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Contents

Federal Register

Vol. 87, No. 163

Wednesday, August 24, 2022

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
10429.....51859

9 CFR
439.....51861

10 CFR
Proposed Rules:
430.....52282

14 CFR
71 (3 documents) 51867, 51868, 51870
97 (2 documents) 51871, 51873

15 CFR
744.....51876

17 CFR
50.....52182

20 CFR
Proposed Rules:
404.....51933

27 CFR
24.....51880

30 CFR
870.....51904
872.....51904

33 CFR
100.....51908
165 (3 documents) 51909, 51911

40 CFR
180.....51911
Proposed Rules:
52 (4 documents) 51933, 51941, 51944, 51946

41 CFR
102–81.....51915

47 CFR
64.....51920

49 CFR
192.....52224
1002.....51922

50 CFR
17 (2 documents) 51925, 51928
679.....51932
Proposed Rules:
648.....51955

Federal Register
Vol. 87, No. 163
Wednesday, August 24, 2022

Presidential Documents

Title 3—

The President

Proclamation 10429 of August 19, 2022

National Employer Support of the Guard and Reserve Week, 2022

By the President of the United States of America

A Proclamation

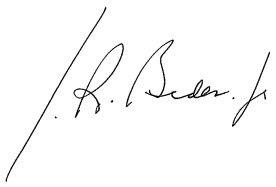
Since our Nation's founding, many courageous women and men have taken the oath to defend our Constitution by joining the National Guard and Reserve. During National Employer Support of the Guard and Reserve Week, we show our appreciation for the civilian employers who support and honor our brave service members and their families.

The citizen Soldiers and Airmen of the National Guard, and the Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen of the Reserve, are central to our Armed Forces and the security of our Nation. When activated, they answer the call to serve at a moment's notice, sacrificing their personal and professional lives to protect our safety and freedoms. When they are not in uniform, these patriots from diverse backgrounds balance the competing demands of their families, their civilian careers, and their military responsibilities. They serve as teachers, pastors, engineers, civil servants, medical professionals, and other critical roles in their local communities—strengthening our Nation at home. The Biden family is a National Guard family, and we will always be inspired by all of those who put their country above themselves to defend our way of life, just as my son Major Beau Biden did in the Delaware National Guard.

Civilian employers play a critical role in ensuring a secure life for service members and their families through stable employment, health care, and benefits. Our Nation is forever grateful for the patriotic efforts of employers and businesses who empower our Guard and Reserve service members to thrive. During National Employer Support of the Guard and Reserve Week, we honor our National Guard and Reserve members and their families for their service and sacrifice. We also thank employers for their steadfast support of our Nation's heroes, for their outstanding contributions to our economy, and for the role they play in the success of our military and our Nation.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 21 through August 27, 2022, as National Employer Support of the Guard and Reserve Week. I call upon the people of the United States, State and local officials, private organizations, and all military commanders to honor employers of National Guard and Reserve members with appropriate ceremonies and activities.

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



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Rules and Regulations

Federal Register
Vol. 87, No. 163
Wednesday, August 24, 2022

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 439

[Docket No. FSIS–2021–0013]

RIN 0583–AD70

Changes to Accreditation of Non-Federal Analytical Testing Laboratories

AGENCY: Food Safety and Inspection Service (FSIS), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: FSIS is revising the regulations prescribing the statistical methods used in measuring the performance of chemistry laboratories in its voluntary Accredited Laboratory Program (ALP) and expanding the scope of accreditations offered by the program. Currently, participants in the ALP are accredited for the analysis of food chemistry (moisture, protein, fat, and salt), specific chemical residues, and classes of chemical residues. FSIS also is providing for the ALP to accredit non-Federal laboratories for microbiological indicator organisms and pathogen testing. FSIS is changing the statistical method the ALP uses to evaluate laboratory proficiency testing (PT). Additionally, FSIS is making various minor edits and changes to the regulation for the sake of clarity and to incorporate all sample types under the jurisdiction of FSIS.

DATES: This rule is effective October 24, 2022.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 720–0399.

SUPPLEMENTARY INFORMATION:

Background

FSIS accredits non-Federal analytical laboratories under its Accredited Laboratory Program (ALP). Under this voluntary program, FSIS accredits laboratories to conduct analyses of official meat and poultry samples for food chemistry (moisture, protein, fat, and salt), specific chemical residues, and classes of chemical residues. In response to the meat and poultry industries' need for more rapid analytical results as food testing expanded, and because of limitations in FSIS laboratory capacity at the time of this need, these programs were established to accredit non-Federal laboratories for certain tests of both meat and poultry products.

The ALP monitors each non-Federal laboratory currently accredited under the program to ensure that these laboratories are operating at a level of quality that produces reliable results that can be used to support decisions in establishments' food safety systems. The Proficiency Testing (PT) program administered by the ALP supports this effort. Monitoring is achieved by evaluating PT results for acceptable analytical performance and assessing quality assurance through on-site reviews of each laboratory's management system and facility assets.

On December 14, 2020, FSIS proposed changes to its ALP regulations (85 FR 80668). Specifically, FSIS proposed to change the statistical method it uses to evaluate laboratory PT sample results to the *z* score approach for those accreditations that are currently evaluated by Cumulative Summation (CUSUM). FSIS also proposed to accredit non-Federal laboratories for microbiological indicator organisms and pathogen testing, in response to industry interest. This second change will allow ALP-accredited laboratories to support statistical process control testing. FSIS intends to announce additional criteria for submitting test results in a future **Federal Register** document. Additionally, FSIS proposed to make various minor edits and changes to the regulations for the sake of clarity and to incorporate all sample types under the jurisdiction of FSIS (*e.g.,* to include egg products), as appropriate for the associated analyte, and to improve program flexibility.

The comment period ended on February 12, 2021. After reviewing comments, FSIS is finalizing the rule as proposed.

