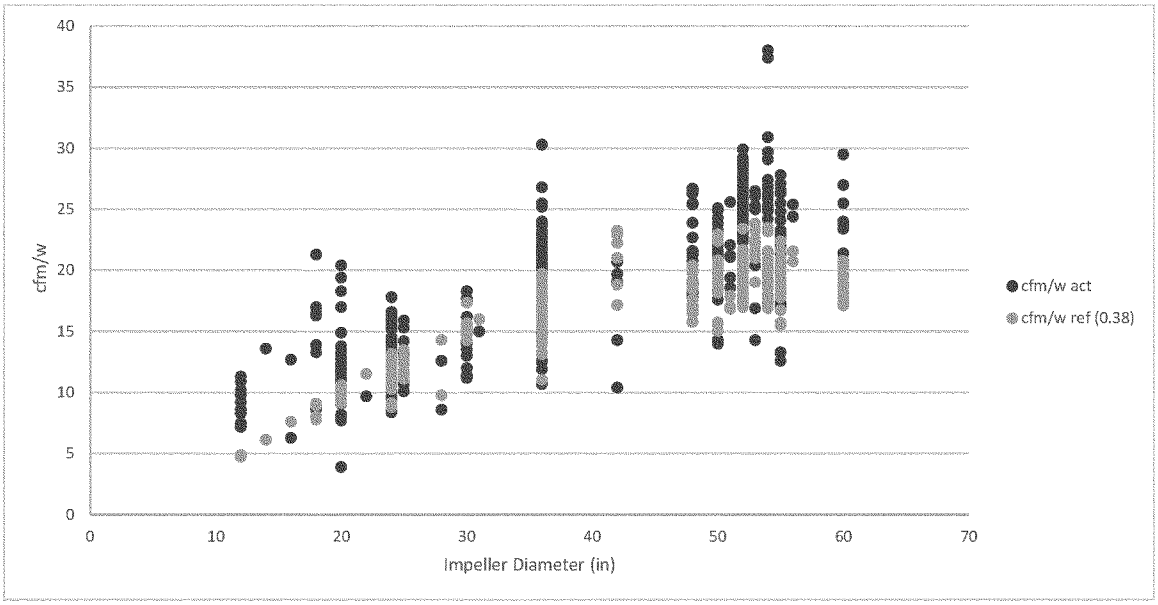

Figure III-5: Comparison of cfm/w Metric for Actual Fans vs. cfm/w Metric for Reference Fans at the Same Duty Point (Q_0=3,210; P_0=0; Efficiency target = 0.38)

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DOE requests comment on the proposed FEI calculation for air circulating fans.

18. Rounding

As discussed in section III.K, DOE presents a sampling plan for determining representative values of FEI, FEP, and BHP. As discussed, AMCA 214–21 provides a method for calculating fan performance using the FEI metric. However, AMCA 214–21 does not provide normative rounding requirements for FEI.

DOE notes that the FEI requirement is specified to the hundredths place in Section 6.5.3.1.3 of ASHRAE 90.1–2019 (Fan Efficiency). Additionally, the DOE energy conservation standard for large diameter ceiling fans is the Ceiling Fan Energy Index (''CFEI''), where the CFEI metric is calculated according to AMCA 208–18, is specified to the hundredths place (*i.e.,* CFEI must be greater than or equal to 1.00 at high speed and 1.31 at 40 percent speed, or the nearest speed that is not less than 40 percent speed). 10 CFR 430.32. Additionally, Annex I of AMCA 214–21 (informative) specifies rounding the FEI to the hundredth place.

DOE notes that FEI is the ratio of the electric input power of a reference fan to the electric input power of the actual fan and agrees that rounding FEI to two decimal places seems reasonable. Therefore, DOE is proposing that represented values of FEI would be rounded to the hundredths place. For consistency, DOE is also proposing that represented values for FEP would be rounded to the hundredths place.

Rounding of the inputs to the calculation of FEI can impact the represented FEI (or FEP value). DOE reviewed the provisions related to rounding in the ceiling fan test procedure, which state that all measurements should be recorded at the resolution of the test instrumentation and that calculations shall be rounded to the number of significant digits present at the resolution of the test instrumentation. Section 3.1.1 of 10 CFR part 430 appendix U.

DOE has tentatively concluded that the rounding provisions in section 3.1.1 of 10 CFR part 430 appendix U are reasonable and that recording measurements at the resolution of the test instrumentation would provide sufficient significant digits for accurately calculating representative values of FEI and FEP. Therefore, DOE is proposing that all measurements would be recorded at the resolution of the test instrumentation and that calculations would be rounded to the number of significant digits present at the resolution of the test instrumentation.

DOE is aware that the AMCA 230 committee is considering adding rounding requirements in the revised version of AMCA 230. Should the revised version of AMCA 230 publish prior to the publication of any DOE test procedure final rule, DOE intends, after considering stakeholder feedback received in response to the proposals in this document, to revise the provisions related to appurtenances in line with the latest AMCA 230 standard, provided the updates in this standard are consistent with the provisions DOE is proposing in this NOPR, or the updates are related to topics that DOE has discussed and for which DOE has solicited comments to in this NOPR.

DOE requests comment on its proposals for rounding represented values of FEI and FEP to the hundredths place. Additionally, DOE seeks comment on its proposal to specify rounding requirements for test values and calculations that are consistent with the resolution of the test instrumentation.

19. Location of Extraneous Airflow Measurement

Section 8.1.2 of AMCA 230–15 (with errata) specifies that the air velocity in the test room, not generated by the test air circulating fan, shall not exceed 0.25 m/s (50 fpm) prior to, during, and after the test. Velocity measurements shall be taken immediately before and immediately after the test to ensure that this condition is met. In addition, AMCA 230–15 (with errata) specifies the location of the extraneous airflow measurement shall be directly under the center of the fan at an elevation of 1701.8 mm (67 in.) above the floor. DOE notes that this provision is only applicable to fans tested according to Figure 1 of AMCA 230–15 (with errata) and that there is no location specified for extraneous airflow measurement for fans tested according to Figures 2A, 2B1, 2B2, 3A and 3B.

The AMCA committee is considering adding the following provisions to specify the location of the extraneous airflow measurement and to move these provisions from Section 8.1.2 of AMCA 230–15 (with errata) into each of the figures. For figure 1 of AMCA 230–15, the location of extraneous airflow measurement would be directly under the center of the fan at an elevation of 1.7m (67 in.) above the floor. For figures 2A, 2B1, 2B2, 3A and 3B, the location of extraneous airflow measurement should be at the center of the fan at a distance of 1.5m (5 ft) downstream of the fan impeller.

DOE agrees that these additional specifications are necessary to ensure test procedure repeatability, and therefore proposes to add these additional provisions as considered by the AMCA 230 committee.

DOE requests comment on the proposed location of the extraneous airflow measurement for air circulating fans.

20. Run-In Requirements

Section 7.4 of AMCA 214–21 specifies that all fans shall be run-in for not less than fifteen minutes prior to the commencement of data collection. The AMCA 230 committee is considering adding similar requirements for air circulating fans. DOE proposes that the minimum run-in requirement of 15 minutes for fans and blowers be applied to air circulating fans.

DOE requests comment on the proposed run-in requirements.

21. Transducer Type Barometers

Section 6.5.2.1 of AMCA 230–15 (with errata) specifies that transducer type barometers shall be calibrated for each test. The AMCA 230 committee is considering removing this requirement from the revised version. DOE is also considering not including this requirement as it may be sufficient to require that the barometer be calibrated against a mercury column barometer with a calibration that is traceable to the National Institute of Standards and Technology (''NIST'') or other national physical measures recognized as equivalent by NIST, without having to repeat calibration before each test.

DOE requests comment on whether the requirement to calibrate transducer type barometers for each test is necessary or should be removed for air circulating fans.

E. Distinguishing Between Fans and Blower and Air Circulating Fans

In response to the February 2022 ECS RFI, ebm-papst supported the use of the thrust-test method described in AMCA 230 to test ACFs without a housing. They also stated that either AMCA 210 or AMCA 230 test methods could be used for ACFs with housing. (Docket No. EERE–2022–BT–STD–0002, ebm-papst, No. 8 at p. 1)

Some manufacturers offer the same fan model with different mounting configurations. Depending on the mounting configuration, the same fan could either meet the definition of a fan tested per AMCA 210–15 or meet the definition of an air circulating fan and be tested per AMCA 230–15. DOE identified that air circulating fans with housing (*i.e.,* axial panel air circulating fans and box fans) can also be distributed in commerce as with brackets for mounting through a wall, ceiling, or other structure that separates the fan's inlet for its outlet and marketed as ''exhaust fans''. In this case, DOE agrees with ebm-papst that these fans would be tested per AMCA 210–16 as they would meet the definition of an axial panel fan. Manufacturers who distribute these fans in commerce in both configurations and market the fans both for air circulation and exhaust applications typically test the fan using both AMCA 230–15 (with errata) and AMCA 210–16.

DOE is proposing that fan models that meet both the definition of an axial panel fan and the definition of an air circulating fan (*i.e.,* axial air circulating panel fan, box fan, or ACFH) depending on the presence or absence of brackets for mounting through a wall, ceiling, or other structure that separates the fan's inlet from its outlet be tested according to both the proposed test procedures for fans and blowers, excluding air circulating fans, and the proposed test procedure for air circulating fans.

DOE requests comment on its proposal that fans that meet the definition of both an axial panel fan and the definition of an air circulating fan because of the presence or absence of brackets for mounting through a structure that separates a fan's inlet from its outlet be tested both as a fan and blower and as an air circulating fan.

F. Metric

AMCA 214–21 provides uniform methods to determine the FEP and FEI of a fan at a given duty point.[84] As explained, FEP describes the electrical input power of a fan in kilowatts. AMCA 214–21 defines FEI as the ratio of the electrical input power of a reference fan to the electrical input power of the actual fan for which the FEI is calculated, both established at the same duty point. As stated, FEI is a dimensionless index for evaluating a fan's performance against a reference fan. Section 5 of AMCA 214–21 provides the equations to calculate the reference fan electrical input power as a function of airflow and pressure.

For fans other than circulating fans, the Working Group recommended using FEP as the primary fan metric and to allow using FEI for additional representation of energy use. The Working Group also recommended calculating FEI using the FEP of a fan that is exactly compliant with any future fan energy conservation standards. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #6, at p. 5). The Working Group further recommended that the metric be evaluated at each operating point as specified by the manufacturer. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendations #18, #27, at pp. 10–11, 13–14). Under this approach, for each basic model of fan, a manufacturer would have to determine the FEP of the fan at each operating point.

As discussed, FEG is another efficiency metric developed for fans other than air circulating fans. FEG is a numerical rating that represents the ratio of airpower produced by the fan divided by the fan shaft power, as a function of fan impeller diameter.[85] As stated by the petitioners, starting in 2012, FEG was used in model energy codes and standards [86] to establish fan efficiency requirements, which were subsequently adopted by at least 12 State energy codes.[87] (Docket No. EERE–2020–BT–PET–0003, The Petitioners, No. 1.3., at p. 2, 4) Following the recommendations of the Working Group, AMCA developed the metrics FEP and FEI as a replacement for FEG.

The Petitioners stated that, compared with FEG, FEI is a wire-to-air metric for fans. The Petitioners also commented that the FEI metric allows fan specifiers and purchasers to easily compare the power consumption of multiple fans, including motor and drive combinations. Petitioners stated that

[84] As previously described, a duty point is characterized by a given airflow and pressure and has a corresponding operating speed. The collection of all duty points associated with a given speed is referred to as a ''fan curve''. AMCA 214–21 provides methods to establish the FEP and FEI at any point within the operating range of the fan.

[85] See AMCA 205–2010, ''Energy Efficiency Classification for Fans''.

[86] International Green Construction Code (2012); ANSI/ASHRAE/IES 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings (2013); ANSI/ASHRAE/USGBC/IES 189.1, Standard for the Design of High-Performance Green Buildings Except Low-Rise Residential Buildings (2014); International Energy Conservation Code (2015).

[87] Alabama, Florida, Hawaii, Idaho, Illinois, Maryland, Minnesota, New Jersey, New York, Oregon, Utah, Vermont, and Washington.

using FEI would facilitate simpler enforcement by code officials because FEI ratings are easy to compare to potential minimum code requirements. (Docket No. EERE–2020–BT–PET–0003, The Petitioners, No. 1.3 at p. 3)

In response to the April 2020 Notice of Petition, CTI commented that FEI is a new metric and questioned its longevity as a basis for Federal regulation. CTI commented that AMCA previously advocated for FEG in ASHRAE 90.1 and is now advocating for FEI. CTI commented that the use of FEI in ASHRAE 90.1–2019 will help assess the usability and application of this metric. (Docket No. EERE–2020–BT–PET–0003, CTI, No. 11 at p. 3)

NEEA and NWPCC commented in support of the FEI metric. NEEA and NWPCC stated that the FEI, which is established at any given duty point, can be used to compare the energy consumption of different fans operating at the same design conditions. NEEA and NWPCC commented that the FEI metric provides a straightforward way for designers to evaluate the relative power consumption of different fans and would drive the market to select more efficient fans through providing consistent, actionable information to designers. (Docket No. EERE–2020–BT–PET–0003, NEEA and NWPCC, No. 12 at p. 2)

ASAP, ACEEE, and NRDC and Greenheck commented that a DOE test procedure based on AMCA 214 would provide the basis to assist customers and designers in making purchasing decisions and save energy by informing design decisions. (Docket No. EERE–2020–BT–PET–0003, ASAP, ACEEE, NRDC, No. 7 at p. 1; Greenheck, No. 6.2. at p. 1). ASAP, ACEEE, and NRDC stated that AMCA 214 provides methods to establish FEI ratings across the entire operating range of a fan model, which can improve fan selection and deliver large energy and cost savings. ASAP, ACEEE, and NRDC commented that the FEI metric provides a simple way to evaluate the relative power consumption of potential fans at a customer's design point. (Docket No. EERE–2020–BT–PET–0003, ASAP, ACEEE, NRDC, No. 7 at p. 1)

Johnson Controls commented in support of a transition from FEG to FEI for fans in airside applications (*i.e.,* applications where the primary purpose of equipment is to deliver airflow to a space, and where the energy efficiency of the fan operation is the primary driver of performance). Johnson Controls commented that using FEI for the representation of fan efficiency in airside applications will help consumers better understand the energy performance of a fan based on the expected airflow and pressure at the point of design. (Docket No. EERE–2020–BT–PET–0003, Johnson Controls, No. 10 at p. 1)

In the October 2021 RFI, DOE requested feedback on the metrics used in AMCA 230–15 and AMCA 214–21, particularly in the context of air circulating fans, including ACFHs. 86 FR 54412, 54415.

AHRI commented that ACFHs are standalone fans, with performance testing established appropriately using AMCA 230–15 and a FEI metric calculated using AMCA 214–21. (AHRI, No. 10 at p. 2)

AMCA reiterated its support for the use of FEI as the regulatory metric over FEP and as the metric for representation for fans and blowers, including air circulating fans. AMCA commented that FEI is preferred over FEP because FEI is a comprehensive ratio that already has duty-point dependent reference power embedded. FEI lends itself as a practical efficiency metric for setting a fan energy standard. FEP, is variable, depending on flow and other parameters. FEI, therefore, would be a more stable compliance metric. AMCA added that FEI has become the norm for AMCA certification and industry practice and has been adopted into model energy codes and standards and is used in state energy codes.[88] AMCA added that FEI is also being used as the metric for utility incentive programs presently offered or under development. (AMCA, No. 6 at p. 9) AMCA also recommended that DOE allow representation of intermediate data used to determine FEI, if those values were calculated using data from physical tests in accordance with the DOE test procedure, *i.e.,* FEP, W; Airflow, cfm; Efficacy, cfm/W; and Thrust efficiency ratio, lbf/kW. (AMCA, No. 6 at p. 9)

ASAP, ACEEE, NRDC support using FEI as the efficiency metric for air circulating fans. ASAP, ACEEE, NRDC commented that the FEI is both representative of energy usage and straightforward for purchasers to interpret. ASAP, ACEEE, NRDC commented that FEI accounts for inherent efficiency differences between fans of the same diameter that deliver different airflows. ASAP, ACEEE, NRDC also stated that using FEI for air circulating fans would also provide consistency with other commercial and industrial fan types subject to any future DOE standards. Moreover, ASAP, ACEEE, NRDC commented that FEI is intuitive and easy to understand for informing purchase decisions and provided the example that a FEI of 1.1 represents 10% energy savings over a FEI of 1. ASAP, ACEEE, NRDC also stated that FEI is similar to the Pump Energy Index for pumps. (ASAP, ACEEE, NRDC, No. 7 at p. 2)

NEEA agreed with AMCA in preferring the use of FEI over FEP for Federal efficiency standards. NEEA commented that FEI is a metric the market is already beginning to align to, and an additional efficiency metric could confuse the market. NEEA commented that the industry has begun to transition away from Fan Efficiency Grade (FEG) to FEI, encouraged by the inclusion of FEI in model energy codes (including ASHRAE 90.1–2019 and the 2021 Oregon Energy Efficiency Specialty Code). NEEA stated that consistency in the metric used to calculate efficiency will expedite adoption of efficient equipment and make opportunities for incentive programs more readily available to the market. NEEA is not opposed to the use of FEP as an intermediary metric to determine FEI, but recommends that DOE align with the market's momentum toward FEI to create industry alignment around the definition of fan efficiency. (NEEA, No. 11 at p. 3)

The CA IOUs recommended that DOE use the FEI metric from AMCA 214–21 for ACFHs. The CA IOUs commented that FEP is not an efficiency metric, but rather a measurement of the fan's input power, taking motor, motor controller, and transmission losses into account. The CA IOUs asserted that FEI, which is a ratio of the product's FEP to the electrical input power of a reference fan, is a more appropriate metric for these products. The CA IOUs stated that FEI also accounts for the air velocity generated by the fan, which is an important consideration for ACFHs since one of the primary requirements of an ACFH is to deliver a focused airstream at a moderate to high velocity. Additionally, the CA IOUs commented that FEI has become the default metric for fans in building codes and incentive programs. The CA IOUs stated that FEI is the efficiency metric used in ASHRAE 90.1, IECC, and the California Energy Code. The CA IOUs added that since FEP and ACFH airflow in cubic feet per minute is needed to calculate overall efficiency and efficacy per AMCA 230–

[88] AMCA listed the following in its comment: ANSI/ASHRAE/IES 90.1–2019, Energy Standard for Buildings Except Low-Rise Residential Buildings; ANSI/ASHRAE/ICC/USGBC/IES 189.1–2020, Standard for the Design of High-Performance; Green Buildings Except Low-Rise Residential Buildings; 2021 International Energy Conservation Code; 2021 International Green Construction Code; 2020 Florida Building Code: Energy Conservation; 2021 Oregon Energy Efficiency Specialty Code; 2022 California Building Energy Efficiency Standards (Title 24).