Comments and Responses

FSIS received seven comments on the proposed rule. Commenters included representatives from laboratories, an association of laboratory scientists, a State Department of Agriculture, a nationwide laboratory network, and a trade association. Four of the seven commenters expressed overall support for the proposed rule. Some commenters raised questions and made suggestions, and two of the commenters expressed concern with making International Organization for Standardization (ISO) 17025 accreditation a prerequisite to participation in the program, a possibility upon which FSIS requested comment in the proposal. No commenter expressed broad opposition to the proposal, as a whole, for updating the statistical PT scoring and expanding the program to include accreditations for microbiological indicator organisms and pathogen testing.

The following is a discussion of the relevant issues raised in the comments.

Statistical Methods

Comments: All commenters generally agreed with the proposed change from CUSUM to *z* scores. One commenter from a State Department of Agriculture asked at which point a lab would be considered on probation under the new statistical analysis using *z* scores; how grading will be applied; and whether a *z* score will be determined per event.

Response: Per 9 CFR 439.20 and ISO 13528, the PT scoring changes will be applied per event. The ALP will also monitor laboratory performance over time. After adopting the proposed changes, probation imposed for performance issues will be administered the same way it has with CUSUMs, but assessment will rely instead on unacceptable *z* scores and monitoring for persistent bias. Unacceptable *z* scores are greater than 3 and less than −3. FSIS intends to determine probation for PT performance issues as follows.

- A laboratory will be placed on probation for having two *z* scores that exceed the action level of $|z| \geq 3.0$ for the same analyte or class of analytes within six consecutive PT events.
- A laboratory may be placed on probation for having a persistent bias of an analyte or class of analytes compared

to the accepted values of ALP PT samples. As a general practice under ISO 13528, FSIS intends that the ALP will use control charts to monitor for this aspect of performance. Bias occurs once eight or more consecutive values fall above or below the center or mean line. Under the ALP, FSIS reserves the right to consider other factors (such as magnitude or significance) when determining the impact of bias.

Management of Associated Data

Comments: Two commenters stated that ALP data should be managed through a website portal or other similar option. One commenter representing an association of scientists strongly supported the FSIS vision of utilizing the ALP to allow regulated establishments to voluntarily submit test results to FSIS. Another commenter representing a nationwide laboratory network suggested that accredited laboratories should maintain complete records of all aspects of the testing process and that the records should be securely maintained in an electronic format that is adequately backed up. In addition, the commenter recommended that key components of ALP data should be clearly defined to assure proper data interpretation and that definitions used by ISO13528:2015(E) should be consistent with USDA to assure uniformity.

Response: FSIS intends to develop a web-based platform for ALP test result submissions to FSIS. FSIS will announce the availability of the web-based platform in a future *Constituent Update.* Per 9 CFR 439.20, the FSIS ALP regulations require a secure management system that is adequate for tracking samples and related analyses and test results. The ALP does allow, but does not require, electronic records, and it does require that records be secure. Test result definitions used by the ALP are consistent with ISO 13528:2015(E). Any electronic system for submitting test results to FSIS will have to be compatible with FSIS data management systems.

Desired Food Matrix and Analyte Pairs

*Comment*s: One commenter representing a laboratory did not see the benefit of adding pathogens and indicator organism constituents to the ALP. Five commenters recommended that FSIS expand the ALP offerings to include such items as pH in meat, beta-agonists in beef/pork muscle/organs, *Campylobacter* in chicken, *Salmonella* in meat products, *Listeria spp.* in swabs/sponges, *Listeria monocytogenes* in meat products, *Escherichia coli* in carcass swabs, Enterobacter in swabs/sponges, Shiga toxin-producing *Escherichia coli* in meat products, generic *Escherichia coli,* total coliform, Aerobic Plate Count, and drug residues in animal products, including antibiotics and pesticides. Other commenters recommended the ALP include microbiology qualitative and quantitative testing and requested that FSIS revisit approved analytes in the ALP on a systematic basis.

Response: Per 9 CFR 439.1 and 439.10, FSIS will consider all requests for accredited matrix and analyte pairs for the ALP that are within FSIS's jurisdiction. FSIS will also consider qualitative and quantitative testing for chemical and microbiological components under the ALP. Finally, FSIS will routinely examine the ALP offerings when appropriate.

ISO Accreditation

Comments: Two commenters representing laboratories did not support making ISO 17025 accreditation a prerequisite to participating in the ALP and stated such a requirement could cause an undue burden on smaller laboratories wishing to join the ALP. Two commenters representing a laboratory association and a laboratory network supported making ISO 17025 accreditation a prerequisite to participating in the ALP but also stated that the requirement may be unnecessary. One of these commenters suggested that laboratories not accredited to ISO 17025 should operate under a robust quality management system or ''ISO-like'' environment. One commenter representing a laboratory network supported the rule and stated that ISO 17025 accreditation should be a prerequisite to membership in the ALP.

Response: This final rule expands the ALP in a way that is inclusive for all interested laboratories and establishments that can successfully meet the program requirements and, per 9 CFR 439.20, the ALP will require participating laboratories to have a management system in place that includes traceability, document control, and secure record retention. Laboratories may choose whether to be accredited to the ISO 17025 standard; however, FSIS will not require ISO 17025 accreditation under the ALP. Laboratories seeking ALP accreditation without ISO 17025 accreditation are often very small and conduct meat and poultry analyses only. In these cases, the ALP accreditation provides value by affirming that the lab can do independent PT analysis with those PT samples made by and coming from the ALP.

Comments: Three commenters responded that if a laboratory is accredited to ISO 17025, the FSIS ALP audit should be streamlined to account for this and offer fee discounts. One commenter representing a network of laboratories responded that the ALP proficiency testing program should be accredited to the ISO 17043 standard if it is to attract members from the governmental sector. One commenter representing an association of laboratories stated that a reduction in fees would be welcomed by laboratories interested in the ALP, but the best way to incentivize laboratories to become ALP members is to expand the scope of testing. The commenter pointed out that most laboratories providing services to meat and poultry companies are focused on supporting their clients' food safety programs. The commenter stated that laboratories' clients view their being an FSIS ALP laboratory as positive, which is beneficial to the laboratory.

Response: FSIS will continue to accept the management systems of laboratories that are accredited to ISO 17025 by an International Laboratory Accreditation Cooperation recognized accrediting body as meeting ALP requirements. The laboratories must be in good standing with their ISO accreditation for the ALP to accept the management systems. The ALP performs onsite reviews of participating laboratories to ensure they are following management system requirements, as well as the technical and method requirements for participation in the program. FSIS estimates that the ALP review for ISO 17025 accredited laboratories will be reduced by a range of 0.5 to 1 hour. The ALP has been ISO 17043 accredited as a proficiency testing provider since 2015. The ALP has also been ISO 17034 accredited as a reference material producer since 2017. Both accreditations are kept current. Because comments have been supportive of expanding the ALP offerings, FSIS intends to develop new offerings from the ALP. The new offerings may be found on the ALP website as they are developed and available.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Need for the Rule

There were approximately 55 food chemistry laboratories participating in the ALP in 2012. Since then, participation has declined to 34 laboratories in 2021. Of those laboratories, 25 were accredited for food chemistry, 13 for chemical residue chlorinated pesticides analysis, and 4 for chemical residue PCBs analysis (some laboratories have multiple accreditations).[1] Participation in the ALP will likely be bolstered by expanding the ALP to include additional analytes, such as indicator organisms and foodborne pathogens. In addition, switching from the CUSUM PT sample scoring system currently used by the ALP to *z score*-based statistics should simplify the accreditation process for both the laboratories and FSIS. The program generally facilitates industry testing to verify that food is safe and properly labeled.

Expected Industry Costs and Savings

Although the final rule does not change the current accreditation fee structure,[2] it will reduce the number of samples non-Federal food chemistry laboratories will have to analyze to attain and maintain food chemistry accreditation. Based on industry data, non-ALP laboratories charge approximately $108 [3] per sample. Current criteria for obtaining accreditation (9 CFR 439.10(d)(2)(i)) require that laboratories analyze a set of 36 samples (9 CFR 439.1(k) ''Initial accreditation check sample'') for food chemistry to obtain initial accreditation or to remove probationary status in food chemistry. The estimated cost for analyzing the sample set (also known as qualification set) is approximately $3,888 (36 × $108 = $3,888). This number of samples is not necessary to statistically evaluate laboratory performance for admittance to the program. Under this final rule, FSIS removed the requirement for the set of 36 samples. This will permit the ALP to offer laboratories smaller sets for food chemistry accreditation. The smaller qualification sets will reduce costs for laboratories and still be large enough to evaluate laboratory performance. FSIS experts provided an estimated cost of analysis of approximately $1,512 when using 14 samples per set (14 × $108 = $1,512), a reduction of $2,376 ($3,888 − $1,512 = $2,376) per qualification set for food chemistry. This analysis assumes that between 1 and 6 establishments will have to complete qualification sets in any given year.[4] Based on this assumption the annual savings ranges from $2,376 (1 × $2,376) to $14,256 (6 × $2,376), with a mid-point of $8,316 (3.5 × $2,376).

Additionally, the changes to the accreditation process (9 CFR 439.10(d)(4)(ii)) are also expected to reduce industry costs. Current criteria state that if a laboratory's second set of qualification samples do not meet the criteria for obtaining accreditation, laboratories must submit a new application, all fees, and all documentation of corrective action required for accreditation. FSIS will no longer require food chemistry laboratories to reapply and pay the fees again before receiving the third qualification sample set. Instead, fees will be paid after the third set or if the initial accreditation process is not completed within eleven months (per 9 CFR 439.10(c)). This is expected to reduce an applicable laboratory's accreditation cost by between $2,100 and $5,000.

Regulatory Flexibility Analysis

The FSIS Administrator (Administrator) has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). First, this rule's impact is limited to a small number of entities and participation in the program is voluntary. Second, while the changes are expected to reduce accreditation costs, these cost savings are not anticipated to be significant and will apply to accredited laboratories regardless of size.

Paperwork Reduction Act

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has determined that there is no new information collection related to this final rule. FSIS collects information for the ALP under Office of Management and Budget (OMB) approval numbers 0583–0082 and 0583–0163.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

[1] A list of current FSIS Accredited Laboratories can be found at *https://www.fsis.usda.gov/science-data/laboratories-procedures/accredited-laboratory-program* (last accessed on June 22, 2021). PCBs stands for Polychlorinated Biphenyls.

[2] Fees and charges for laboratory accreditation are provided in 9 CFR part 391.

[3] This cost is based on publicly listed industry prices in 2021 charged by N.P Analytical Laboratories, Great Lakes Scientific, New Jersey Feed Laboratory Inc (NJFL), and Analytical Feed and Food Lab accessed on June 22, 2021.

[4] For instance, in 2016, there were 2 new applicants and 4 probation applicants and, in 2021, there are no new applicants and 1 probation applicant.

USDA Non-Discrimination Statement

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Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

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List of Subjects in 9 CFR Part 439

Laboratories, Meat inspection, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS revises 9 CFR part 439 to read as follows:

PART 439—ACCREDITATION OF NON-FEDERAL LABORATORIES FOR ANALYTICAL TESTING OF MEAT, POULTRY, AND EGG PRODUCTS

Sec.

AUTHORITY: 7 U.S.C. 138f, 450, 1901–1906, 1622(o); 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

§ 439.1 Definitions.

(a) *Accredited Laboratory Program (ALP).* The voluntary Food Safety and Inspection Service (FSIS) program in which non-Federal laboratories are accredited as capable of performing analyses with the level of quality that is necessary to maintain accreditation in the program, on samples of raw or processed meat, poultry, and egg products, and through which a proficiency testing sample program for quality assurance is conducted.