15, testing labs and manufacturers can still report those metrics in their product literature without additional burden. (CA IOUs, No. 9 at p. 2)

In response to the February 2022 ECS RFI, ebm papst suggested using a metric that distinguishes air circulating fans with exceptional air velocity from air circulating fans with exceptional wire-to-air efficiency because of the importance of air velocity when selecting an air circulating fans. (ebm-papst, No. 8 at p. 3)

In its proposed regulation, the CEC is proposing to use the FEI metric for fans and blowers.[89] Since the publication of the term sheet and of AMCA 214–21, a number of incentive programs and model energy codes and standards used in state energy codes rely on the FEI metric.[90]

As noted, FEG is a numerical rating that represents the ratio of airpower produced by the fan divided by the fan shaft power and is defined as a function of fan impeller diameter. FEG ratings are defined in discrete ''bands'' (*e.g.,* FEG 85, FEG 80, FEG 75, etc.) and are established in accordance with AMCA 205–12, ''Energy Efficiency Classification for Fans''.[91] To determine FEG, a fan is tested to measure its maximum bare-shaft fan efficiency (*i.e.,* peak efficiency). The FEG rating is determined by plotting the measured peak efficiency versus the fan impeller diameter, then reading the associated FEG band in which this point falls.

Fans can operate over a wide range of speed, pressure, and airflow, and the fan bare-shaft efficiency can vary greatly over this range. As defined in AMCA 205–12, the FEG rating is representative of only the maximum efficiency of the fan. As a result, depending on the actual operating conditions, a fan with a higher peak efficiency and FEG rating could consume more energy in a particular application than a fan with a lower peak efficiency and FEG rating. In addition, the FEG metric does not capture the performance of the motor, transmission, or motor controllers and does not differentiate among fans with motors, transmissions, and motor controllers with differing efficiency levels.

AMCA 230–15 provides methods to determine FEP of air circulating fans as well as efficacy (*i.e.,* amount of flow per unit of electrical input power produced in cfm/W) and overall efficiency (*i.e.,* amount of thrust per unit of electrical input power produced in lbf/W). While AMCA 230–15 provides methods to determine several metrics associated to air circulating fan performance, AMCA 214–21 relies on the FEP and FEI metrics (''wire-to-air metrics) for air circulating fans. In addition, FEI accounts for air velocity [92] as it relies on the calculation of the reference fan FEP (FEP_{ref}) as a function of flow and total pressure (which is equal to velocity pressure for air circulating fans) and allows comparing the wire-to-air performance of fans at different air velocities.

Based on the discussion in the preceding paragraphs, DOE proposes to apply FEI as the efficiency metric for fans and blowers. As discussed, FEI would provide for evaluation of the efficiency of a fan or blower across a range of operating conditions, would capture the performances of the motor, transmission, or motor controllers (if any), and would allow for the differentiation of fans with motors, transmissions, and motor controllers with differing efficiency levels. Also as discussed, use of FEI would align with the industry test standard (AMCA 214–21) and drive better fan selections. In addition, DOE proposes to establish the FEI differently for fans and blowers other than air circulating fans, and for air circulating fans as described in section III.F.1 and section III.F.2 of this document.

1. FEI Determination for Fans and Blowers Other Than Air Circulating Fans

For fans and blowers that are not air circulating fans, considering their wide range of application, DOE proposes that fan FEI would be evaluated in accordance with the DOE proposed test procedure at each of the fan's operating points within the range of airpower and shaft input power proposed in scope (*i.e.,* at each duty point, as specified by the manufacturer within the range of airpower and shaft input power proposed in scope). This approach is consistent with the term sheet recommendations and would require the determination of the FEI at each duty point as specified by the manufacturer. With this approach, the test procedure would not prescribe particular operating conditions at which the FEI is to be evaluated in order to calculate the FEI metric, instead, the FEI is determined at each duty point. Further, if DOE were to establish any potential energy conservation standards, compliance with that standard would be required at each duty point specified by the manufacturer within the range of airpower and shaft input power proposed in scope (*i.e.,* operating range or ''bubble''), and for which the manufacturer publishes performance data. See discussion in section III.L. of this document.

DOE notes several stakeholders (AMCA, AHRI, NEEA, and the CA IOUs) submitted comments related to this approach as part of the CEC proposed rulemaking docket.[93] AMCA, AHRI, NEEA, and the CA IOUs recommended that manufacturers be able to publish performance data for duty points where the FEI is non-compliant (*i.e.,* FEI < 1 in the case of the CEC proposed regulation) and explained that performance data across the entire fan operating range is needed for designing or troubleshooting fan system problem.[94] The CA IOUs suggested that manufacturers be allowed to publish fan performance data in marketing or catalogs materials, but clearly indicate inefficient values that are outside the FEI ≥1.0 bubble.[95] AMCA, AHRI and NEEA jointly commented that a regulation should not prohibit, but rather distinguish duty points that meet the California Standards and duty points that don't.[96]

In view of these comments, DOE is considering to require calculating a weighted-average FEI (''WFEI'') based on the FEI at a limited number of

[89] See Proposed regulatory language for Commercial and Industrial Fans and Blowers available in the following Docket: 22–AAER–01 at: *efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-AAER-01.*

[90] ANSI/ASHRAE/IES 90.1–2019, Energy Standard for Buildings Except Low-Rise Residential Buildings; ANSI/ASHRAE/ICC/USGBC/IES 189.1–2020, Standard for the Design of High-Performance; Green Buildings Except Low-Rise Residential Buildings; 2021 International Energy Conservation Code; 2021 International Green Construction Code; 2020 Florida Building Code: Energy Conservation; 2021 Oregon Energy Efficiency Specialty Code; 2022 California Building Energy Efficiency Standards (Title 24); incentive programs presently offered or under development by Seattle City Light, ComEd, and Xcel Energy. See AMCA FEI Advocacy Brief available at: *www.amca.org/assets/resources/public/assets/uploads/0621-FEI_Advocacy_Brief_V3-20210715.pdf.*

[91] *See* AMCA whitepaper available at *www.amca.org/assets/resources/public/userfiles/file/Nospreads_FanEfficGrades.pdf.*

[92] Average velocity of air emerging from an outlet measured in the plane of the outlet.

[93] All documents related to this rulemaking can be found in the rulemaking Docket 22–AAER–01 accessible at: *www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-11.* See Joint AMCA, AHRI and NEEA comments at *https://efiling.energy.ca.gov/GetDocument.aspx?tn=242893&DocumentContentId=76471* (p. 20) and CA IOUs comments at: *https://efiling.energy.ca.gov/GetDocument.aspx?tn=242904&DocumentContentId=76485 (p.7).*

[94] See Joint AMCA, AHRI and NEEA comments at *https://efiling.energy.ca.gov/GetDocument.aspx?tn=242893&DocumentContentId=76471 (p. 20).*

[95] See CA IOUs comments at: *https://efiling.energy.ca.gov/GetDocument.aspx?tn=242904&DocumentContentId=76485* (p.7).

[96] See Joint AMCA, AHRI and NEEA comments at *https://efiling.energy.ca.gov/GetDocument.aspx?tn=242893&DocumentContentId=76471 (p. 20).*

representative duty points instead of having the FEI metric evaluated at each duty point as proposed. With such approach, if DOE were to establish energy conservation standards, compliance would be based on the weighted-average FEI of a given basic model, and manufacturers would be allowed to publish performance information at all duty points. DOE has tentatively determined that while some fans can operate at different speeds, the FEI generally increases (*i.e.,* performs better) as the speed of the fan decreases. Therefore, DOE is considering requiring manufacturers calculate a weighted-average FEI based on operating points at maximum speed. This would ensure that the fan will perform with an FEI that is equal to or greater than the FEI at maximum speed. In addition, end-users have been encouraged to select and operate the fan near a fan's best efficiency point (BEP),[97] therefore, DOE is considering using the BEP at maximum speed as a reference duty point and to require calculating the weighted average FEI using the duty points specified as described in the remainder of this section, depending on the fan's speed capability and motor configuration. In the absence of fan field operating data, DOE is considering equally weighting these duty points.

For fans without motors or controls: DOE is considering requiring that the weighted-average FEI be calculated at maximum speed and using the following duty points: 100 percent of BEP flow, 75 percent of BEP flow, and 50 percent of BEP flow. All flow points would be on the same fan curve [98] at the fan's maximum operating speed.

For single-speed fans (*i.e.,* fans with a single-speed motor), DOE is considering to require that the weighted-average FEI be calculated at the single available speed and using the following operating points: 100 percent of BEP flow, 75 percent of BEP flow, and 50 percent of BEP flow. All flow points would be on the same fan curve at the same single available operating speed.

For variable-speed fans that can continuously adjust their operating speeds (*i.e.,* fans with a variable-speed motor), DOE is considering to require that the weighted-average FEI be calculated at the following points: 100 percent of BEP flow at maximum speed, 75 percent of BEP flow, and 50 percent of BEP flow. However, in this case the reduced BEP flow points would be achieved by reducing the fan's operating speed and following a quadratic system curve, rather than following the fan curve at maximum speed to achieve the desired flow point. The system curve represents the system's resistance (pressure) at various flows and is often represented by a curve where the pressure varies as the square of the flow ratios.[99]

For multi-speed fans (*i.e.,* fans with a multi-speed motor capable of operating at different discrete speeds): DOE is also considering requiring that the weighted-average FEI be calculated at the following points: 100 percent of BEP flow at maximum speed, 75 percent of BEP flow, and 50 percent of BEP flow. In this case, similar to variable speed fans, the reduced BEP flow points would be achieved by reducing the fan's operating speed (For multi-speed fans, the speed options are limited). Therefore, in this case the manufacturer would not be able to continuously reduce speed until the required flow is achieved. Instead, DOE is considering an approach where the manufacturer would be required to achieve the reduced BEP flow points by reducing speed and increasing pressure (*i.e.,* moving along the fan curve at reduced speeds). In addition, DOE is considering requiring that the pressure at the reduced BEP flow point be greater than the pressure on the reference system curve.

In addition, DOE notes that for fans tested wire-to-air, it is not possible to determine the BEP as a ratio of air power to shaft input power as the fan shaft input power is not measured directly. Therefore, when applying a wire-to-air test method, DOE is considering establishing the BEP as the point that maximizes the fan's wire-to-air efficiency.

DOE requests comment on the appropriate metric to use for fans and blowers other than air circulating fans.

DOE requests comment on the proposed FEI metric determined in accordance with the proposed test procedure, and on whether any changes are necessary to provide for more representative energy efficiency ratings. If changes are suggested, DOE seeks input on how the proposed FEI metric should be amended and why, and on any other metrics that would be more appropriate. If changes or alternate metrics are suggested, DOE requests information on the impact to testing cost as compared to the proposed use of FEI.

DOE requests comments on the alternative approach considered to establish a weighted average FEI metric for fans and blowers other than air circulating fans. DOE requests comments on the appropriate reference system curve to use in the case of variable-speed fans to standardize the calculation of the reduced BEP flow operating points.

2. FEI Determination for Air Circulating Fans

For air circulating fans, to account for variations in fan speeds, DOE proposes the following, depending on the air circulating fan's speed capability: for single speed fans, DOE proposes that the FEI be evaluated at the single available speed and corresponding duty point. For multi-speed fans and variable speed fans, in the absence of data to characterize typical operating speeds, DOE proposes to calculate the FEI based on the weighted average FEI at each of the tested fan speeds, and that each speed be apportioned an equal weight. (*e.g.,* if the FEI is calculated at five speeds, each speed is given 20 percent in the calculation of the weighted average FEI). DOE has tentatively determined that while DOE has not found data to characterize the field operating speeds of air circulating fans, a more representative FEI can be calculated by using a weighted-average across multiple speeds and weighting all those speeds equally (when compared to calculating the efficiency at only high speed). DOE notes that it would still allow manufacturers to make representations of performance using cfm/w if a manufacturer desires to do so. In addition, to differentiate the proposed FEI for air circulating fans (*i.e.,* based on Q_0=3,210 and P_0=0, and an efficiency target of 0.38—See section III.D.17 of this document) from the FEI as it applies to fans and blowers that are not air circulating fans (*i.e.,* based on Q_0= 250 and P_0=0.4, and an efficiency target of 0.66 for fans with a total pressure basis—See section III.D.17 of this document) and from the CFEI as it applies to ceiling fans, DOE is considering using the term ''Air Circulating Fan FEI'' or ''ACFEI''.

DOE is aware that the AMCA 230 committee may consider specifying

[97] The BEP represents the flow and pressure values at which the fan total efficiency (ratio of total airpower to fan shaft input power) is maximized when operating a given speed. Prior to the use of FEI, energy codes required selecting a fan with an efficiency within 10–15 percentage points of the BEP efficiency. See International Green Construction Code (2012); ANSI/ASHRAE/IES 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings (2013); ANSI/ASHRAE/USGBC/IES 189.1, Standard for the Design of High-Performance Green Buildings Except Low-Rise Residential Buildings (2014); International Energy Conservation Code (2015).

[98] A fan curve represents the flow and pressure duty points of a fan at a given speed.

[99] See section 6.3 of AMCA 201–02: AMCA. (2002). *Fans and systems.* AMCA Publication 201. Arlington Heights, IL: Air Movement and Control Association International. Available at *www.amca.org/assets/resources/public/pdf/Education%20Modules/AMCA%20201-02%20(R2011).pdf.*

which metric to use in AMCA 230–22 when evaluating the energy performance of air circulating fans. While this NOPR proposes to rely on FEI, DOE is considering alternative metrics such as cfm/w including weighted average cfm/w for multi- and variable-speed fans), as well as alternative weights for multi- and variable-speed fans.

DOE requests comment on the appropriate metric to use for air circulating fans.

DOE requests comment on the proposed FEI metric determined in accordance with the proposed test procedure, and on whether any changes are necessary to provide for more representative energy efficiency ratings. If changes are suggested, DOE seeks input on how the proposed FEI metric should be amended and why, and on any other metrics that would be more appropriate. Specifically, for air circulating fans, DOE requests comment on the proposed use of the FEI metric determined in accordance with the test procedure as proposed and if DOE should consider other performance metrics as measured by AMCA 230–15, or different weights. If changes or alternate metrics are suggested, DOE requests information on the impact to testing cost as compared to the proposed use of FEI.

DOE requests comments on whether to use a different acronym to designate the FEI of air circulating fans (''ACFEI'').

G. Efficiency Considerations for Certain Unducted Fans

As proposed, depending on the fan category, the reference FEP would be calculated based on total pressure as opposed to static pressure. See Table III–9 of this document. As discussed, the reference FEP would be used to calculate the FEI value.