(b) *Food chemistry.* Analysis of raw or processed meat or poultry products for the components moisture, protein, fat, and salt.

(c) *Initial accreditation proficiency testing sample.* A sample provided by the FSIS ALP to a non-Federal laboratory to determine whether the laboratory's analytical capability meets the standards for acceptance into the program. The concentration or presence of the targeted analyte(s) and the composition of the components in the sample is unknown to the laboratory.

(d) *Inter-laboratory accreditation maintenance proficiency testing sample.* A sample provided by the FSIS ALP to an accredited laboratory to assist in determining whether the laboratory is maintaining acceptable analytical performance for a given analyte or component. The concentration or presence of the targeted analyte(s) and the composition of the components in the sample is unknown to the laboratory.

(e) *International Organization for Standardization (ISO) 13528.* ISO 13528:2015(E) Corrected version 2016, ''Statistical methods for use in proficiency testing by interlaboratory comparison,'' October 15, 2016, or updated versions.

(f) *Probation.* The period commencing with official notification to an accredited laboratory that it no longer satisfies the ALP performance requirements specified in this part and ending with official notification that accreditation is fully restored, is suspended, or is revoked.

(g) *Refusal of accreditation.* An action taken by FSIS when a laboratory that is applying for accreditation is denied the accreditation.

(h) *Responsibly connected.* Any individual, or entity, that is a partner, officer, director, manager, or owner of 10 percent or more of the voting stock of the applicant or recipient of accreditation or an employee in a managerial or executive capacity or any employee who conducts or supervises the analysis of FSIS samples.

(i) *Revocation of accreditation.* An action taken by FSIS against a laboratory thereby removing the laboratory's certification of accreditation and participation in inter-laboratory accreditation maintenance proficiency testing sample events.

(j) *Suspension of accreditation.* An action taken by FSIS against a laboratory thereby temporarily removing the laboratory's certification of accreditation and participation in the inter-laboratory accreditation maintenance proficiency testing sample events. Suspension of accreditation ends when accreditation either is fully restored or is revoked.

(k) *z score.* A statistically derived number representing a laboratory's performance for analyzing quantitative proficiency testing samples. The ALP calculates and interprets *z* scores consistent with the ISO 13528 standard.

§ 439.5 Applications for accreditation.

(a) Participation in the ALP is voluntary. Application for accreditation must be made on designated paper or electronic forms provided by FSIS, or otherwise in writing, by the owner or manager of a non-Federal analytical laboratory. Application forms may be obtained by contacting the ALP at *ALP@usda.gov.* The forms must be sent to the ALP or may be submitted electronically. The application must specify the kinds of accreditation sought by the owner or manager of the laboratory. A laboratory whose accreditation has been refused or revoked for performance reasons may reapply for accreditation after 60 days from the effective date of that action and must provide written documentation specifying what corrections were made and illustrate to FSIS that the corrections are effective or would reasonably be expected to be effective.

(b) At the time that an application for accreditation is filed with the ALP, the laboratory must submit fees payable to the U.S. Department of Agriculture by check, bank draft, money order, or other form of payment accepted by the U.S. Department of Agriculture, in the amount specified by FSIS as directed in 9 CFR 391.5, along with the completed application for the accreditation(s).

(c) An application for accreditation will not be processed or allowed to advance, without further procedure, if the accreditation fee(s) is delinquent.

(d) FSIS will issue a bill annually in the amount specified by FSIS in 9 CFR 391.5 for each accreditation held and are due by the date required. Bills are payable to the U.S. Department of Agriculture by check, bank draft, money order, or other form of payment accepted by the U.S. Department of Agriculture.

§ 439.10 Criteria for obtaining accreditation.

(a) Analytical laboratories may be accredited for the analyses of foodborne indicator and pathogen analytes, or a specified chemical residue or a class of chemical residues, in raw or processed meat, poultry, and egg products. Analytical laboratories also may be accredited for the analyses of food chemistry components in raw or processed meat and poultry products.

(b) Accreditation will be granted only if the applying laboratory successfully satisfies FSIS requirements that are stated in this part.

(c) To obtain FSIS accreditation, an analytical laboratory must:

(1) Be supervised by a person holding, at a minimum, a bachelor's degree in biology, chemistry, microbiology, food science, food technology, or a related field.

(i) For food chemistry accreditation, the supervisor must also have one year of experience in food chemistry analysis, or equivalent qualifications.

(ii) For chemical residue accreditation, either the supervisor or the analyst assigned to analyze the sample must also have three years of experience determining analytes at or below part per million levels, or equivalent qualifications.

(iii) For indicator organisms or pathogen accreditation, either the supervisor or the analyst assigned to analyze the sample must also have three years of experience in foodborne pathogen analyses or equivalent qualifications.

(2) Demonstrate the capability to achieve quality assurance levels that are within acceptable limits as determined by evaluation that is consistent with ISO 13528 for the analysis of initial accreditation proficiency testing samples, in the analyte category for which accreditation is sought. FSIS and some Association of Official Analytical Collaboration (AOAC) International analytical test procedures are acceptable for use in this program. FSIS procedures may be found on the U.S. Department of Agriculture (USDA) FSIS website at *www.fsis.usda.gov.* AOAC procedures may be found on the AOAC website at *www.aoac.org.*

(3) Complete a second set of proficiency testing samples if the results of the first set of proficiency testing samples are unsuccessful.

(i) The second set of proficiency testing samples will be provided within 30 days following the date of receipt by FSIS of a request from the applying laboratory. The second set of proficiency testing samples will be analyzed only for the analyte(s) or analyte classes for which unacceptable initial results had been obtained by the laboratory.

(ii) If the results of the second set of proficiency testing samples are unsuccessful, the laboratory may request a third set of proficiency testing samples after a 60-day waiting period, commencing from the date of notification by FSIS of unsuccessful results. The third set of proficiency testing samples will be analyzed only for the analyte(s) or analyte classes for which unacceptable initial results had been obtained by the laboratory.

(iii) If the laboratory is unsuccessful for the third set and still wishes to pursue accreditation, the ALP will require a new application and an application fee if the initial accreditation process is not completed within eleven months. Documentation of corrective action(s) related to the previous unsuccessful accreditation attempt must be submitted to and accepted by the ALP.

(4) Allow inspection of the laboratory facility and pertinent documents by FSIS officials prior to the determination of granting accredited status.

(5) Pay the accreditation fee by the date required.

§ 439.20 Criteria for maintaining accreditation.

(a) *Criteria.* To maintain accreditation, an analytical laboratory must fulfill the requirements of this section.

(b) *Records.* To demonstrate traceable and appropriate application of equipment, standards, procedures, analysts, and approvals related to accreditation, an accredited laboratory must:

(1) Maintain laboratory quality control records for the most recent three years that samples have been analyzed.

(2) Maintain complete records of the receipt, analysis, and disposition of samples for the most recent three years that samples have been analyzed.

(3) Maintain in a secure electronic format or in a standards book, all records, readings, and calculations for prepared standards. Entries are to be dated and the analyst identified at the time of the entry, and manual calculations verified and documented by the supervisor, or by the supervisor's designee, before use of the standard. The standards records are to be retained for three years after the last recorded entry. The certificates of analysis are to be kept on file for purchased standards for at least the period of time that the materials are in use.

(4) Maintain records of instrument maintenance and calibration. The records are to be retained for three years after the last recorded entry.

(5) As provided in paragraph (e) of this section, records are to be made available for review by any duly authorized representative of the Secretary of Agriculture, including ALP personnel or their designees.

(c) *Inter-laboratory accreditation maintenance proficiency testing sample.* (1) An accredited laboratory must analyze inter-laboratory accreditation maintenance proficiency testing samples and return the results to the ALP by the due date, which is usually within approximately three weeks of sample receipt. This must be done whenever requested by FSIS and at no cost to FSIS.

(2) Results must be those of the accredited laboratory. Analyses of proficiency testing samples must not be contracted out by the accredited laboratory.

(d) *Corporate changes.* The ALP must be informed within 30 days of any change of address or in the laboratory's ownership, officers, directors, supervisory personnel, or other responsibly connected individual or entity.

(e) *On-site review.* An accredited laboratory must permit any duly authorized representative of the Secretary to perform both announced and unannounced on-site laboratory reviews of facilities and records, both hard copy and electronic, during normal business hours, and to copy any records pertaining to the laboratory's participation in the ALP.

(f) *Analytical test procedures.* An accredited laboratory must use analytical test procedures designated by the FSIS ALP as being acceptable. FSIS and some AOAC analytical test procedures are acceptable.

(g) *Quality assurance levels.* An accredited laboratory must demonstrate the capability to maintain quality assurance levels that are within acceptable limits as evaluated by the ALP in the analysis of inter-laboratory accreditation maintenance proficiency testing samples for the analyte category for which accreditation was granted. An accredited laboratory will successfully demonstrate the maintenance of these capabilities if its results from inter-

laboratory accreditation maintenance proficiency testing samples satisfy ALP evaluation criteria based on the ISO 13528 standard, to include performance evaluation by *z* score statistics.

(h) *Fees.* An accredited laboratory must pay the annual required accreditation fee when it is due.

(i) *Probation.* If placed on probation, an accredited laboratory must meet the ALP requirements as prescribed in this section in order to remove the probation status.

(1) The laboratory must successfully analyze a set of initial accreditation proficiency testing samples for the analyte(s) that triggered the probation and submit the analytical results to FSIS by the due date, which is typically within approximately three weeks of receipt of the samples.

(2) Similarly satisfy criteria for accreditation maintenance proficiency testing samples specified by the ALP in this part.

(3) Provide written corrective action documentation, related to the issue that triggered the probation, to the ALP by the date required.

(j) *Suspension.* If placed on suspension, an accredited laboratory must meet the ALP requirements as prescribed in this section in order to remove the suspension status. If the laboratory is unsuccessful in meeting the requirements to remove the suspension status, accreditation will be revoked.

(1) Laboratories that are suspended due to performance or response issues enter a waiting period of 60 days from the effective date of that action. After the 60-day period has passed, if the laboratory wishes to pursue reinstatement to the ALP, the laboratory must submit a written corrective action plan specifying what corrections were made and illustrate to FSIS that the corrections are effective or would reasonably be expected to be effective.

(i) After the corrective action plan has been accepted by the ALP, the laboratory must successfully analyze a set of initial accreditation proficiency testing samples for the analyte(s) that triggered the suspension and meet all other program requirements including payment of any annual fees that are due. The ALP may perform an on-site inspection at the laboratory's facility and/or require the laboratory to provide documentation to confirm that it meets the requirements of the program.

(ii) The suspended laboratory is allowed two attempts to successfully analyze the initial accreditation proficiency testing set(s) of samples.

(2) Laboratories that are suspended due to indictment or charges as described in § 439.52 may not seek removal of suspension status until being cleared of said indictment or charges.

§ 439.50 Refusal of accreditation.

Upon a determination by the FSIS Administrator (Administrator), a laboratory will be refused accreditation for the following reasons:

(a) A laboratory will be refused accreditation for failure to meet the requirements of the ALP as stated in this part.

(b) A laboratory will be refused accreditation if the laboratory or any individual or entity responsibly connected with the laboratory has been convicted of, or is under indictment for, or has charges on any information brought against them in a Federal or State court concerning any of the following violations of law:

(1) Any felony.

(2) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(3) Any misdemeanor based upon a false statement to any governmental agency.

(4) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

(5) Altering any official sample or analytical finding; or substituting any analytical result from any other laboratory and representing the result as its own.

§ 439.51 Probation of accreditation.

Upon a determination by the Administrator, a laboratory will be placed on probation for the following reasons:

(a) If the laboratory fails to complete more than one inter-laboratory accreditation maintenance proficiency testing sample analysis within 12 consecutive months, unless written permission is granted by the Administrator.