An individual commenter opposed the use of the FEI metric, stating that the FEI disadvantages non-ducted fans, in particular, wall fans and PRVs, which are tested in AMCA 214 based on static pressure. Graves stated that such fans are penalized unfairly by excluding the velocity pressure component in the calculation of FEI. Graves asserted that wall fans and PRVs would have a higher measured efficiency if total pressure rather than static pressure was used in the calculation of FEI. (Docket No. EERE–2020–BT–PET–0003, Graves, No. 4 at p. 1)

Graves stated that for certain non-ducted fans, the outlet velocity pressure is a useful fan output, citing the following examples: poultry houses, which require a minimum of 600 feet per minute of air velocity; dairy installations, in which air movement contributes to greater milk production; paint shops, which use PRVs to filter the exhausted air from the paint booth; and restaurant PRVs, which extract heat from the kitchen and filter the supply air. (Docket No. EERE–2020–BT–PET–0003, Graves, No. 4 at p. 1). Graves recommended testing agricultural fans [100] with the metric relied on by the BESS Lab at the University of Illinois, which uses a cubic feet per minute per watt (''cfm/watt'') metric. (Docket No. EERE–2020–BT–PET–0003, Graves, No. 4 at p. 3).

To reflect typical usage conditions, AMCA 214–21 specifies whether testing is required to be conducted with a ducted outlet (*i.e.,* measuring total pressure) or a free outlet (*i.e.,* measuring static pressure) for each defined fan category (See Table III–9). For certain categories required to be tested with a ducted outlet, AMCA 214–21 defines an optional test that can be performed with a free outlet. For axial panel fans (*i.e.,* ''wall fans'') and axial PRV fans, AMCA 214–21 requires testing with a free outlet (*i.e.,* measuring static pressure), but does not define an optional test with a ducted outlet.

AMCA commented that the FEI calculations submitted by Graves were based on an older methodology. (Docket No. EERE–2020–BT–PET–0003, AMCA, No. 13 at p. 1). AMCA commented that the velocity pressure at the fan's outlet is not the same as the velocity pressure created by the air moving inside the building, and that the two are only tangentially related. AMCA described an example illustrating that two different rooftop fans—one larger fan with an outlet velocity of 500 FPM and an airflow of 1,000 cfm, and one smaller fan with an outlet velocity of 750 FPM and the same airflow of 1,000 cfm—would both result in the same air velocity inside the building; however, the smaller fan's efficiency would be lower, and it would consume more energy than the larger fan with lower outlet velocity. (Docket No. EERE–2020–BT–PET–0003, AMCA, No. 13 at pp. 1–2).

AMCA stated that FEI is calculated using a lower reference fan efficiency for unducted fans than for ducted fans (0.60 vs. 0.66, respectively), which it described as providing a 6 percent efficiency ''grace'' for unducted fans. (Docket No. EERE–2020–BT–PET–0003, AMCA, No. 13 at p. 2).

AMCA also commented that BESS Lab uses static pressure as a basis for the cfm/watt metric and that manufacturers of agricultural fans include performance data in catalogs using static pressure. AMCA further commented that the cfm/watt metric is similar to the FEI metric, and that the results of the BESS Lab test could be used to calculate FEI.[101] According to AMCA, all the agricultural exhaust fans listed on the BESS Lab website have an FEI of at least 1.00. (Docket No. EERE–2020–BT–PET–0003, AMCA, No. 13 at pp. 2–3).

AMCA further commented that the metric of cfm/watt is a simple metric that was appropriate for agricultural exhaust fans because these fans are almost always applied at the same pressure (0.10 in. wg. of static pressure). However, AMCA stated that PRVs, which have similar applications to agricultural exhaust fans, can be applied at much higher pressures in other applications. Accordingly, a metric of cfm/watt evaluated at a single pressure and airflow can no longer be used for evaluation because the cfm/watt of a fan applied at a higher pressure would be much less than the cfm/watt at a lower pressure. (Docket No. EERE–2020–BT–PET–0003, AMCA, No. 13 at pp. 2–3).

AMCA commented that the choice to calculate FEI using either static or total pressure depending on fan category was recommended by the Working Group, which included a mix of stakeholders, including manufacturers of unducted fans. (Docket No. EERE–2020–BT–PET–0003, AMCA, No. 13 at p. 2).

In response to the October 2021 RFI, Morrison commented that air circulating fan heads (''ACFHs'') are different from other fans intended to be hooked up to ducts and should be evaluated differently. Morrison commented that an efficacy metric, such as that used by the BESS Lab (cfm/watt), would be appropriate. (Morrison, No. 8 at p. 1)

DOE reviewed the metric used by BESS Lab for reporting test results for agricultural fans. Although BESS Lab relies on a cfm/watt metric, the measured values are the same as those measured by a wire-to-air test in

[100] DOE identified that fans used in agricultural applications (''agricultural fans'') include PRVs (tested per AMCA 214–21, referencing AMCA 210–16) axial panel fans (tested per AMCA 214–21, referencing AMCA 210–16) and air circulating fans (tested per AMCA 214–21, referencing AMCA 230–15). Grave's comment focuses on agricultural fans that are PRVs.

[101] BESS Lab publishes test results for agricultural fans and provides the values of cfm/watt at different duty points expressed in static pressure, speed, and airflow. Based on these results, the electrical input power of a fan in kilowatts (same metric as the FEP) can be converted to cfm/watt by dividing the airflow by 1000 at a given duty point. This is similar to the results of an AMCA 214–21 test which provides the FEP in kilowatts at a given airflow, static pressure, and speed (the ratio of the airflow and FEP, divided by 1000 would provide the cfm/watts metric). See for example: *https://bess.illinois.edu/pdf/00110.pdf.*

accordance with AMCA 214–21 (*i.e.,* airflow, static pressure, electrical input power) and DOE tentatively determined this metric is identical to the FEP metric measured at a unique pressure point (or limited number of pressure points). In addition, DOE notes that the BESS Lab relies on test methods that are based on AMCA 210–16 and AMCA 230–15.[102] Therefore, DOE is proposing to use the FEI (based on FEP) metric for all PRVs and air circulating fans, including agricultural fans.

DOE seeks feedback on the proposed use of the FEI metric for all PRVs and air circulating fans, including agricultural fans.

H. Control Credit Approach

The Working Group recommended that the FEP of a fan with dynamic continuous control [103] be calculated with an additional credit to offset the losses inherent to the control. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #16, at p. 9)

ebm-papst, Inc. commented that fans with electronic VSDs for automatic load matching should be allowed a credit that does not disfavor their rating. However, voltage controls such as triac controls, series resistors, tapped motor windings, and autotransformers should not be allowed a credit because of their low efficiency at part-load. (Docket No. EERE–2013–BT–STD–0006, ebm-papst, No. 152 at pp. 1–2)

Greenheck, supported by Wade S. Smith Consulting, suggested applying a 10 percent credit to the FEP of fans equipped with variable speed controls (*e.g.,* for these fans the FEP would be decreased by a factor of 0.9). (Docket No. EERE–2013–BT–STD–0006; Greenheck, No. 221a at p. 13; Smith, No. 207 at p.3) Greenheck stated that a 10 percent credit is in line with the credit used in the current European regulations.[104] Greenheck commented that such credit would be sufficient to compensate for the losses inherent to the variable speed control, while being small enough to not provide enough incentive to make inefficient fans paired with controls attractive to customers. (Docket No. EERE–2013–BT–STD–0006; Greenheck, No. 221a at p. 13)

DOE analyzed the control credit in the European Commission Regulation No. EU 327/2011 and observed that the value of the credit is equivalent to about 5–10 percent of the fan electrical input power for a fan with controls with an electrical input power less than 5 kW, but that it decreases to 4 percent for fans at or above 5 kW. Since the term sheet publication, AMCA established the FEI calculation method in AMCA 214–21. DOE also reviewed the calculation of FEP for fans with variable speed controls in AMCA 214–21, which does not provide for any control credit. (See Section 6.4.2 of AMCA 214–21).

In its proposed rulemaking for commercial and industrial fans and blowers, the CEC did not propose a credit when establishing the FEI of fans with controllers and did not specify a different minimum FEI level when proposing energy conservation standards for fans with a controller.[105] Instead, the CEC highlighted that fans with a controller will have a larger FEI-compliant performance capability compared to fans that are single speed.[106]

Consistent with industry practice, DOE proposes to adopt the FEP and FEI calculation as specified in AMCA 214–21 and does not propose to develop a control credit for fans with a controller. As stated, EPCA requires the DOE test procedures be reasonably designed to produce test results, which reflect energy efficiency and energy use during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) To the extent use of a dynamic continuous control impacts the energy use characteristics of a fan or blower, appropriate consideration of any such impact would be part of the evaluation of potential energy conservation standards.

DOE requests comment on its proposal to not include a credit in the FEP and FEI calculation for fans with a motor controller.

I. Use of a Single Test Procedure Nationally

In response to the April 2020 Notice of Petition, ebm-papst requested that a DOE test procedure preempt potentially differing physical test methods and calculations associated with existing, pending, and future building energy codes and fan standards anywhere in the Nation. (Docket No. EERE–2020–BT–PET–0003, ebm-papst, No. 9 at p. 1)

As previously noted, Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D)) With respect to equipment covered by DOE under section 6311(1)(L), pre-emption of State or local standards for that equipment would begin on the date that an energy conservation standard is established, except where state or local standards have already been established. (42 U.S.C. 6316(a)(10)) Pre-emption of existing State regulations would begin on the date compliance is required with the Federal energy conservation standard, should such a standard be established. (*Id.*) As DOE established fans and blowers as a covered equipment under its authority in section 6311(1)(L), pre-emption of State or local standards will not apply until DOE establishes standards for this equipment (if the State or locality has not adopted their own standard) or until the DOE standard takes effect (if the State or locality has existing standards for the covered equipment in place).

J. Alternative Energy Determination Methods (AEDM)

For certain covered equipment, DOE permits the use of an AEDM subject to the requirements at 10 CFR 429.70. An AEDM is a mathematical model based on the covered equipment design, and mitigates the potential cost associated with having to physically test units. AEDMs are permitted in instances in which the model can reasonably predict the equipment's energy efficiency performance.

Although specific requirements vary by product or equipment, use of an AEDM entails development of a mathematical model that estimates energy efficiency or energy consumption characteristics of the basic model, as would be measured by the

[102] Comments from BESS Lab to the CEC process indicate that they Lab tests rely on AMCA 210–16 with modifications as noted in American Society of Agricultural and Biological Engineers (''ASABE'')/S565 Oct2005 Agricultural Ventilation Constant Speed Fan Test Standard or on AMCA 230–15. See *efiling.energy.ca.gov/GetDocument.aspx?tn=218197&DocumentContentId=26682* and *efiling.energy.ca.gov/GetDocument.aspx?tn=221228.*

[103] Variable speed controls or dynamic continuous controls: any device that adjusts the speed of the fan continuously over the fan's operating speed range in response to incremental changes in the required fan output airflow during its operation. (Docket No. EERE–2013–BT–STD–0006; No. 179 at p. 6)

[104] See European Commission Regulation No. EU 327/2011; *eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0327&from=EN.*

[105] See Proposed regulatory language for Commercial and Industrial Fans and Blowers available in the following Docket: 22–AAER–01 at: *efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-AAER-01.*

[106] See Staff Report, p. 36–37 for Commercial and Industrial Fans and Blowers available in the following Docket: 22–AAER–01 at: *efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-AAER-01.*

applicable DOE test procedure. 10 CFR 429.70(c)(1)(i). The AEDM must be based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data. 10 CFR 429.70(c)(1)(ii). A manufacturer must validate an AEDM by demonstrating that its predicted efficiency performance of the evaluated equipment agrees with the performance as measured by actual testing in accordance with the applicable DOE test procedure. 10 CFR 429.70(c)(1)(iii). The validation procedure and requirements, including the statistical tolerance, number of basic models, and number of units tested vary by product. 10 CFR 429.70(c)(2).

Once developed, an AEDM may be used for representations of the performance of untested basic models in lieu of physical testing. The manufacturer, by using an AEDM, bears the responsibility and risk of the validity of the ratings, including cases where the manufacturer receives and relies on performance data for certain components from a component manufacturer.

AEDMs, when properly developed, can provide a straight-forward and accurate means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing. Where authorized by regulation, AEDMs enable manufacturers to rate and certify the compliance of their basic models by using the projected energy use or energy efficiency results derived from these simulation models in lieu of testing.

The Working Group recommended allowing the use of an AEDM to generate the represented values of FEP and FEI of a fan basic model. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendations #23, #24, #25 at pp. 12–13)

DOE proposes to allow the use of an AEDM in lieu of testing to determine fan performance, which would mitigate the potential cost associated with having to physically test units.

1. Validation

Validation is the process by which a manufacturer demonstrates that an AEDM meets DOE's requirements for use as a certification tool by physically testing a certain number of basic models and comparing the test results to the output of the AEDM. Before using an AEDM, a manufacturer must validate the AEDM's accuracy and reliability as follows.

A manufacturer must select a minimum number of basic models from each validation class to which the AEDM applies. To validate an AEDM, the specified number of basic models from each validation class must be tested in accordance with the DOE test procedure and sampling plan in effect at the time those basic models used for validation are distributed in commerce. Testing may be conducted at a manufacturer's testing facility or a third-party testing facility. The resulting rating is directly compared to the result from the AEDM to determine the AEDM's validity. A manufacturer may develop multiple AEDMs per equipment category, and each AEDM may span multiple validation classes; however, the minimum number of basic models must be validated per equipment category for every AEDM that a manufacturer chooses to develop. An AEDM may be applied to any basic model within the applicable equipment category at the manufacturer's discretion. All documentation of testing, the AEDM results, and subsequent comparisons to the AEDM would be required to be maintained as part of both the test data underlying the certified rating and the AEDM validation package pursuant to 10 CFR 429.71.

The Working Group recommended that the AEDM be validated by the testing of at least two basic models, compliant with any potential energy conservation standards for each equipment class.[107] In addition, the Working Group recommended that if an AEDM was used to simulate a wire-to-air test method, then the basic models used to validate the AEDM had to be tested using the wire-to-air test method. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #24, at p. 13).

DOE is proposing to include fan and blower validation classes at 10 CFR 429.70(k) and to require that two basic models per validation class be tested using the relevant proposed test procedure. This number of basic models is consistent with the number of basic models required for most DOE-regulated equipment that utilize AEDMs. In addition, at least one basic model selected for validation testing would be required to include a motor, or a motor and controller of each topology (*e.g.,* induction, permanent magnet, electronically commutated motor) included in the AEDM. In addition, DOE proposes that if the AEDM is intended to represent the wire-to-air test method, then the testing of the basic models used to validate the AEDM must be performed according to the wire-to-air test method. Similarly, if the AEDM is intended to represent the fan shaft power test method, DOE proposes that the testing of the basic models used to validate the AEDM be performed according to the fan shaft power test method.

DOE's proposed validation classes for fans and blowers are listed as follows: (1) Centrifugal housed; (2) Radial housed; (3) Centrifugal inline; (4) Centrifugal unhoused; (5) Centrifugal PRV exhaust; (6) ; Centrifugal PRV supply; (7) Axial inline; (8) Axial panel; (9) Axial PRV; (10) unhoused ACFH; (11) air circulating axial panel fan; (12) box fan; (13) cylindrical air circulating fan; and (14) housed centrifugal air circulating fan.

The Working Group recommended adding a tolerance of five percent to the results of the AEDM for the basic models used for validation of the AEDM. The Working Group recommended that the predicted FEP using the AEDM may not be more than five percent less than the FEP determined from the test according to the DOE test procedure for the basic models used to validate an AEDM. (Docket No. EERE–2013–BT–STD–0006; No. 179, Recommendation #25, at p. 13).

The Working Group recommendation would require that the FEP calculated by an AEDM must be greater than or equal to 95 percent of the FEP determined testing the basic models used to validate the AEDM. This is equivalent to requiring that the FEI determined using the FEP calculated by an AEDM must be less than or equal to 100/0.95 percent or approximately 105 percent of the FEI calculated using the FEP determined from testing the basic models used to validate the AEDM.[108]

DOE proposes to apply the 5 percent tolerance to the FEI because FEI is the proposed metric. DOE proposes that the FEI calculated by an AEDM must be less than or equal to 105 percent of the FEI determined from the test of the basic models used to validate the AEDM.

2. Additional AEDM Requirements

Consistent with provisions for other commercial and industrial equipment, DOE proposes to require that, if requested by DOE, a manufacturer must perform at least one of the following activities: (1) conduct a simulation

[107] DOE uses validation classes for AEDMs. While validation classes may not directly align with equipment classes, validation classes are consistent with equipment classes. DOE would propose equipment classes in a future energy conservation standards rulemaking for fans and blowers.

[108] The FEI is equal to the reference FEP (FEP–ref) divided by the FEP of the actual fan. Therefore, if the FEP calculated using the AEDM (FEP–AEDM) is greater than or equal to 95 percent of the FEP (FEP–test) determined through testing, the FEP–ref/FEP–AEDM is less than or equal to 1/0.95 * FEP–ref/FEP–test.

before a DOE representative to predict the performance of particular basic models of the equipment to which the AEDM was applied; (2) provide analysis of previous simulations conducted by the manufacturer; or (3) conduct certification testing of basic model(s) selected by DOE.