(b) If the laboratory does not respond to ALP inquiries related to its participation in the program or fails to meet any of the requirements or criteria set in this part.

(c) If the laboratory does not successfully demonstrate the maintenance of quality assurance capabilities including its results from inter-laboratory accreditation maintenance proficiency testing samples. ALP evaluation criteria are based on the ISO 13528 standard, to include performance evaluation by *z* score statistics.

§ 439.52 Suspension of accreditation.

A laboratory will be suspended from the program if probation status is not rectified according to program requirements stated in this part. The accreditation of a laboratory will be immediately suspended if the laboratory or any individual or entity responsibly connected with the laboratory is indicted or has charges on information brought against them in a Federal or State court for any of the following violations of law. A laboratory must notify the ALP within 30 calendar days if any of these situations occur.

(a) Any felony.

(b) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(c) Any misdemeanor based upon a false statement to any governmental agency.

(d) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

(e) Altering any official sample or analytical finding; or substituting any analytical result from any other laboratory and representing the result as its own.

§ 439.53 Revocation of accreditation.

A laboratory will have its accreditation revoked from the program if suspension status is not rectified. The accreditation of a laboratory will also be revoked for the following reasons:

(a) An accredited laboratory will have its accreditation revoked if the Administrator determines that the laboratory or any responsibly connected individual or any agent or employee has:

(1) Altered any official sample or analytical finding; or

(2) Substituted any analytical result from any other laboratory and represented the result as its own.

(b) An accredited laboratory will have its accreditation revoked if the laboratory or any individual or entity responsibly connected with the laboratory is convicted in a Federal or State court of any of the following violations of law. A laboratory must notify the ALP within 30 calendar days if any of these situations occur.

(1) Any felony.

(2) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(3) Any misdemeanor based upon a false statement to any governmental agency.

(4) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

§ 439.60 Notifications and hearings.

Accreditation of any laboratory will be refused, suspended, or revoked under the conditions previously described in this part. The owner or operator of the laboratory will be sent written notice of the refusal, suspension, or revocation of accreditation by the Administrator. In such cases, the laboratory owner or operator will be provided an opportunity to present, within 30 days of the date of the notification, a statement challenging the merits or validity of such action and to request an oral hearing with respect to the denial, suspension, or revocation decision. An oral hearing will be granted if there is any dispute of material fact joined in such responsive statement. The proceeding will be conducted thereafter in accordance with the applicable rules of practice, which will be adopted for the proceeding. Any such refusal, suspension, or revocation will be effective upon the receipt by the laboratory of the notification and will continue in effect until final determination of the matter by the Administrator.

Paul Kiecker,

Administrator.

[FR Doc. 2022–18274 Filed 8–23–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0244; Airspace Docket No. 20–AWP–9]

RIN 2120–AA66

Modification of Class D and Class E Airspace and Establishment of Class E Airspace; Camarillo, CA

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

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace, designated as an extension to a Class D or Class E surface area, at Camarillo Airport, Camarillo, CA. This action also removes the Camarillo very high frequency omnidirectional range (VOR)/distance measuring equipment (DME) from the airspace's legal description. Additionally, this action establishes Class E airspace extending upward from 700 feet above the surface. Lastly, this action makes administrative changes to the Class D and Class E legal descriptions. These actions would ensure the safety and management of visual flight rules (VFR) and instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would modify the Class D and Class E airspace at Camarillo Airport, Camarillo, CA, to support VFR and IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2021–0244 (87 FR 34595; June 7, 2022) to modify the Class E airspace designated as an extension to a Class D or Class E surface area, establish Class E airspace beginning at 700 feet above the surface, remove the Camarillo VOR/DME from the airspace's legal description, and make administrative changes to the Class D and Class E legal descriptions at Camarillo Airport, Camarillo, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by modifying the Class E airspace, designated as an extension to a Class D or Class E surface area. This airspace area is east of the airport and is reduced to properly contain IFR aircraft descending below 1,000 feet above the surface. This action also removes the Camarillo VOR/DME navigational aid (NAVAID) from the airspace's legal description. The NAVAID is not required to define the airspace and removal of the NAVAID simplifies the airspace's description.

Additionally, this action establishes Class E airspace extending upward from 700 feet above the surface. This airspace is designed to contain arriving IFR aircraft descending below 1,500 feet above the surface and departing IFR aircraft until they reach 1,200 feet above the surface. Lastly, this action also makes several administrative modifications to the Class D and Class E airspace's legal descriptions. To match the FAA database, the geographic coordinates in the third line of the Class E4 airspace's text header are modified to read lat. ''34°12′50″ N, long. 119°05′40″ W.'' Also, since Camarillo Airport's Class D airspace abuts the Class D areas for Point Mugu Naval Air Station and Oxnard Airports, the geographic coordinates at Camarillo Airport's Class

D are updated to more accurately define the common borders of the Class D areas, which do not represent a change to the current boundaries. The Class D and Class E4 legal descriptions are updated to read ''Notice to Air Missions'' in place of ''Notice to Airmen,'' to match the FAA's current definition of the acronym ''NOTAM.'' Finally, the term ''Airport/Facility Directory'' in the last sentence of the Class D and Class E4 airspace descriptions is updated to read ''Chart Supplement.''

Class D, E4, and E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11. FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000. Class D Airspace.