In addition, DOE proposes that when making representations of values other than FEI (*e.g.,* FEP, fan shaft power) for a basic model that relies on an AEDM, all other representations would be required to be based on the same AEDM results used to generate the represented value of FEI.

3. AEDM Verification Testing

Consistent with provisions for certain other commercial and industrial equipment, DOE proposes including in 10 CFR 429.70(k) provisions related to AEDM verification testing for fans and blowers, including: (1) selection of units from retail if available, or otherwise from a manufacturer, (2) independent, third-party testing if available, or otherwise at a manufacturer's facility, (3) testing performed without manufacturer representatives on-site, (4) testing in accordance with the DOE test procedure, any active test procedures, any guidance issued by DOE, and lab communication with the manufacturer only if DOE organizes it, (5) notification of manufacturer if a model tests worse than its certified rating by an amount exceeding a 5 percent tolerance with opportunity for the manufacturer to respond, (6) potential finding of the rating for the model to be invalid, and (7) specifications regarding when a manufacturer's use of an AEDM may be restricted due to prior invalid represented values and how a manufacturer could regain the privilege of using an AEDM for rating.

DOE requests feedback regarding all aspects of its proposal to permit use of an AEDM for fans and blowers, and any data or information comparing modeled performance with the results of physical testing. DOE specifically seeks comment on its proposed validation classes, and whether different number of basic models should be considered.

K. Sampling Plan

DOE provides sampling provisions for determining represented values of energy use or energy efficiency of a covered product or equipment. *See generally* 10 CFR part 429. These sampling provisions provide uniform statistical methods that require testing a sample of units that is large enough to account for reasonable manufacturing variability among individual units of a basic model, or variability in the test methodology, such that the test results for the overall sample will be reasonably representative of the efficiency of that basic model.

The general sampling requirement currently applicable to all covered products and equipment provides that a sample of sufficient size must be randomly selected and tested and that, unless otherwise specified, a minimum of two units must be tested to certify a basic model. 10 CFR 429.11. This minimum is implicit in the requirement to calculate a mean—an average—which requires at least two values. Manufacturers can increase their sample size to narrow the margin of error. The design of the sampling plan is intended to determine an accurate assessment of product or equipment performance, within specified confidence limits, without imposing an undue testing or economic burden on manufacturers. Different samples from the same population will generate different values for the sample average. An interval estimate quantifies this uncertainty in the sample estimate by computing lower and upper confidence limits (''LCL'' and ''UCL'') of an interval (centered on the average of the sample) which will, with a given level of confidence, contain the population average. Instead of a single estimate for the average of the population (*i.e.,* the average of the sample), a confidence interval generates a lower and upper limit for the average of the population. The interval estimate gives an indication of how much uncertainty there is in the estimate of the average of the population.[109] Confidence limits are expressed in terms of a confidence coefficient. For covered equipment and products, the confidence coefficient typically ranges from 90 to 99 percent.[110] The confidence coefficient, for example 97.5 percent means that if an infinite number of samples are collected, and the confidence interval computed, 97.5 percent of these intervals would contain the average of the population: *i.e.,* although the average of the entire population is not known, there is a high probability (97.5 percent confidence level) that it is greater than or equal to the LCL and less than or equal to the UCL.

To ensure that the represented value of efficiency is no greater than the population average, the sampling plans for determination of the represented value typically consist of testing a representative sample to insure that . . . (ii) Any represented value of energy efficiency[111] . . . shall be no greater than the lower of (A) the average of the sample ($\bar{x}$) or (B) the lower XX confidence limit of the true mean divided by K, where the values for XX and K vary with product or equipment type. XX, the confidence limit, typically ranges from 90 to 99 percent, while K, an adjustment factor, typically ranges from 0.9 to 0.99. The specific values for XX and K for a particular product or equipment are selected based on an expected level of variability in product performance and measurement uncertainty. 10 CFR 429.14 through 10 CFR 429.63. Requiring that the represented value be less than or equal to the LCL would ensure that the represented value of efficiency is no greater than the population average. DOE divides the LCL by K to provide additional tolerance to account for variability in product performance and measurement uncertainty.[112] The comparison with the average of the sample further ensures that if LCL divided by K is greater than $\bar{x}$, the represented value is established using the average of the sample. In addition, DOE relies on a one-sided confidence limit to provide the option for manufacturers to rate more conservatively.

The Working Group recommended that a represented value of a basic model be based on a minimum of one test, where the tested value must be less than the represented value. The Working Group did not provide recommendations to address a situation in which a manufacturer chooses to increase their test sample size. (Docket No. EERE–2013–BT–STD–0006, No. 179, Recommendation #23 at p. 12) The Petitioners also requested that manufacturers be allowed to establish FEP and FEI ratings of a fan basic model based on testing of a single unit. (Docket No. EERE–2020–BT–PET–0003, The Petitioners, No. 1.3 at p. 8)

In response to the October 2021 RFI, AMCA commented that they do not yet have a specific sampling recommendation it can support with data and analyses. AMCA would prefer to use the ratings and sampling methods embodied in AMCA Publication 211, ''Certified Ratings Program Product Rating Manual for Fan Air Performance'', which is the program's operating manual for certifying fans to

[109] *NIST/SEMATECH e-Handbook of Statistical Methods, https://www.itl.nist.gov/div898/handbook/eda/section3/eda352.htm.*

[110] 10 CFR part 429 outlines sampling plans for certification testing for product or equipment covered by EPCA.

[111] Or any other metric for which the consumer will favor a higher value, such as FEI.

[112] For example, if DOE expects that the variability for measured performance is within a margin of 3 percent, DOE will use a K value of 0.97. See for example 79 FR 32019, 32037 (June 3, 2014).

AMCA's certification programs. (AMCA, No. 6 at p. 10)

DOE proposes that a minimum sample size of two units would be used when making representations of FEP, FEI, and BHP, as applicable. This proposal is consistent with the statistical sampling requirements in place for other commercial and industrial equipment regulated by DOE.[113] In addition, DOE proposes that the FEI be rounded to the nearest hundredth. These requirements would be added to 10 CFR 429.66.

DOE seeks information on whether the statistical sampling plans used for other commercial and industrial equipment at 10 CFR part 429 would be appropriate for fans and blowers. If not, DOE requests information and data to explain why not, and what changes would be appropriate. DOE also requests comment on the proposed minimum sample size.

L. Enforcement Provisions

DOE proposes to add specific enforcement testing provisions for fans and blowers at 10 CFR 429.110 and proposes that DOE would use an initial sample size of not more than four units and would determine compliance based on the arithmetic mean of the sample. This is similar to existing enforcement testing provisions for pumps and HVACR equipment.

DOE proposes to add product-specific enforcement provisions for fans and blowers other than air circulating fans to specify that: (1) geometric similarity of two or more fans will be verified by requiring that the manufacturer provides all fan design dimensions as described in Annex K of AMCA 214–21; and (2) DOE will test each fan basic model according to the test method (specified by the manufacturer in any certification report (*i.e.,* based on Sections 6.1, 6.2, 6.3 or 6.4 of AMCA 214–21).

M. Test Procedure Costs and Impact

As previously discussed, DOE proposes to establish a test procedure for fans and blowers at 10 CFR part 431 subpart J and a newly proposed appendix A and appendix B as follows: (1) adopting through reference the test methods in AMCA 214–21, with certain modifications; (2) adopting through reference certain test procedure provisions in AMCA 210–16 and AMCA 230–15 with errata, as referenced by AMCA 214–21; and (3) specifying FEP and FEI as the relevant metrics, based on AMCA 214–21. Additionally, DOE is proposing to add section 66 to 10 CFR part 429, which adds fan and blower sampling requirements and provisions related to determining represented values, and to add section (k) to 10 CFR 429.70, which specifies alternative efficiency determination method requirements. DOE has tentatively determined that the proposed test procedure would impact testing costs as discussed in the following paragraphs.

By proposing to adopt industry standards, DOE has tentatively determined that the test procedure proposed in this NOPR would be reasonably designed to produce test results, which reflect energy efficiency and energy use of fans and blowers during a representative average use cycle and that would not be unduly burdensome for manufacturers to conduct. DOE is presenting the costs associated with performing testing according to the proposed test procedure at third-party testing facilities (*i.e.,* facilities that are not operated by the manufacturer whose product is being tested).

DOE recognizes that some manufacturers of fans and blowers may operate their own testing facilities or may establish in-house testing facilities suitable for obtaining representative efficiency values using the test procedure proposed in this NOPR. In order to establish a test laboratory capable of testing to the proposed test procedure, DOE expects that manufacturers could have substantial initial capital costs; however, DOE anticipates that the cost to perform a test would be less for in-house testing than for third-party testing. Therefore, it is expected that over the lifetime of a new test laboratory, the initial expense of the capital costs would be less than the total cost of third-party testing. For the purpose of estimating the costs in order to properly represent efficiency values for fans and blowers according to the test procedure proposed in this NOPR, DOE analyzed the case of testing at third-party laboratories.

1. Estimated Costs for Testing Fans and Blowers at a Third-Party Facility

In the case of testing at third-party testing facilities, DOE estimates a per-test cost of $3,000 for AMCA members and $6,000 for non-AMCA members. These estimates are based on statements made by AMCA during the ASRAC negotiations, where a member cost of $3,000 per test and a non-member cost of no more than double the member cost were stated. (Docket No. EERE–2013–BT–STD–0006, #82, p. 228) DOE estimates that approximately 60 percent of fan manufacturers are AMCA members and that the remaining 40 percent are not AMCA members. Utilizing these percentages and the respective costs per test for AMCA members and non-AMCA members, DOE estimates the aggregated average test cost would be $4,200 for third-party testing of both general fans and air circulating fans. As stated in section III.K, DOE proposes that basic model representations would be required to be based on testing a minimum of two units. Therefore, DOE estimates that it will cost $8,400 to test a basic model.

DOE requests feedback on its assumption that it would cost an average of $4,200 to test one fan for both general fans and air circulating fans. Additionally, DOE requests data on third-party laboratory testing costs (other than AMCA).

DOE requests feedback on the method described above for estimating manufacturer per-model testing costs of general fans and air circulating fans. Additionally, DOE requests feedback and data on the total testing costs per basic model for testing at third-party facilities.

2. Estimated Cost To Develop, Validate, and Implement an AEDM

As previously discussed, an AEDM is a mathematical model developed by a manufacturer that estimates the energy efficiency or energy consumption characteristics of a basic model as measured by the applicable DOE test procedure. Before using an AEDM, a manufacturer must validate the AEDM's accuracy and reliability by physically testing a certain number of basic models and comparing the test results to the output of the AEDM.

DOE assumes a mechanical engineer would develop and validate a new AEDM. Based on wage and salary data from the Bureau of Labor Statistics (''BLS''), DOE estimates the hourly fully burdened mechanical engineering wage to be approximately $66.[114] DOE also estimates that it would take 24 labor

[113] The general sampling requirement currently applicable to all covered products and equipment provides that a sample of sufficient size must be randomly selected and tested to ensure compliance and that, unless otherwise specified, a minimum of two units must be tested to certify a basic model as compliant. See 10 CFR 429.11.

[114] DOE estimated the hourly wage using data from BLS's ''Occupational Employment and Wages, May 2021'' publication. DOE used the ''Mechanical Engineers'' mean hourly wage of $46.64 to estimate the hourly wage rate (*www.bls.gov/oes/current/oes172141.htm*). DOE then used BLS's ''Employer Costs for Employee Compensation—December 2021'' to estimate that wages and salary account for approximately 70.5 percent of compensation for private industry workers (*www.bls.gov/news.release/archives/ecec_03182022.pdf*). Last accessed on April 2, 2022. Therefore, DOE estimated a fully burdened labor rate of $66.16 ($46.64 ÷ 0.705 = $66.16).

hours per validation class for an engineer to develop and validate an AEDM using existing simulation tools. Therefore, DOE estimated the cost of a fully burdened mechanical engineer as approximately $1,600 per validation class. As discussed in section III.J.1, testing of two basic models is required to validate an AEDM for a specific validation class. One unit must be tested per basic model in order to validate an AEDM. 10 CFR 429.70(c)(2)(i) Therefore, two physical tests on two different basic models are required for validation of a fans and blowers AEDM. As discussed in the previous section, DOE estimates the average cost per test to be $4,200. Therefore, the total estimated manufacturer cost to develop and validate an AEDM for a single validation class is estimated to be $10,000, which is the cost to perform one test on two basic models at a third-party lab ($8,400) plus the fully burdened cost of a mechanical engineer's time to develop and validate the AEDM ($1,600).

DOE assumes a mechanical technician would implement an AEDM once it is developed. Based on wage and salary data from the Bureau of Labor Statistics, DOE estimates the hourly fully burdened mechanical technician wage to be approximately $43.[115] DOE estimates that it would take a mechanical technician 1 hour to determine the representative values necessary to certify a basic model using an AEDM. Therefore, the estimated cost to implement an AEDM to develop certified ratings is $43 per basic model.

DOE requests comment on its assumption that manufacturers have existing simulation tools that a mechanical engineer could use to develop an AEDM. Additionally, DOE requests comment on its assumption that AEDMs would be developed by a mechanical engineer and later utilized by mechanical technicians to develop certified ratings for each basic model. Finally, DOE requests comment on its assumption that it would take a mechanical engineering approximately 24 working hours to develop an AEDM and that it would take a mechanical technician approximately 1 hour per basic model to develop certified ratings from an AEDM.

3. Voluntary Representations

If manufacturers voluntarily make representations regarding the energy consumption or cost of energy of the fans and blowers that are proposed to be in-scope for the proposed test procedure (listed in Section III.A of this document), they would be required to make representations based on testing according to the DOE test procedure. (42 U.S.C. 6314(d)(1)) DOE has initially determined that the implementation of the proposed test procedure, if finalized, would result in added costs to fan and blower manufacturers if manufacturers choose to make efficiency representations. These added costs pertain to manufacturers that would need to update current efficiency representations in marketing materials and those that would choose to add efficiency representations to marketing materials.

N. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) To the extent the test procedure proposed in this document is required only for the evaluation and issuance of new efficiency standards, use of the proposed test procedure, if finalized, would not be required until the implementation date of new standards. 10 CFR 431.4; Section 8(e) of appendix A 10 CFR part 430 subpart C.

If DOE were to publish a new test procedure, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review, as supplemented and reaffirmed by E.O. 13563, Improving Regulation and Regulatory Review'', 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit significant regulatory actions to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a significant regulatory action under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As

[115] DOE estimated the hourly wage using data from BLS's ''Occupational Employment and Wages, May 2021'' publication. DOE used the ''Mechanical Engineering Technologists and Technicians'' mean hourly wage of $30.47 to estimate the hourly wage rate (*www.bls.gov/oes/current/oes173027.htm*). DOE then used BLS's ''Employer Costs for Employee Compensation—December 2021'' to estimate that wages and salary account for approximately 70.5 percent of compensation for private industry workers (*www.bls.gov/news.release/archives/ecec_03182022.pdf*). Last accessed on April 2, 2022. Therefore, DOE estimated a fully burdened labor rate of $43.22 ($30.47 ÷ 0.705 = $43.22).

required by Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The following sections detail DOE's IRFA for this test procedure rulemaking:

1. Descriptions of Reasons Why Action Is Being Considered

DOE is proposing to establish a test procedure for fans and blowers at subpart J of 10 CFR part 431. As discussed, EPCA provides that DOE may include a type of industrial equipment, including fans and blowers, as covered equipment if it determines that to do so is necessary to carry out the purposes of Part A–1. (42 U.S.C. 6311(2)(B)(ii) and (iii); 42 U.S.C. 6312(b)). The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation. (42 U.S.C. 6312(a)) As stated, on August 19, 2021, DOE published a final determination determining that fans and blowers meet the statutory criteria for classifying industrial equipment as covered, because fans and blowers are a type of industrial equipment (1) which in operation consume, or are designed to consume, energy; (2) are to a significant extent distributed in commerce for industrial or commercial use; and (3) are not covered under 42 U.S.C. 6291(a)(2). 86 FR 46579, 46586. DOE also determined that coverage of fans and blowers is necessary to carry out the purposes of Part A–1. 86 FR 46579, 46588.

This proposed rulemaking is in accordance with DOE's obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316; 42 U.S.C. 6296)

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)

3. Description and Estimate of Small Entities Regulated

DOE has recently conducted a focused inquiry into small business manufacturers of the equipment covered by this proposed rulemaking. DOE used the Small Business Administration (SBA) size standards to determine whether any small entities would be subject to the requirements of the proposed rule. The small business size standards are listed by North American Industry Classification System (''NAICS'') code as well as by industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing commercial and industrial fans and blowers is classified under NAICS 333413, ''Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.'' The SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business for this category. DOE used a combination of publicly available information and a private stakeholder database to create a list of potential manufacturers. Once DOE created a list of potential manufacturers, DOE used market research tools to determine whether any met the SBA's definition of a small entity, based on the total number of employees for each company including parent, subsidiary, and sister entities.

4. Based on DOE's analysis, over 200 companies potentially selling commercial and industrial fans and blowers covered by this proposed test procedure were identified. DOE screened out companies that do not meet the small entity definition and additionally screened out companies that are largely or entirely foreign owned and operated. Of the identified companies, 51 were further identified as a potential small business manufacturing commercial and industrial fans and blowers.

5. Description and Estimate of Compliance Requirements

DOE estimates that this proposed test procedure would not require any manufacturer to incur any testing burden associated with the proposed test procedure. If finalized, DOE recognizes that commercial and industrial fans and blowers energy conservation standards may be proposed or promulgated in the future and manufacturers would then be required to test all covered equipment in accordance with the proposed test procedures. (*See* Docket No. EERE–2021–BT–TP–0021) Therefore, although such is not yet required, DOE is presenting the costs associated with testing equipment and procedure consistent with the requirements of the proposed test procedure, as would be required to comply with any future energy conservation standards for fans and blowers.

This proposed test procedure, if finalized, may result in manufacturers who choose to make voluntary representation incurring costs associated with re-testing their models to update efficiency representations in marketing materials based on testing according to the DOE test procedure. Estimated costs for testing fans and blowers is discussed in Section M of this notice.

(a) Establishment of a Test Procedure

Due to the lack of a model database and the large number of potential small businesses, DOE selected 20 of the small businesses to examine for model counts—which can be averaged across the full set of small businesses. DOE reviewed the websites and, where available, product catalogs of each of the sampled small businesses manufacturing equipment covered by the proposed test procedure. While detailed product information was not availiable for three of the sampled small businesses, DOE identified, maximally, 2,686 models of commercial and industrial fans and blowers that may be covered by the proposed test procedure across the remaining 17 small businesses. The number of models identified ranged from 7 to 636 across the applicable manufacturers, for an average of 158 and a median of 49 models per manufacturer. In the intesest of arriving at an upperbound cost estimate, DOE assumes that all small businesses will use third-party testing and not implement an AEDM. DOE previously estimated a total average certification testing cost of $8,400 per model—$6,000 for an AMCA member and $12,000 for a non-AMCA member—

which translates to an average cost for small business manufacturers of $1,327,200, assuming all models are tested. Accordingly, total costs for small businesses, assuming that the non-sampled small businesses have similar model counts would be approximately $67,687,200.

DOE was able to find annual revenue estimates for all of the 17 small businesses sampled. Testing costs as a pecentage of estimated annual revenue fluctuate widely—ranging from less than one percent to over 70 percent—for an average of approximately 15 percent and a median value of approximately four percent.

(b) Establishment of an AEDM

Establishing an AEDM for commercial and industrial fans and blowers is not expected to impose an additional cost on small business manufacturers. Manufacturers are not required to use the AEDM and using the AEDM to certify models is expected to result in an significantly lower cost relative to using the standard test procedure for all or most of the models a small business might produce.

6. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered today.

7. Significant Alternatives to the Rule

The discussion in this section analyzes impacts on small businesses that would result from DOE's proposed test procedure, if finalized. In reviewing alternatives to the proposed test procedure, DOE examined not establishing a performance-based test procedure for commercial and industrial fans and blowers. While not establishing performance-based test procedures for commercial and industrial fans and blowers would reduce the burden on small businesses, DOE must use test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

DOE notes there currently are no energy conservation standards prescribed for commercial and industrial fans and blowers. Therefore, manufacturers would not be required to conduct the proposed test procedure, if made final, until such time as compliance is required with energy conservation standards, should DOE establish such standards, unless manufacturers voluntarily chose to make representations as to the energy use or energy efficiency of commercial and industrial fans and blowers.

DOE has tentatively determined that there are no better alternatives than the proposed amendments in terms of meeting the agency's objectives to measure energy efficiency more accurately and to reduce burden on manufacturers. Therefore, DOE is proposing in this NOPR to amend the existing DOE test procedure for fans and blowers.

Additional compliance flexibilities may be available through other means. Notably, section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered equipment must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This proposed rule would not establish any certification or recordkeeping requirements on manufacturers of fans and blowers. Were DOE to establish energy conservation standards for fans and blowers, certification data would be required for fans and blowers subject to such standards; however, DOE is not proposing certification or reporting requirements for fans and blowers in this NOPR. Instead, DOE may consider proposals to establish certification requirements and reporting for fans and blowers under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes a new test procedure that it expects will be used to develop and implement future energy conservation standards for fans and blowers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. Federal energy efficiency requirements for covered equipment established under EPCA supersede State laws and regulations concerning energy conservation testing, labeling, and standards beginning on the date on which a final rule establishing an energy conservation standard is issued by the Secretary, except that any State or local standard prescribed or enacted or the equipment before the date on which the final rule is issued shall not be preempted until the energy conservation standard established by the Secretary for the equipment takes effect. (42 U.S.C. 6316(a)(10); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of fans and blowers is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a

significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed test procedure for fans and blowers would incorporate testing methods contained in certain sections of the following commercial standards: AMCA 214–21, AMCA 210–16, AMCA 230–15, AMCA 240–15, AMCA 99–16, ISO 5801:2017, and ISO 80079–36:2016. DOE has evaluated these standards and is unable to conclude whether they fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standards published by AMCA, titled, ''ANSI/AMCA Standard 214–21, ''Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers.'' AMCA 214–21 is an industry-accepted test procedure that provides methods to determine fan electrical shaft power and/or electrical power, flow, and pressure and calculate the fan energy index (FEI) and is applicable to product sold in North America. AMCA 214–21 specifies testing conducted in accordance with other industry-accepted test procedures (also proposed for incorporation by reference). The test procedure proposed in this NOPR references various sections of AMCA 214–21 that address test setup, test conduct, and calculation of the FEI.

DOE also proposes to incorporate by reference the test standards published by AMCA, titled ''ANSI/AMCA Standard 210/ASHRAE 51–16 Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating;'' and ''ANSI/AMCA 230–15, ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification'' (with errata). AMCA 210–16 is an industry-accepted test procedure that provides methods of tests for fans and blowers that are not air circulating fans, and AMCA 230–15 is an industry-accepted test procedure that provides methods of tests for air circulating fans. These methods are referenced in AMCA 214–21.

DOE further proposes to incorporate by reference the test standards published by AMCA, titled ''ANSI/AMCA 240–15, Laboratory Methods of Testing Positive Pressure Ventilators for Aerodynamic Performance Rating'' (''AMCA 240–15''). AMCA 240–15 is an industry-accepted test procedure that provides definitions and methods of tests for positive pressure ventilator.

DOE further proposes to incorporate by reference the test standards published by AMCA, titled ''ANSI/AMCA 99–16 Standards Handbook'', (''AMCA 99–16''). AMCA 99–16 serves as a collection of technical information that is used in the development of other AMCA documents.

Copies of AMCA 214–21, AMCA 210–16, AMCA 230–15, AMCA 240–15, and AMCA 99–16 may be purchased from AMCA International at 30 West University Drive, Arlington Heights, IL 60004–1893, or by going to *www.amca.org.*

DOE also proposes to incorporate by reference the test standards published by the International Organization for Standardization, titled ''ISO 5801:2017, Fans—Performance testing using standardized airways'' (''ISO 5801:2017''). ISO 5801:2017 is the industry-accepted test procedure that provides methods of tests for fans and blowers that are not air circulating fans, internationally. In addition, DOE proposes to incorporate by reference ISO 80079–36:2016, which specifies the method and requirements for design, construction, testing and marking of non-electrical equipment intended for use in potentially explosive atmospheres.

Copies of ISO 5801:2017 and ISO 80079–36:2016 may be purchased from International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, or by going to *www.iso.org.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule.[116] Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

[116] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on the fans and blowers, other than air circulating fans, proposed for inclusion in the DOE test procedure.

(2) DOE requests comment on the proposed limits based on fan airpower, fan shaft input power and fan electrical input power for fans other than air circulating fans. Specifically, DOE requests comment on the proposed definitions of ''static airpower'' and ''total airpower'' used to characterize the upper 150 horsepower limit for fans other than air circulating fans.

(3) DOE requests comment on its proposed exclusions from the proposed scope of applicability of the test procedure, listed as follows: (1) radial housed unshrouded fans with a diameter less than 30 inches or a blade width of less than 3 inches; (2) safety fans; (3) induced flow fans; (4) jet fans; and (5) cross-flow fans. DOE seeks additional information to support exclusion from the scope of potential test procedures.

(4) DOE seeks comment and input on the applicability of AMCA 214–21 and AMCA 210–16 to fans that create a vacuum of 30 inches water gauge or greater. DOE requests comment on the 30 inches water gauge limit used by the CEC.

(5) DOE requests comment on the proposed exclusively embedded fan exclusions listed in Table III 8 of this document.

(6) DOE seeks information on whether it is common practice for standalone fan manufacturers that supply fans to HVACR equipment manufacturers to test these fans in accordance with AMCA 214–21 or AMCA 210–16 in a standalone configuration, and to provide fan performance data for these fans.

(7) DOE seeks information on whether it is common practice for manufacturers of HVACR equipment that manufacture and incorporate fans into their equipment to test these fans in accordance with AMCA 214–21 or AMCA 210–16 in a standalone configuration, and to provide fan performance data to their customers.

(8) DOE seeks comment on the estimates provided for the percentage of fans that are incorporated in HVACR equipment that are purchased by the HVACR equipment manufacturer vs. manufactured in-house.

(9) DOE seeks comment and input regarding any physical features that could be used to distinguish a fan that is exclusively designed for use in equipment listed in Table III 8 of this document.

(10) DOE seeks comment on the proposed definition of ''exclusively embedded fan''.

(11) DOE requests comments on the proposed scope of applicability of the test procedure for air circulating fans.

(12) DOE requests comment on excluding fans and blowers that are exclusively powered by internal combustion engines from the scope of this test procedure and associated energy conservation standards.

(13) DOE requests feedback and information on the physical features that would help distinguish fans and blowers that are exclusively powered by internal combustion engines from other fans and blowers.

(14) DOE requests comment on the definitions proposed for the following fan categories: (1) axial inline fan; (2) axial panel fan; (3) centrifugal housed fan; (4) centrifugal unhoused fan; (5) centrifugal inline fan; (6) radial-housed fan; and (7) PRVs, consistent with AMCA 214–21. If any of the definitions are not appropriate, DOE seeks input on how they should be amended and why.

(15) DOE seeks input and comments on the proposed definitions of (1) induced flow fan, (2) jet fan, and (3) cross-flow fan consistent with AMCA 214–21 and AMCA 208–18. If any of the definitions are not appropriate, DOE seeks input on how they should be amended and why.

(16) DOE requests comment on the proposed definition of basic model, with respect to fans and blowers.

(17) DOE requests comments on its proposed definition of safety fans. Specifically, DOE requests comments in whether item (4) of the CEC definition of safety fans is equivalent to ''laboratory exhaust fans'' as defined in Section 3.52 of AMCA 214–21.

(18) DOE requests comment on the proposed definitions for air circulating fan and related terms.

(19) DOE requests comment on the proposed definitions related to heat rejection equipment.

(20) DOE requests comment on its proposed definition of air circulating fan outlet area. DOE additionally requests comment on whether the definition of outlet area for fans and blowers other than air circulating fans should be revised and, if so, how.

(21) DOE seeks information on whether, in general, AMCA 214–21, AMCA 210–16, and AMCA 230–15 (with errata) provide measurements which reflect energy efficiency or energy use during a representative average use cycle of the fans and blowers (including air circulating fans) proposed to be in scope. If these standards would not provide such measurements, DOE seeks input on how it should be amended and why, and on any other industry test standard that would be more appropriate.

(22) DOE requests comment and supporting data on whether AMCA 214–21 and ISO 5801:2017 produce equivalent test results.

(23) DOE seeks information and data to assist in evaluating the repeatability and reproducibility of AMCA 214–21, AMCA 210–16, and AMCA 230–15 (with errata). DOE seeks input on whether any changes to these standards are needed to increase its repeatability and reproducibility.

(24) DOE seeks information on whether changes to AMCA 214–21, AMCA 210–16, and AMCA 230–15 (with errata) are needed to allow for the determination of more representative energy efficiency ratings, and any cost associated with a suggested change.

(25) DOE requests comment on the physical features that could be identified to differentiate bare-shaft fans that can accommodate only a direct-drive transmission from other bare-shaft fans.

(26) DOE requests comment on any additional revisions under consideration by the AMCA 230 committee that are not discussed in this document.

(27) DOE requests comment on the equations provided in Section 5.3 and section 6.4.2.3 of AMCA 214–21. Specifically, DOE requests comment on whether applying the method outlined in Section 6.4 of AMCA 214–21 and the equations provided in Section 6.4.2.3 of AMCA 214–21 could result in a higher value of FEI than the FEI resulting from a wire-to-air test in accordance with Section 6.1 of AMCA 214–21.

(28) DOE requests comments on whether it should add a reference to section I.6 of AMCA 211–22 or replace Annex E of AMCA 214–21 by Annex I of AMCA 211–22.

(29) DOE seeks feedback on its proposal that PRVs that can operate both as supply and exhaust fans be tested in both configurations as described in Table III 9.

(30) DOE seeks comment on its proposal to test exclusively embedded fans in a standalone configuration outside of the equipment that incorporates the fan.

(31) DOE requests comment on its proposed approach for testing air circulating fans that are distributed in commerce without an electric motor.

(32) DOE requests comment on its proposal to add provisions for calculating the total pressure of air circulating fans based on the equations in Section A.2 of AMCA 208–18.

(33) DOE requests comment on the proposed provisions related to the consideration of appurtenances when testing fans and blowers, including air circulating fans.

(34) DOE requests comment on whether it should consider specifying additional provisions to describe which components should be included in the test.

(35) DOE requests comment on the proposed provisions related to specifying which frequency, phase, and voltage to use during a test.

(36) DOE additionally requests comment on whether the supply voltage requirements proposed for testing air circulating fans and fans and blowers other than air circulating fans would appropriately represent an average use cycle.

(37) DOE seeks feedback on the options presented for specifying the testing speed(s) for air circulating fans and its proposal to test single speed fans at the single available speed, multi-speed fans at each available speed, and variable speed fans at 20, 40, 60, and 80 percent of maximum speed. DOE further requests feedback on its proposal to clarify that if the fan minimum speed is greater than 20 percent of the maximum speed, the performance data would be captured and reported in five speeds evenly spaced throughout the speed range, including at minimum and maximum speeds.

(38) DOE requests data to characterize typical air circulating fan operating speed(s) and time spent at each operating speed.

(39) DOE requests feedback on whether Section 6.2 and Annex E of AMCA 214–21 should be applied to air circulating fans.

(40) DOE requests comment on its proposal for determining if an air circulating fan has reached equilibrium prior to initiating testing. Specifically, DOE is soliciting comment on the test variables and related tolerances that it is proposing to incorporate in its equilibrium determination. Additionally, DOE seeks comment on the minimum duration and maximum interval over which equilibrium would need to be verified. DOE also seeks comment on which variables proposed in Table III–13 that, if not stable prior to test, would have the greatest impact on measured fan performance. Finally, DOE requests comment on its proposal to specify the time and frequency over which extraneous airflow measurements would be recorded.

(41) DOE requests comment on its proposal for determining if a fan that is not an air circulating fan has reached equilibrium prior to initiating testing. Specifically, DOE is soliciting comment on the test variables and related tolerances that it is proposing to incorporate in its equilibrium determination. Additionally, DOE seeks comment on the minimum duration and maximum interval over which equilibrium would need to be verified. Finally, DOE seeks comment on which variables proposed in Table III–14 that, if not stable prior to test, would have the greatest impact on measured fan performance.

(42) DOE requests comment on the applicability of each test figure in AMCA 230–15 to air circulating fans.

(43) DOE requests comment on the proposed FEI calculation for air circulating fans.

(44) DOE requests comment on its proposals for rounding represented values of FEI and FEP to the hundredths place. Additionally, DOE seeks comment on its proposal to specify rounding requirements for test values and calculations that are consistent with the resolution of the test instrumentation.

(45) DOE requests comment on the proposed location of the extraneous airflow measurement for air circulating fans.

(46) DOE requests comment on the proposed run-in requirements.

(47) DOE requests comment on whether the requirement to calibrate transducer type barometers for each test is necessary or should be removed for air circulating fans.

(48) DOE requests comment on its proposal that fans that meet the definition of both an axial panel fan and the definition of an air circulating fan because of the presence or absence of brackets for mounting through a structure that separates a fan's inlet from its outlet be tested both as a fan and blower and as an air circulating fan.

(49) DOE requests comment on the appropriate metric to use for fans and blowers other than air circulating fans.