* * * * *

AWP CA D Camarillo, CA [Amended]

Camarillo Airport, CA
(Lat. 34°12′50″ N, long. 119°05′40″ W)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 4.3-mile radius of the Camarillo Airport, excluding that portion south and west of a line beginning at lat. 34°09′18.02″ N, long. 119°02′40.92″ W; to lat. 34°10′34.70″ N, long. 119°04′1.71″ W; to lat. 34°10′22″ N, long. 119°09′27″ W; to lat. 34°15′38.75″ N, long. 119°09′34.88″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP CA E4 Camarillo, CA [Amended]

Camarillo Airport, CA
(Lat. 34°12′50″ N, long. 119°05′40″ W)

That airspace extending upward from the surface within 2.5 miles each side of the 079° bearing from the airport, extending from the 4.3-mile radius to 8.2 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP CA E5 Camarillo, CA [New]

Camarillo Airport, CA
(Lat. 34°12′50″ N, long. 119°05′40″ W)

That airspace extending upward from 700 feet above the surface within a 4.8-mile radius of the airport and within 3.1 miles each side of the 079° bearing from the airport extending from the 4.3-mile radius to 10.8 miles east of the airport, and within 1 mile each side of the 268° bearing from the airport extending from the 4.8-mile radius to 5.3 miles west of the airport.

Issued in Des Moines, Washington, on August 17, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–18105 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0243; Airspace Docket No. 20–AWP–10]

RIN 2120–AA66

Modification of Class D Airspace, Removal and Establishment of Class E Airspace; Oxnard Airport, CA

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

ACTION: Final rule.

SUMMARY: This action removes the Class E airspace, designated as an extension to a Class D or Class E surface area. Additionally, this action establishes Class E airspace extending upward from 700 feet above the surface. Lastly, this action makes administrative changes to the Class D airspace legal description. These actions will ensure the safety and management of visual flight rules (VFR) and instrument flight rules (IFR) at the airport.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the **Federal Register** approves this incorporation by reference under Title 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation

Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would modify the Class D and Class E airspace at Oxnard Airport, Oxnard, CA, to support VFR and IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2021–0243 (87 FR 21056; April 11, 2022) to remove the Class E airspace designated as an extension to a Class D or Class E surface area, establish Class E airspace beginning at 700 feet above the surface, and make administrative changes to the Class D legal description. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending 14 CFR part 71 by removing the Class E airspace, designated as an extension to a Class D or Class E surface area. This airspace is west of the airport and is no longer required to contain IFR arrivals descending below 1,000 feet above the surface.

This action also establishes Class E airspace extending upward from 700 feet above the surface to contain arriving IFR aircraft descending below 1,500 feet above the surface, and departing IFR aircraft until they reach 1,200 feet above the surface.

Finally, the FAA is making several administrative modifications to the Class D legal description. The current description requires modification to replace the use of the phrases ''Notice to Airmen'' and ''Airport/Facility Directive.'' These phrases should read ''Notice to Air Missions'' and ''Chart Supplement'' respectively, in the Oxnard Class D airspace legal description. Additionally, the Oxnard Airport's Class D airspace abuts the Class D areas of Point Mugu Naval Air Station Airport and Camarillo Airport. The geographic coordinates in the Oxnard Airport Class D legal description are updated to more accurately define the common borders of the three Class D surface areas, which does not represent a change to the current boundaries.

Class D, E4, and E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000. Class D Airspace.

* * * * *

AWP CA D Oxnard, CA [Amended]

Oxnard Airport, CA

(Lat. 34°12′03″ N, long. 119°12′26″ W)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 4.3-mile radius of the airport, excluding that portion east and southeast of a line beginning at lat. 34°15′38.75″ N, long. 119°09′34.88″ W, to lat. 34°10′22″ N, long. 119°09′27″ W, to lat. 34°07′44.53″ N, long. 119°12′18.39″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP CA E4 Oxnard, CA [Removed]

Oxnard Airport, CA
(Lat. 34°12′03″ N, long. 119°12′26″ W)
Camarillo VOR/DME
(Lat. 34°12′45″ N, long. 119°05′39″ W)

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

* * * * *

AWP CA E5 Oxnard, CA [New]

Oxnard Airport, CA
(Lat. 34°12′03″ N, long. 119°12′26″ W)

That airspace extending upward from 700 feet above the surface within a 4.8-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.8-mile radius to 12.4 miles east of the airport, and within 1.8 miles each side of the 265° bearing from the airport, extending from the 4.8-mile radius to 6.5 miles west of Oxnard Airport.

Issued in Des Moines, Washington, on August 17, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–18106 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1047; Airspace Docket No. 21–ASW–23]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace; Fort Worth and Dallas-Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace at Fort Worth, TX, and the Class E airspace at Dallas-Fort Worth, TX. This action is the result of an airspace review due to the cancellation of the instrument procedures and implementation of new instrument procedures at Granbury Regional Airport, Granbury, TX, contained within the Dallas-Fort Worth, TX, Class E airspace legal description. The geographic coordinates of Fort Worth Spinks Airport, Fort Worth, TX, are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace at Fort Worth Spinks Airport, Fort Worth, TX, and the Class E airspace extending upward from 700 feet above the surface at Granbury Regional Airport, Granbury, TX, contained within the Dallas-Fort Worth, TX, airspace legal description, to support instrument flight operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 68571; December 3, 2021) for Docket No. FAA–2021–1047 to amend the Class D airspace at Fort Worth, TX, and the Class E airspace at Dallas-Fort Worth, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

Difference From the NPRM

Subsequent to publication of the NPRM, the FAA updated the term ''Notice to Airmen'' to ''Notice to Air Missions.'' As this is an administrative change and does not impact the proposed airspace, this change has been incorporated into the Fort Worth Spinks Airport, Fort Worth, TX, airspace legal description.