(50) DOE requests comment on the proposed FEI metric determined in accordance with the proposed test procedure, and on whether any changes are necessary to provide for more representative energy efficiency ratings. If changes are suggested, DOE seeks input on how the proposed FEI metric should be amended and why, and on any other metrics that would be more appropriate. If changes or alternate metrics are suggested, DOE requests information on the impact to testing cost as compared to the proposed use of FEI.

(51) DOE requests comments on the alternative approach considered to establish a weighted average FEI metric for fans and blowers other than air circulating fans. DOE requests comments on the appropriate reference system curve to use in the case of variable-speed fans to standardize the calculation of the reduced BEP flow operating points.

(52) DOE requests comment on the appropriate metric to use for air circulating fans.

(53) DOE requests comment on the proposed FEI metric determined in accordance with the proposed test procedure, and on whether any changes are necessary to provide for more representative energy efficiency ratings. If changes are suggested, DOE seeks input on how the proposed FEI metric should be amended and why, and on any other metrics that would be more appropriate. Specifically, for air circulating fans, DOE requests comment on the proposed use of the FEI metric determined in accordance with the test procedure as proposed and if DOE should consider other performance metrics as measured by AMCA 230–15, or different weights. If changes or alternate metrics are suggested, DOE requests information on the impact to testing cost as compared to the proposed use of FEI.

(54) DOE requests comments on whether to use a different acronym to designate the FEI of air circulating fans (''ACFEI'').

(55) DOE seeks feedback on the proposed use of the FEI metric for all PRVs and air circulating fans, including agricultural fans.

(56) DOE requests comment on its proposal to not include a credit in the FEP and FEI calculation for fans with a motor controller.

(57) DOE requests feedback regarding all aspects of its proposal to permit use of an AEDM for fans and blowers, and any data or information comparing modeled performance with the results of physical testing. DOE specifically seeks comment on its proposed validation classes, and whether different number of basic models should be considered.

(58) DOE seeks information on whether the statistical sampling plans used for other commercial and industrial equipment at 10 CFR part 429 would be appropriate for fans and blowers. If not, DOE requests information and data to explain why not, and what changes would be appropriate. DOE also requests comment on the proposed minimum sample size.

(59) DOE requests feedback on its assumption that it would cost an average of $4,200 to test one fan for both general fans and air circulating fans. Additionally, DOE requests data on third-party laboratory testing costs (other than AMCA).

(60) DOE requests feedback on the method described above for estimating manufacturer per-model testing costs of general fans and air circulating fans. Additionally, DOE requests feedback and data on the total testing costs per basic model for testing at third-party facilities.

(61) DOE requests comment on its assumption that manufacturers have existing simulation tools that a mechanical engineer could use to develop an AEDM. Additionally, DOE requests comment on its assumption that AEDMs would be developed by a mechanical engineer and later utilized by mechanical technicians to develop certified ratings for each basic model. Finally, DOE requests comment on its assumption that it would take a mechanical engineering approximately 24 working hours to develop an AEDM and that it would take a mechanical technician approximately 1 hour per basic model to develop certified ratings from an AEDM.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking request for comment, and announcement of public meeting.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on June 24, 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 June 24, 2022.

Treena V. Garrett

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.4 is amended by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraphs (d), (e), and (f) as (e), (f) and (g); and
■ c. Adding new paragraph (d).

The revisions and addition read as follows:

§ 429.4 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE, and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the following sources:

* * * * *

(d) *AMCA.* Air Movement and Control Association International, 30 West University Drive, Arlington Heights, IL 60004–1893, (847) 394–0150, *www.amca.org.*

(1) ANSI/AMCA Standard 214–21, (''AMCA 214–21''), ''Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers'', March 1, 2021; IBR approved for § 429.134.

(2) [Reserved]

* * * * *

§ 429.11 [Amended]

■ 3. Section 429.11 is amended in paragraph (a) by removing ''429.62'' and adding in its place ''429.66'', and in paragraph (b) by removing ''429.65'' and adding in its place ''429.66''.

■ 4. Add § 429.66 to subpart B to read as follows:

§ 429.66 Fans and blowers.

(a) *Determination of represented values.* A manufacturer must determine the represented values for each basic model, either by testing in conjunction with the applicable sampling provisions or by applying an AEDM as set forth in this section and in § 429.70(k). Manufacturers must update represented values to account for any change in the applicable motor standards in Table 5 of § 431.25 and certify amended values as of the next annual certification (as applicable).

(1) *Testing*—(i) *Units to be tested.* If the represented values for a given basic model are determined through testing, the requirements of § 429.11 apply.

(ii) Any represented value of fan electrical input power (''FEP''), fan shaft input power, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where $\bar{x}$ is the sample mean; n is the number of samples, and x_i is the i^{th} sample. Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n–1 degrees of freedom (from appendix A of subpart B of part 429). Represented values must be rounded to the nearest hundredth.

(iii) Any represented value of the fan energy index (''FEI''), weighted-average FEI, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where $\bar{x}$ is the sample mean; n is the number of samples, and x_i is the i^{th} sample. Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n–1 degrees of freedom (from appendix A of subpart B of part 429). Represented values must be rounded to the nearest hundredth.

(2) *Alternative efficiency determination methods.* In lieu of testing, the represented values for a basic model of a fan or blower must be determined through the application of an AEDM pursuant to the requirements of § 429.70(j) and the provisions of this section, where: the represented values of any basic model used to validate an AEDM must be calculated under paragraph (b)(1) of this section.

■ 5. Section 429.70 is amended by:

■ a. In paragraph (a), removing ''429.62'' and adding its place ''429.66''; and

■ b. Adding paragraph (k).

The additions read as follows:

§ 429.70 Alternative methods for determining energy efficiency or energy use.

* * * * *

(k) *Alternative efficiency determination method (AEDM) for fans and blowers*— (1) *Criteria an AEDM must satisfy.* A manufacturer is not permitted to apply an AEDM to a basic model of fan or blower to determine represented values pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that estimates the energy use characteristics of the basic model as measured by the applicable DOE test procedure and accurately represents the performance characteristics of that basic model;

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of actual performance data; and

(iii) The manufacturer has validated the AEDM in accordance with paragraph (k)(2) of this section.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability by comparing the simulated FEI, or simulated weighted-average FEI, as applicable, to the tested FEI or tested weighted-average FEI, as applicable (determined by testing), as follows.

(i) *Select basic models.* For each fan or blower validation class listed as follows: centrifugal housed fan; radial housed fan; centrifugal inline fan; centrifugal unhoused fan; centrifugal power roof ventilator exhaust fan; centrifugal power roof ventilator supply fan; axial inline fan; axial panel fan; axial centrifugal power roof ventilator fan; unhoused ACFH; air circulating axial panel fan; box fan; cylindrical air circulating fan; and housed centrifugal air circulating fan to which the AEDM is applied, a manufacturer must select at least two basic models compliant with any energy conservation standards in subpart J of part 431. In addition, at least one basic model selected for validation testing should include a motor, or a motor and controller if the AEDM is applied to a basic model with a motor or to a basic model with a motor and controller.

(ii) *Apply the AEDM* to the selected basic models. Using the AEDM, calculate the simulated FEI, or weighted-average FEI, as applicable, for each of the selected basic models.

(iii) *Testing.* Test at least two units of each of the selected basic models in accordance with 10 CFR 431.174 of this chapter and determine the FEI or weighted-average FEI, as applicable, in accordance with § 429.66(a)(1).

(iv) *Compare.* The simulated FEI or simulated weighted-average FEI, as applicable, for each basic model must be less than or equal to 105 percent of the FEI or weighted-average FEI, as applicable, determined in paragraph (k)(2)(iii) of this section through testing.

(3) *Verification of an AEDM.* (i) *Periodic reviews.* Each manufacturer must periodically select basic models representative of those to which it has applied an AEDM. The manufacturer must select a sufficient number of basic models to ensure the AEDM maintains its accuracy and reliability. For each basic model selected for verification: subject at least one unit to testing in accordance with 10 CFR 431.174. The provisions in paragraph (k)(2)(iv) of this section must be met.

(ii) Each manufacturer that has used an AEDM under this section must have available for inspection by the Department of Energy records showing:

(A) The method or methods used to develop the AEDM;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based;

(C) Complete test data, equipment information, and related information that the manufacturer has generated or acquired pursuant to paragraphs (k)(2) and (k)(3) of this section; and

(D) The calculations used to determine the simulated FEI or simulated weighted-average FEI, as applicable, of each basic model to which the AEDM was applied.

(iii) If requested by the Department, the manufacturer must:

(A) Conduct simulations to predict the performance of particular basic models of electric motors specified by the Department;

(B) Provide analyses of previous simulations conducted by the manufacturer; and/or

(C) Conduct testing of basic models selected by the Department.

■ 6. Amend § 429.110 by:

■ a. Redesignating paragraphs (e)(7), (8), and (9) as (e)(8), (9), and (10), respectively; and

■ b. Adding new paragraph (e)(7).

The addition reads as follows:

§ 429.110 Enforcement testing.

* * * * *

(e) * * *

(7) For fans and blowers, DOE will use an initial sample size of not more than four units and will determine compliance based on the arithmetic mean of the sample.

* * * * *

■ 7. Amend § 429.134 by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) *Fans and blowers*—(1) *Verification of geometric similarity.* For fans and blowers other than air circulating fans, geometric similarity of two or more fans or blowers will be verified by requiring

that the manufacturer provides all fan design dimensions as described in Annex K of AMCA 214–21 (incorporated by reference, see § 429.4).

(2) For fans and blowers other than air circulating fans, DOE will test each fan or blower basic model according to the test method specified by the manufacturer (*i.e.,* based on Section 6.1, 6.2, 6.3 or 6.4 of AMCA 214–21).

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 8. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 9. Section 431.172 is revised to read as follows:

§ 431.172 Definitions.

Air circulating fan means a fan that has no provision for connection to ducting or separation of the fan inlet from its outlet using a pressure boundary, operates against zero external static pressure loss, and is not a jet fan.

Air circulating axial panel fan means an axial housed air circulating fan head without a cylindrical housing or box housing that is mounted on a panel, orifice plate or ring.

Air circulating fan outlet area means—

(1) For unhoused air circulating fan heads, the area of a circle having a diameter equal to the blade tip diameter; and

(2) For housed ACFHs, the inside area perpendicular to the airstream, measured at the plane of the opening through which the air exits the fan.

Air-cooled steam condenser means a device for rejecting heat to the atmosphere through the indirect condensing of steam inside air-cooled finned tubes.

Axial inline fan means a fan with an axial impeller and a cylindrical housing with or without turning vanes.

Axial panel fans means an axial fan, without cylindrical housing, that includes a panel, orifice plate, or ring with brackets for mounting through a wall, ceiling, or other structure that separates the fan's inlet from its outlet.

Basic model, with respect to fans and blowers, means all units of fans and blowers manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (*e.g.,* aerodynamic) characteristics that affect energy consumption. In addition:

(1) All variations of blade pitches of an adjustable-pitch axial fan may be considered a single basic model; and

(2) All variations of impeller widths and impeller diameters of a given full-width impeller and full-diameter impeller centrifugal fan may be considered a single basic model.

Box fan means an axial housed air circulating fan head without a cylindrical housing that is mounted on a panel, orifice plate or ring and is mounted in a box housing.

Centrifugal housed fan means a fan with a centrifugal or mixed flow impeller in which airflow exits into a housing that is generally scroll-shaped to direct the air through a single fan outlet. A centrifugal housed fan does not include a radial impeller.

Centrifugal inline fan means a fan with a centrifugal or mixed flow impeller in which airflow enters axially at the fan inlet and the housing redirects radial airflow from the impeller to exit the fan in an axial direction.

Centrifugal unhoused fan means a fan with a centrifugal or mixed flow impeller in which airflow enters through a panel and discharges into free space. Inlets and outlets are not ducted. This fan type also includes fans designed for use in fan arrays that have partition walls separating the fan from other fans in the array.

Cross-flow fan means a fan or blower with a housing that creates an airflow path through the impeller in a direction at right angles to its axis of rotation and with airflow both entering and exiting the impeller at its periphery. Inlets and outlets can optionally be ducted.

Cylindrical air circulating fan means an axial housed air circulating fan head with a cylindrical housing that is not a positive pressure ventilator as defined in ANSI/AMCA Standard 240–15, Laboratory Methods of Testing Positive Pressure Ventilators for Aerodynamic Performance Rating, (incorporated by reference, see § 431.173).

Evaporative field erected closed-circuit cooling tower means a structure which rejects heat to the atmosphere through the indirect cooling of a process fluid stream to a lower temperature by partial evaporation of an external recirculating water flow.

Evaporative field erected open-circuit cooling tower means a structure which rejects heat to the atmosphere through the direct cooling of a water stream to a lower temperature by partial evaporation.

Exclusively embedded fan means a fan or blower that is manufactured and incorporated into a product or equipment manufactured by the same manufacturer and that is exclusively distributed in commerce embedded in another product or equipment.

Fan or blower means a rotary bladed machine used to convert electrical or mechanical power to air power, with an energy output limited to 25 kilojoule (kJ)/kilogram (kg) of air. It consists of an impeller, a shaft and bearings and/or driver to support the impeller, as well as a structure or housing. A fan or blower may include a transmission, driver, and/or motor controller.

Fan static airpower means the static power delivered to air by the fan or blower; it is proportional to the product of the fan airflow rate, the fan static pressure and the compressibility coefficient and is calculated in accordance with Section 7.8.1 of AMCA 210–16, (incorporated by reference, see § 431.173), using static pressure instead of total pressure.

Fan total airpower means the total power delivered to air by the fan or blower; it is proportional to the product of the fan airflow rate, the fan total pressure and the compressibility coefficient and is calculated in accordance with Section 7.8.1 of AMCA 210–16 (incorporated by reference, see § 431.173).

Field erected air-cooled (dry) cooler means a structure which rejects heat to the atmosphere from a fluid, either liquid, gas or a mixture thereof, flowing through an air-cooled internal coil.

Field erected evaporative condenser means a structure which rejects heat to the atmosphere through the indirect condensing of a refrigerant in an internal coil by partial evaporation of an external recirculating water flow.

Full-width impeller means the maximum impeller width with which a given fan or blower basic model is distributed in commerce.

Full-diameter impeller means maximum impeller diameter with which a given fan or blower basic model is distributed in commerce.

Housed air circulating fan head means an air circulating fan with an axial or centrifugal impeller, and a housing.

Housed centrifugal air circulating fan means a housed air circulating fan head with a centrifugal or radial impeller in which airflow exits into a housing that is generally scroll shaped to direct the air through a single, narrow fan outlet.

Induced flow fan means a type of laboratory exhaust fan with a nozzle and windband; the fan's outlet airflow is greater than the inlet airflow due to induced airflow. All airflow entering the inlet exits through the nozzle. Airflow exiting the windband includes the nozzle airflow plus the induced airflow.

Jet fan means a fan designed and marketed specifically for producing a high velocity air jet in a space to increase its air momentum. Jet fans are rated using thrust. Inlets and outlets are not ducted but may include acoustic silencers.

Packaged air-cooled (dry) cooler means a device which rejects heat to the atmosphere from a fluid, either liquid, gas or a mixture thereof, flowing through an air-cooled internal coil.

Packaged evaporative closed-circuit cooling tower means a device which rejects heat to the atmosphere through the indirect cooling of a process fluid stream in an internal coil to a lower temperature by partial evaporation of an external recirculating water flow.

Packaged evaporative condenser means a device which rejects heat to the atmosphere through the indirect condensing of a refrigerant in an internal coil by partial evaporation of an external recirculating water flow.

Packaged evaporative open-circuit cooling tower means a device which rejects heat to the atmosphere through the direct cooling of a water stream to a lower temperature by partial evaporation.

Power roof ventilator means a fan with an internal driver and a housing to prevent precipitation from entering the building. It has a base designed to fit over a roof or wall opening, usually by means of a roof curb.

Radial-housed fan means a fan with a radial impeller in which airflow exits into a housing that is generally scroll-shaped to direct the air through a single fan outlet. Inlets and outlets can optionally be ducted.

Safety Fan means:

(1) A fan or blower that is designed and marketed to operate only at or above 482 degrees Fahrenheit (250 degrees Celsius);

(2) A reversible axial fan in cylindrical housing that is designed and marketed for use in ducted tunnel ventilation that will reverse operation under emergency ventilation conditions;

(3) A fan or blower bearing an Underwriter Laboratories or Electric Testing Laboratories listing for ''Power Ventilators for Smoke Control Systems'';

(4) An open discharge exhaust fan with integral discharge nozzles which develop or maintain a minimum discharge velocity of 3,000 FPM;

(5) A fan constructed in accordance with AMCA type A or B spark resistant construction as defined in ANSI/AMCA Standard 99–16 Standards Handbook, (incorporated by reference, see § 431.173);

(6) A fan or blower designed and marketed for use in explosive atmospheres and tested and marked according to ISO 80079–36:2016 Explosive atmospheres—Part 36: Non-electrical equipment for explosive atmospheres—Basic method and requirements, (incorporated by reference, see § 431.173); or

(7) An electric-motor-driven-Positive Pressure Ventilator as defined in ANSI/AMCA Standard 240–15, Laboratory Methods of Testing Positive Pressure Ventilators for Aerodynamic Performance Rating, (incorporated by reference, see § 431.173).

Unhoused Air circulating fan head means an air circulating fan without a housing, having an axial impeller with a ratio of fan-blade span (in inches) to maximum rate of rotation (in revolutions per minute) less than or equal to 0.06. The impeller may or may not be guarded.

■ 10. Section 431.173 is added to subpart J to read as follows:

§ 431.173 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE, and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs:

(b) *AMCA.* Air Movement and Control Association International, Inc., 30 West University Drive, Arlington Heights, IL 60004–1893, (847) 394–0150, *www.amca.org.*

(1) ANSI/AMCA Standard 99–16 ''Standards Handbook,'' November 10, 2016, IBR approved for § 431.172.

(2) ANSI/AMCA Standard 210/ASHRAE 51–16, (''AMCA 210–16''), ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating,'' August 26, 2016, IBR approved for § 431.172 and appendix A to this subpart.

(3) ANSI/AMCA Standard 214–21, (''AMCA 214–21''), ''Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers,'' March 1, 2021; IBR approved for § 431.174, and appendices A and B to this subpart.

(4) ANSI/AMCA 230–15, (''AMCA 230–15 (with errata)'') ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification,'' October 16, 2015, with technical errata sheet for ANSI/AMCA standard 230–15 density corrections. IBR approved for appendix B to this subpart.

(5) ANSI/AMCA Standard 240–15, (''AMCA 240–15'') ''Laboratory Methods of Testing Positive Pressure Ventilators for Aerodynamic Performance Rating,'' September 5, 2015, IBR approved for § 431.172.

(c) *ISO.* International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, *www.iso.org, email: customerservice@iso.org.*

(1) ISO 5801:2017, ''Fans—Performance testing using standardized airways'', approved 2017, IBR approved for appendix A to this subpart.

(2) ISO 80079–36 ''Explosive atmospheres—Part 36: Non-electrical equipment for explosive atmospheres—Basic method and requirements'', approved 2016, IBR approved for § 431.172.

■ 11. Section 431.174 is added to subpart J to read as follows:

§ 431.174 Test Procedure for fans or blowers.

(a) *Scope for fans and blowers other than air circulating fans.* A fan or blower, other than an air circulating fan is subject to the test procedure in this section if it meets the following criteria:

(1) Is a centrifugal housed fan; radial housed fan; centrifugal inline fan; centrifugal unhoused fan; centrifugal power roof ventilator exhaust fan; centrifugal power roof ventilator supply fan; axial inline fan; axial panel fan; or axial centrifugal power roof ventilator fan;

(2) Is not:

(i) A radial housed unshrouded fan with blade diameter at tip less than 30 inches or a blade width of less than 3 inches;

(ii) A safety fan;

(iii) An induced flow fan;

(iv) A jet fan;

(v) A cross-flow fan;

(vi) A fan manufactured exclusively to be powered by internal combustion engines; or

(viii) A fan and blower exclusively embedded in the equipment listed in paragraph (a)(3) of this section;

(3) Is not an exclusively embedded fan subject to the following exclusions:

(i) The test procedure in this section does not apply to fans or blowers that are exclusively embedded in:

(A) Single phase central air conditioners and heat pumps rated with a certified cooling capacity less than 65,000 British thermal units per hour (''Btu/h'') cooling capacity, that are subject to DOE's energy conservation standard at 10 CFR 430.32(c);

(B) Three phase, air-cooled, small commercial packaged air-conditioning and heating equipment rated with a certified cooling capacity less than 65,000 Btu/h cooling capacity, that are subject to DOE's energy conservation standard at § 431.97(b);

(C) Transport refrigeration (*i.e.,* Trailer refrigeration, Self-powered truck refrigeration, Vehicle-powered truck refrigeration, Marine/Rail container refrigerant);

(D) Vacuum cleaners;

(E) Heat Rejection Equipment: Packaged evaporative open-circuit cooling towers; Evaporative field-erected open-circuit cooling towers; Packaged evaporative closed-circuit cooling towers; Evaporative field-erected closed-circuit cooling towers; Packaged evaporative condensers; Field-erected evaporative condensers; Packaged air-cooled (dry) coolers; Field-erected air-cooled (dry) cooler; Air-cooled steam condensers; Hybrid (water saving) versions of all of the previously listed equipment that contain both evaporative and air-cooled heat exchange sections;

(F) Air curtains; and

(G) Direct expansion-dedicated outdoor air system that are subject to any DOE's test procedures in appendix B to subpart F of this part.

(ii) The test procedure in this section does not apply to supply or condenser fans or blowers that are exclusively embedded in:

(A) Air-cooled commercial package air conditioners and heat pumps (''CUAC'', ''CUHP'') with a certified cooling capacity between 5.5 ton (65,000 Btu/h) and 63.5 ton (760,000 Btu/h) that are subject to DOE's energy conservation standard at § 431.97(b);

(B) Water-cooled and evaporatively-cooled commercial air conditioners that are subject to DOE's energy conservation standard at § 431.97(b);

(C) Water-source heat pumps that are subject to DOE's energy conservation standard at § 431.97(b);

(D) Single package vertical air conditioners and heat pumps that are subject to DOE's energy conservation standard at § 431.97(d);

(E) Packaged terminal air conditioners (''PTAC'') and packaged terminal heat pumps (PTHP) that are subject to DOE's energy conservation standard at § 431.97(c);

(F) Computer room air conditioners that are subject to DOE's energy conservation standard at § 431.97(e); and

(G) Variable refrigerant flow multi-split air conditioners and heat pumps that are subject to DOE's energy conservation standard at § 431.97(f); and

(4) Is a fan or blower with duty points with the following characteristics, measured or calculated in accordance with the test procedure set forth in appendix A of this subpart:

(i)(A) fan shaft input power equal to or greater than 1 horsepower; or

(B) fan electrical input power equal to or greater than 0.89 kW; and

(ii)(A) fan static airpower equal to or less than 150 horsepower for fans using a static pressure basis fan energy index (''FEI'') in accordance with the required test configuration listed in Table 7.1 of AMCA 214–21; or

(B) fan total airpower equal to or less than 150 horsepower for fans using a total pressure basis FEI in accordance with the required test configuration listed in Table 7.1 of AMCA 214–21;

(b) *Scope for air circulating fans.* The test procedure in this section applies to all air circulating fans.

(c) *Testing and calculations for fans and blowers other than air-circulating fans.* Determine the FEI, the fan electrical input power (''FEP''), and fan shaft power (as applicable) at each duty point, as specified by the manufacturer, using the test procedure set forth in appendix A of this subpart.

(d) *Testing and calculations for air-circulating fan.* Determine the FEI and the fan electrical input power (''FEP'') or the weighted-average FEI and weighted-average FEP as applicable, using the test procedure set forth in appendix B of this subpart.

■ 12. Add appendix A to subpart J to part 431 to read as follows:

Appendix A to Subpart J of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Fans and Blowers Other Than Air Circulating Fans

Note: After [date 180 days after date of publication of the final rule], any representations made with respect to energy use or efficiency of fans and blowers subject to testing pursuant to 10 CFR 431.174 must be made in accordance with this appendix.

0. Incorporation by reference.

In § 431.173, DOE incorporated by reference the entire standard for AMCA 214–21, AMCA 210–16, and ISO 5801:2017; however, only enumerated provisions of those documents are applicable as follows:

0.1. AMCA 214–21, ''Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers'':

0.1.1. Section 2 ''References,'' as referenced in section 2.2 of this appendix;

0.1.2. Section 3 ''Definitions'', as referenced in section 1 of this appendix;

0.1.3. Section 4 ''Calculation of the FEI for a single duty point'', as referenced in section 2.4 of this appendix;

0.1.4. Section 5 ''Reference Fan Electrical Power (FEP_{ref})'', as referenced in section 2.4 of this appendix;

0.1.5. Section 6.1 ''Wire-to-Air Testing at the Required Duty Point'', as referenced in section 2.2 of this appendix;

0.1.6. Section 6.2 ''Calculated Ratings Based on Wire-to-Air Testing'', as referenced in section 2.2 of this appendix;

0.1.7. Section 6.3 ''Bare Shaft Fans'', as referenced in section 2.2 of this appendix;

0.1.8. Section 6.4.1.1 ''Requirements for the fan'', as referenced in section 2.2 of this appendix;

0.1.9. Section 6.4.1.2 ''Requirements for the transmission'', as referenced in section 2.2 of this appendix;

0.1.10. Section 6.4.1.3 ''Requirements for the motor, as referenced in section 2.2 of this appendix;

0.1.11. Section 6.4.2 Calculation of FEP_{act}'', as referenced in section 2.2 of this appendix;

0.1.12. Section 6.4.2.1 ''Calculation of transmission efficiency ''$_{trans,act}$)'', as referenced in section 2.2 of this appendix;

0.1.13. Section 6.4.2.2 ''Calculation of actual motor output power'', as referenced in section 2.2 of this appendix;

0.1.14. Section 6.4.2.3 ''Motor efficiency if no VFD is included'', as referenced in section 2.2 of this appendix;

0.1.15. Section 7 ''Testing'', as referenced in section 2.2 of this appendix;

0.1.16. Section 8.1 ''Laboratory Measurement Only'', as referenced in section 2.2 of this appendix;

0.1.17. Section 8.2.1 ''Fan laws and other calculation methods for shaft-to-air testing'', as referenced in section 2.2 of this appendix;

0.1.18. Section 8.2.3 '' Calculation to other speeds and densities for wire-to-air testing'', as referenced in section 2.2 of this appendix;

0.1.19. Annex D ''Motor Performance Constants (Normative)'', as referenced in section 2.2 of this appendix;

0.1.20. Annex E ''Calculation Methods for Fans Tested Shaft-to-Air'', as referenced in section 2.2 of this appendix;

0.1.21. Annex G ''Wire-to-Air Measurement—Calculation to Other Speeds and Densities (Normative)'', as referenced in section 2.2 of this appendix;

0.1.22. Annex J ''Other data and calculations to be retained'' as referenced in section 2.2 of this appendix; and

0.1.23. Annex K ''Proportionality and Dimensional Requirements (Normative)'' as referenced in section 2.2 of this appendix.

0.2. AMCA 210–16, ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating'':

0.2.1. Section 3 ''Definitions/Units of Measure/Symbols'' as referenced in section 2.2 of this appendix;

0.2.2. Section 4 ''Instruments and Methods of Measurement'' as referenced in section 2.2 of this appendix;

0.2.3. Section 5 ''Test Setups and Equipment'' as referenced in section 2.2 of this appendix;

0.2.4. Section 6 ''Observation and Conduct of Test'' as referenced in section 2.2 of this appendix;

0.2.5. Section 7.1 ''Calibration Correction'' as referenced in section 2.2 of this appendix;

0.2.6. Section 7.2 ''Density and Viscosity of air'' as referenced in section 2.2 of this appendix;

0.2.7. Section 7.3 ''Fan Airflow Rate at Test Conditions'' as referenced in section 2.2 of this appendix

0.2.8. Section 7.4 ''Fan Velocity Pressure at Test Conditions'' as referenced in section 2.2 of this appendix

0.2.9. Section 7.5 ''Fan Total Pressure at Test Conditions'' as referenced in section 2.2 of this appendix;

0.2.10. Section 7.6 ''Fan Total Static Pressure at Test Conditions'' as referenced in section 2.2 of this appendix;

0.2.11. Section 7.7 ''Fan Input Power at Test Conditions'' as referenced in section 2.2 of this appendix; and

0.2.1.12. Section 7.8 ''Fan Efficiency'' as referenced in section 2.2 of this appendix.

0.3. ISO 5801:2017, ''Fans—Performance testing using standardized airways'':

0.3.1. Section 3 ''Terms and Definitions'' as referenced in section 2.2 of this appendix;

0.3.2. Section 4 ''Symbols, Abbreviated Terms and Subscripts'' as referenced in section 2.2 of this appendix;

0.3.3. Section 5 ''General'' as referenced in section 2.2 of this appendix;

0.3.4. Section 6 ''Teat Configurations'' as referenced in section 2.2 of this appendix;

0.3.5. Section 7 ''Test Configurations'' as referenced in section 2.2 of this appendix;

0.3.6. Section 8 '' Airways for Duct Configuration'' as referenced in section 2.2 of this appendix;

0.3.7. Section 9 ''Standardized Test Chambers'' as referenced in section 2.2 of this appendix;

0.3.8. Section 10 ''Various Components parts for a Laboratory Setup'' as referenced in section 2.2 of this appendix;

0.3.9. Section 11 ''Standard Test Configurations'' as referenced in section 2.2 of this appendix;

0.3.10. Section 12 ''Measurements'' as referenced in section 2.2 of this appendix;

0.3.11. Section 13 ''Reference Conditions'' as referenced in section 2.2 of this appendix;

0.3.12. Section 15 ''Calculations'' as referenced in section 2.2 of this appendix;

0.3.13. Section 16 ''fan Characteristic Curves'' as referenced in section 2.2 of this appendix; and

0.3.14. Section 17 ''Uncertainty Analysis'' as referenced in section 2.2 of this appendix.

In cases where there is a conflict, the language of this appendix takes precedence over those documents. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the **Federal Register**.

1. Definitions.

The definitions applicable to this appendix are defined in § 431.172 and in Section 3 ''Definitions'' of AMCA 214–21. In cases where there is a conflict, the definitions in § 431.172 take precedence over AMCA 214–21.

2. Test procedure for fans and blowers other than air circulating fans.

2.1. General.

This section describes the test procedure for fans and blowers other than air circulating fans. In cases where there is a conflict, the provisions in this appendix take precedence over AMCA 214–21. Where AMCA 214–21 refers to Annex A ''Polyphase Regulated Motor Efficiencies (Normative)''of AMCA 214–21, Table 5 of § 431.25 must be used instead. Centrifugal Power Roof Ventilators that are both supply and exhaust must be tested in both supply and exhaust configurations.

2.2. Testing.

2.2.1. General.

The fan electrical input power (FEP_{act}) in kilowatts must be determined at every duty point specified by the manufacturer in accordance with one of the test methods listed in Table 1, and the following sections of AMCA 214–21: Section 2 ''References'', Section 7 ''Testing'', included the referenced provisions to AMCA 210–16 and ISO 5801:2017 as listed in sections 2.2.2 and 2.2.3 of this appendix, Section 8.1 ''Laboratory Measurement Only'' (as applicable), and Annex J ''Other data and calculations to be retained''. Section 7 of AMCA 214–21 references AMCA 210–16 and ISO 5801:2017.

TABLE 1 TO APPENDIX A TO SUBPART J OF PART 431

Driver	Motor controller present?	Transmission configuration?	Test method	Applicable section(s) of AMCA 214–21
Electric motor	Yes or No	Any	Wire-to-air	6.1 ''Wire-to-Air Testing at the Required Duty Point''.
Electric motor	Yes or No	Any	Calculation based on Wire-to-air testing.	6.2 ''Calculated Ratings Based on Wire-to-Air Testing'' (references Section 8.2.3 ''Calculation to other speeds and densities for wire-to-air testing'' and Annex G ''Wire-to-Air Measurement—Calculation to Other Speeds and Densities (Normative)'').
Regulated polyphase motor	No	Direct drive, V-belt drive, flexible coupling or synchronous belt drive.	Shaft-to-air	6.4 ''Fans with Polyphase Regulated Motors ''(references Annex D ''Motor Performance Constants (Normative)'').*
None or non-electric	No	None	Shaft-to-air	Section 6.3 ''Bare Shaft Fans''.
Regulated polyphase motor	No	Direct drive, V-belt drive, flexible coupling or synchronous belt drive.	Calculation based on Shaft-to-air testing.	Section 8.2.1 ''Fan laws and other calculation methods for shaft-to-air testing''(references Annex D ''Motor Performance Constants (Normative)'', Annex E ''Calculation Methods for Fans Tested Shaft-to-Air'' and Annex K ''Proportionality and Dimensional Requirements (Normative)'').
None or non-electric	No	None	Calculation based on Shaft-to-air testing.	Section 8.2.1 ''Fan laws and other calculation methods for shaft-to-air testing'' (references Annex E ''Calculation Methods for Fans Tested Shaft-to-Air'' and Annex K ''Proportionality and Dimensional Requirements (Normative)'').

* Only the following section of 6.4 apply: Section 6.4.1.1 ''Requirements for the fan'', Section 6.4.1.2 ''Requirements for the transmission'', Section 6.4.1.3 ''Requirements for the motor, Section 6.4.2 Calculation of FEPact'', Section 6.4.2.1 ''Calculation of transmission efficiency (–trans,act)'', Section 6.4.2.2 ''Calculation of actual motor output power'', Section 6.4.2.3 ''Motor efficiency if no VFD is included''.

In addition, the following values must be determined in accordance with this appendix at each duty point specified by the manufacturer: fan airflow in cubic feet per minute; fan air density; fan total pressure in inches of water gauge for fans using a total pressure basis FEI in accordance with the required test configuration listed in Table 7.1 of AMCA 214–21; fan static pressure in inches of water gauge for fans using a static pressure basis FEI in accordance with the required test configuration listed in Table 7.1 of AMCA 214–21; fan speed in revolutions per minute; and fan shaft input power in horsepower for fans tested in accordance with Section 6.3, 6.4 or 6.5 of AMCA 214–21. All measurements must be recorded at the resolution of the test instrumentation and calculations must be rounded to the number of significant digits present at the resolution of the test instrumentation.

In cases where there is a conflict, the provisions in AMCA 214–21 take precedence over AMCA 210–16 and ISO 5801:2017. In addition, the provisions in this appendix apply.

2.2.2. AMCA 210–16, Applicable Sections.

The following sections of AMCA 210–16 are applicable: Section 3 ''Definitions/Units of Measure/Symbols'', Section 4 ''Instruments and Methods of Measurement''; Section 5 ''Test Setups and Equipment''; Section 6 ''Observation and Conduct of Test''; Section 7.1 ''Calibration Correction''; Section 7.2 ''Density and Viscosity of air''; Section 7.3 ''Fan Airflow Rate at Test Conditions; Section 7.4 ''Fan Velocity Pressure at Test Conditions''; Section 7.5 ''Fan Total Pressure at Test Conditions''; Section 7.6 ''Fan Total Static Pressure at Test Conditions''; Section 7.7 ''Fan Input Power at Test Conditions''; and Section 7.8 ''Fan Efficiency''.

2.2.3. ISO 5801:2017, Applicable Sections.

The following sections of ISO 5801:2017 are applicable: Section 3 ''Terms and Definitions''; Section 4 ''Symbols, Abbreviated Terms and Subscripts''; ''General''; Section 6 ''Teat Configurations''; Section 7 ''Test Configurations''; Section 8 '' Airways for Duct Configuration''; Section 9 ''Standardized Test Chambers''; Section 10 ''Various Components parts for a Laboratory Setup''; Section 11 ''Standard Test Configurations''; Section 12 ''Measurements''; Section 13 ''Reference Conditions''; Section 15 ''Calculations''; Section 16 ''fan Characteristic Curves''; and Section 17 ''Uncertainty Analysis''.

2.2.4. Appurtenances.

This section replaces the provisions in section 7.3 of AMCA 214–21 ''Appurtenances''. If present, any additional appurtenances sold with the fan must be included during the test.

2.2.5. Single-Phase and Multi-Phase.

Fans and blowers rated for operation for single- or multi-phase power supply must be tested with single- or multi-phase power electricity, respectively.

Fans and blowers, capable of operating with single- and multi-phase power supply, must be tested using multi-phase electricity.

2.3. Equilibrium Conditions.

The following provisions must be used to characterize steady operation (equilibrium) as required in section 6 of AMCA 210–16. Equilibrium is achieved if measurements are within the tolerances specified in the Table 2. Measurements need to be determined over at least 5 minutes, with measurements recorded on each variable at a maximum of 5-second intervals.

TABLE 2 TO APPENDIX A TO SUBPART J OF PART 431

Variable	Equilibrium tolerance
Ambient air density	± 1 percent of mean.
Input power by reaction dynamometer.	± 4 percent of mean.
Input power by torque meter.	± 4 percent of mean.
Input power by calibrated motor.	± 4 percent of mean.
Input power by electrical meter.	± 2 percent of mean or 1 W, whichever is greater.
Fan speed	± 1 percent of mean or 1 rpm, whichever is greater.

2.4. FEI Calculation.

The FEI must be determined at every duty point in accordance with Section 4 ''Calculation of the FEI for a single duty point'' and Section 5 ''Reference Fan Electrical Power (FEPref) of AMCA 214–21. In addition the FEI must be rounded to the nearest hundredths place.

■ 13. Add appendix B to subpart J to part 431 to read as follows:

Appendix B to Subpart J of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Air Circulating Fans

Note: After [date 180 days after date of publication of the final rule], any representations made with respect to energy use or efficiency of fans and blowers subject to testing pursuant to § 431.174 must be made in accordance with this appendix.

0. Incorporation by reference.

In § 431.173, DOE incorporated by reference the entire standard for ANSI/AMCA Standard 214–21, and ANSI/AMCA 230–15 with errata; however, only enumerated provisions of those documents are applicable as follows:

0.1. AMCA 214–21, ''Test Procedure for Calculating Fan Energy Index for Commercial and Industrial Fans and Blowers'':

0.1.1. Section 2 ''References,'' as referenced in section 2.2 of this appendix;

0.1.2. Section 3 ''Definitions'', as referenced in section 1 of this appendix;

0.1.3. Section 4 ''Calculation of the FEI for a single duty point'', as referenced in section 2.10 of this appendix;

0.1.4. Section 5 ''Reference Fan Electrical Power (FEP_{ref})'', as referenced in section 2.10 of this appendix;

0.1.5. Section 6.1 ''Wire-to-Air Testing at the Required Duty Point'', as referenced in section 2.2 of this appendix;

0.1.6. Table 7.1 in Section 7. ''Testing'', as referenced in section 2.2 of this appendix;

0.1.7. Section 7.1 ''Test Configuration'', as referenced in section 2.2 of this appendix;

0.1.8. Section 7.2 ''Setup Selection'', as referenced in section 2.2 of this appendix;

0.1.9. Section 7.4 ''Run-in Requirements'' as referenced in section 2.2 of this appendix; and

0.1.10. Annex J ''Other data and calculations to be retained'' as referenced in section 2.2 of this appendix.

0.2. AMCA 230–15 (with errata), ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification'' (with errata)'':

0.2.1. Section 3 ''Units of Measurement'' as referenced in section 2.2 of this appendix;

0.2.2. Section 4 ''Symbols and Subscripts'' as referenced in section 2.2 of this appendix;

0.2.3. Section 5 ''Definitions'' as referenced in section 2.2 of this appendix;

0.2.4. Section 6 ''Instruments and Methods of Measurement'' as referenced in section 2.2 of this appendix;

0.2.5. Section 7 ''Instruments and Methods of Measurement'' as referenced in section 2.2 of this appendix;

0.2.6. Section 8 ''Observations and Conduct of Test'' as referenced in section 2.2 of this appendix;

0.2.7. Section 9 ''Calculations'' as referenced in section 2.2 of this appendix; and

0.2.8. Section 10 ''Report and Results of Test'' as referenced in section 2.2 of this appendix.

In cases where there is a conflict, the language of this appendix takes precedence over those documents. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the **Federal Register**.

1. Definitions.

The definitions applicable to this appendix are defined in § 431.172 and in Section 3 ''Definitions'' of AMCA 214–21. In cases where there is a conflict, the definitions in § 431.172 take precedence over AMCA 214–21.

2. Test procedure for air circulating fans.

2.1. General.

This section describes the test procedure for air circulating fans. In cases where there is a conflict, the provisions in this appendix take precedence over AMCA 214–21.

2.2. Testing.

2.2.1. General.

The fan electrical input power (FEPact) in kilowatts at each tested speed specified in section 2.6 of this appendix must be determined in accordance with the following sections of AMCA 214–21: Section 2 ''References'', Section 6.1 ''Wire-to-Air Testing at the Required Duty Point'', Table 7.1 in Section 7 ''Testing'', included the referenced provisions to AMCA 230–15 as listed in section 2.2.2 of this appendix (with errata), Section 7.1 ''Test Configuration'', Section 7.2 ''Setup Selection'', Section 7.4 ''Run-in Requirements'', and Annex J ''Other data and calculations to be retained''. Section 7 of AMCA 214–21 references AMCA 230–15 (with errata). In cases where there is a conflict, the provisions in AMCA 214–21 take precedence over AMCA 230–15 (with errata).

In addition, the following values must be determined in accordance with this appendix, at each tested speed as specified in section 2.6 of this appendix: fan energy index (''FEI'') in accordance with section 2.11 of this appendix, fan electrical input power (''FEP_{act}'') in kilowatts; fan airflow in cubic feet per minute; fan air density; fan total pressure in inches of water gauge; and fan speed in revolutions per minute. In addition, for multi- and variable-speed fans, the weighted-average FEI and FEP in

accordance with sections 2.11 and 2.12 of this appendix must also be determined. All measurements must be recorded at the resolution of the test instrumentation and calculations must be rounded to the number of significant digits present at the resolution of the test instrumentation.

2.2.2. AMCA 230–15, Applicable Sections.

The following section of AMCA 230–15 are applicable: Section 3 ''Units of Measurement''; Section 4 ''Symbols and Subscripts''; Section 5 ''Definitions''; Section ''Instruments and Methods of Measurement''; Section 7 ''Instruments and Methods of Measurement''; Section 8 ''Observations and Conduct of Test''; Section 9 ''Calculations''; and Section 10 ''Report and Results of Test''. In addition, testing must be conducted in accordance with the provisions in section 2.3 through 2.12 of this appendix. Further, the terms ''electrical input power'' ''system input power'' and ''power'' shall be considered equivalent. The terms ''electrical input voltage'', ''system input voltage '', and ''voltage'' shall be considered equivalent.

2.3. Test Figures and Location of Extraneous airflow measurement.

The following test figures, described in AMCA 230–15 (with errata) must be used to test air circulating fans: 2A, 2B1, 2B2, 3A or 3B.

The location of extraneous airflow measurement shall be at the center of the fan at a distance of 1.5m (5 ft) downstream of the fan impeller.

2.4. Air circulating fans without motors.

Air circulating fans distributed in commerce without an electric motor must be tested using an electric motor as recommended in the manufacturer's catalogs or distributed in commerce with the air circulating fan. If more than one motor is available in manufacturer's catalogs or distributed in commerce with the air circulating fan, DOE proposes requiring testing using the least efficient motor capable of running the fan at the fan's maximum allowable speed.

2.5. Power Supply.

2.5.1. Frequency.

Air circulating fans rated for operation with only 60Hz power supply must be tested with 60 Hz electricity. Air circulating fans capable of operating with 50Hz and 60Hz electricity must be tested with 60Hz electricity.

2.5.2. Phase.

Air circulating fans rated for operation for single- or multi-phase power supply must be tested with single- or multi-phase power electricity, respectively.

Air circulating fans, capable of operating with single- and multi-phase power supply, must be tested using multi-phase electricity.

2.5.3. Voltage.

Select the supply voltage as follows:

(1) For air circulating fans tested with single-phase electricity, the supply voltage must be (a) 120 V if the air circulating fan's minimum rated voltage is 120 V or the lowest rated voltage range contains 120 V, (b) 240 V if the air circulating fan's minimum rated voltage is 240 V or the lowest rated voltage range contains 240 V, or (c) the air circulating fan's minimum rated voltage (if a voltage range is not given) or the mean of the lowest rated voltage range, in all other cases.

(2) For air circulating fans tested with multi-phase electricity, the supply voltage must be (a) 240 V if the air circulating fan's minimum rated voltage is 240 V or the lowest rated voltage range contains 240 V, or (b) the air circulating fan's minimum rated voltage (if a voltage range is not given) or the mean of the lowest rated voltage range, in all other cases.

2.6. Appurtenances.

If present, any additional appurtenances sold with the air circulating fan must be included during the test.

If present, any additional accessories or features sold with the air circulating fan that do not relate to the air circulating fan's ability to create airflow (for example, misting kits) is to be installed, but turned off during testing. If such an accessory or feature cannot be turned off, it shall be set to the lowest energy-consuming mode during testing. If the air circulating fan is offered with a default controller, test using the default controller. If multiple controllers are offered, test using the minimally functional controller.

2.7. Equilibrium Conditions.

The following provisions must be used to characterize equilibrium as required in Section 8 of AMCA 230–15 (with errata). Equilibrium is achieved if measurements are within the tolerances specified in the Table 1. Measurements need to be determined over at least 5 minutes, with measurements recorded on each variable at a maximum of 5 second intervals.

TABLE 1 TO APPENDIX B TO SUBPART J OF PART 431

Variable	Equilibrium tolerance
Calculated air density	±1 percent of mean.
System input voltage	±2 percent of mean.
System input current	±2 percent of mean.
System input power	±2 percent of mean or 1 W, whichever is greater.
Fan speed	±1 percent of mean or 1 rpm, whichever is greater.
Load	±1 percent of mean.
Load differential	±1 percent of mean.

2.8. Extraneous Airflow.

This section replaces Section 8.1.2 of AMCA 230–15 (with errata) ''Extraneous airflow.''

Air velocity in the test room not generated by the air circulating fan must not exceed 0.25 m/s (50 fpm) prior to, before and after the test. Velocity measurements must be taken to ensure that this condition is met as follows:

(1) At least one minute prior to establishing equilibrium; and

(2) For at least one minute at the conclusion of the test, with measurements recorded at a maximum of 5 second intervals. A test is considered to be concluded at the instant the blades are no longer spinning.

2.9. Test speed.

Select the test speed(s) as follows:

(1) For single speed fans, performance data shall be captured and reported for the single available speed;

(2) For multi-speed fans with discrete speeds, performance data shall be captured and reported at each available speeds;

(3) For variable-speed fans with continuously adjustable speeds, performance data shall be captured and reported at 20, 40, 60, 80 and 100 percent of the fan's maximum speed. If the fan's minimum speed is greater 20 percent of the maximum speed the performance data must be captured and reported at five speeds evenly spaced within the available speed range, including at the fan's minimum and maximum speed.

2.10. Total Pressure Calculations.

The fan total pressure at a given airflow must be calculated according to the following equation:

$$P_{t,i} = \rho \left(\frac{Q_i}{1097.8 \times A} \right)^2$$

Where:

A = air circulating fan outlet area (square feet),

$P_{t,i}$ = Fan total pressure at duty point i (inches of water gauge),

Q_i = Airflow at duty point i (cubic feet per minute),

ρ = Fan air density (Pound Mass Per Cubic Foot).

2.11. FEI and Weighted-average FEI Calculation.

The FEI must be determined at every test specified in section 2.6 of this appendix, in accordance with Section 4 ''Calculation of the FEI for a single duty point'' and Section 5 ''Reference Fan Electrical Power (FEPref)'' of AMCA 214–21. In addition, the values of Q_0, P_0, and η_0 in Section 5.1.1. of AMCA 214–21 must be replaced by the following values: $Q_0 = 3{,}210$, $P_0 = 0$, and $\eta_0 = 0.38$.

FEI values must be rounded to the nearest hundredths place.

For single speed fans, determine the FEI at the single available speed. For multi-speed and variable speed fans, calculate the weighted-average FEI as follows:

$$Weighted\ Average\ FEI = \frac{1}{n} \sum_{i=1}^{n} FEI_i$$

Where: *n* is the number of speeds as specified in section 2.6 of this appendix and FEI_i is the FEI at the i^{th} tested speed.

2.12. FEPact and Weighted-Average FEPact Calculation.

For single speed fans, determine the FEP_{act} at the single available speed.

For multi-speed and variable speed fans, calculate the weighted-average FEP_{act} (in kW) as follows:

$$Weighted\ Average\ FEPact = \frac{1}{n}\sum_{i=1}^{n} FEP_{act,i}$$

Where: *n* is the number of speeds as specified in section 2.6 of this appendix and is the $FEP_{act,i}$ is the FEP_{act} at the i^{th} tested speed.

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FEDERAL REGISTER

Vol. 87 Monday,
No. 141 July 25, 2022

Part III

The President

Notice of July 22, 2022—Continuation of the National Emergency With Respect to Mali

Federal Register
Vol. 87, No. 141
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Presidential Documents

Title 3—

The President

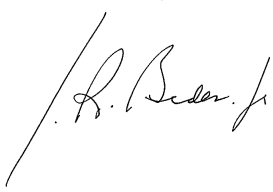
Notice of July 22, 2022

Continuation of the National Emergency With Respect to Mali

On July 26, 2019, by Executive Order 13882, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Mali.

The situation in Mali, including repeated violations of ceasefire arrangements made pursuant to the 2015 Agreement on Peace and Reconciliation in Mali; the expansion of terrorist activities into southern and central Mali; the intensification of drug trafficking and trafficking in persons, human rights abuses, and hostage-taking; a further coup d'etat; the presence of foreign mercenaries threatening peace, security, and stability; and the intensification of attacks against civilians, the Malian defense and security forces, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and international security presences, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13882 on July 26, 2019, must continue in effect beyond July 26, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13882 with respect to the situation in Mali.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 22, 2022.

[FR Doc. 2022–16090
Filed 7–22–22; 11:15 am]
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H.R. 8351/P.L. 117–160
Formula Act (July 21, 2022; 136 Stat. 1345)
Last List June 30, 2022

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