The Rule

This amendment to 14 CFR part 71:

Amends the Class D airspace at Fort Worth Spinks Airport, Fort Worth, TX, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and updates the outdated term ''Notice to Airmen'' to ''Notice to Air Missions;''

And amends the Class E airspace extending upward from 700 feet above the surface within an 8.8-mile (increased from a 6.3-mile) radius of Granbury Regional Airport, Granbury, TX, contained within the Dallas-Fort Worth, TX, airspace legal description; and updates the geographic coordinates of Fort Worth Spinks Airport, Fort Worth, TX, also contained within the Dallas-Fort Worth, TX airspace legal description, to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review due to the cancellation of the instrument procedures and implementation of new instrument procedures at Granbury Regional Airport.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Fort Worth, TX [Amended]

Fort Worth Spinks Airport, TX
(Lat. 32°33′54″ N, long. 97°18′30″ W)

That airspace extending upward from the surface up to but not including 3,000 feet MSL within a 4.1-mile radius of Fort Worth Spinks Airport, and within 1 mile each side of the 173° bearing from the airport extending from the 4.1-mile radius to 4.8 miles south of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASW TX E5 Dallas-Fort Worth, TX [Amended]

Dallas-Fort Worth International Airport, TX
(Lat. 32°53′50″ N, long. 97°02′16″ W)
McKinney National Airport, TX
(Lat. 33°10′37″ N, long. 96°35′20″ W)
Ralph M. Hall/Rockwall Municipal Airport, TX
(Lat. 32°55′50″ N, long. 96°26′08″ W)
Mesquite Metro Airport, TX
(Lat. 32°44′49″ N, long. 96°31′50″ W)
Mesquite Metro: RWY 18–LOC
(Lat. 32°44′03″ N, long. 96°31′50″ W)
Lancaster Regional Airport, TX
(Lat. 32°34′39″ N, long. 96°43′03″ W)
Point of Origin
(Lat. 32°51′57″ N, long. 97°01′41″ W)
Fort Worth Spinks Airport, TX
(Lat. 32°33′54″ N, long. 97°18′30″ W)
Cleburne Regional Airport, TX
(Lat. 32°21′14″ N, long. 97°26′02″ W)
Bourland Field, TX
(Lat. 32°34′55″ N, long. 97°35′27″ W)
Granbury Regional Airport, TX
(Lat. 32°26′40″ N, long. 97°49′01″ W)
Parker County Airport, TX
(Lat. 32°44′47″ N, long. 97°40′57″ W)
Bridgeport Municipal Airport, TX
(Lat. 33°10′26″ N, long. 97°49′42″ W)
Decatur Municipal Airport, TX
(Lat. 33°15′15″ N, long. 97°34′50″ W)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas-Fort Worth International Airport, and within a 6.6-mile radius of McKinney National Airport, and within 1.8 miles each side of the 002° bearing from McKinney National Airport extending from the 6.6-mile radius to 9.2 miles north of the airport, and within a 6.3-mile radius of Ralph M. Hall/Rockwall Municipal Airport, and within 1.6 miles each side of the 010° bearing from Ralph M. Hall/Rockwall Municipal Airport extending from the 6.3-mile radius to 10.8 miles north of the airport, and within a 6.5-mile radius of Mesquite Metro Airport, and within 4 miles west and 7.9 miles east of the 001° bearing from the Mesquite Metro: RWY 18–LOC extending from the 6.5-mile radius of the Mesquite Metro Airport to 10 miles north of the Mesquite Metro: RWY 18–LOC, and within a 6.6-mile radius of Lancaster Regional Airport, and within 1.9 miles each side of the 140° bearing from Lancaster Regional Airport extending from the 6.6-mile radius to 9.2 miles southeast of the airport, and within 8 miles northeast and 4 miles southwest of the 144° bearing from the Point of Origin extending from the 30-mile radius of Dallas-Fort Worth International Airport to 35 miles southeast of the Point of Origin, and within a 6.5-mile radius of Fort Worth Spinks Airport, and within 8 miles east and 4 miles west of the 178° bearing from Fort Worth Spinks Airport extending from the 6.5-mile radius to 21 miles south of the airport, and within a 6.9-mile radius of Cleburne Regional Airport, and within 3.6 miles each side of the 292° bearing from the Cleburne Regional Airport extending from the 6.9-mile radius to 12.2 miles northwest of airport, and within a 6.5-mile radius of Bourland Field, and within a 8.8-mile radius of Granbury Regional Airport, and within a 6.3-mile radius of Parker County Airport, and within 8 miles east and 4 miles west of the 177° bearing from Parker County Airport extending from the 6.3-mile radius to 21.4 miles south of the airport, and within a 6.3-mile radius of Bridgeport Municipal Airport, and within 1.6 miles each side of the 040° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.6 miles northeast of the airport, and within 4 miles each side of the 001° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.7 miles north of the airport, and within a 6.3-mile radius of Decatur Municipal Airport, and within 1.5 miles each side of the 263° bearing from Decatur Municipal Airport extending from the 6.3-mile radius to 9.2 miles west of the airport.

Issued in Fort Worth, Texas, on August 18, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–18181 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31442; Amdt. No. 4021]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These

changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 24, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 2022.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on August 5, 2022.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 8 September 2022

Sitka, AK, PASI, RNAV (GPS)–B, Orig
Yakutat, AK, PAYA, RNAV (GPS) RWY 2, Amdt 4
Yakutat, AK, PAYA, RNAV (GPS) RWY 11, Amdt 5
Yakutat, AK, PAYA, RNAV (GPS) RWY 29, Amdt 5
Butler, AL, 09A, Takeoff Minimums and Obstacle DP, Amdt 2
Tuscaloosa, AL, KTCL, TACAN RWY 4, Orig
Tuscaloosa, AL, KTCL, TACAN RWY 22, Orig
San Martin, CA, E16, RNAV (GPS) RWY 32, Amdt 2A
New Haven, CT, KHVN, RNAV (GPS) RWY 20, Amdt 1
Willimantic, CT, KIJD, RNAV (GPS) RWY 9, Amdt 1D
Apalachicola, FL, KAAF, RNAV (GPS) RWY 24, Amdt 1E
Apalachicola, FL, KAAF, RNAV (GPS) RWY 32, Amdt 2E
Macon, GA, KMCN, ILS OR LOC RWY 5, ILS RWY 5 (SA CAT I), ILS RWY 5 (SA CAT II), Amdt 4
Macon, GA, KMCN, VOR RWY 14, Amdt 10C, CANCELLED
Macon, GA, KMCN, VOR RWY 23, Amdt 4D, CANCELLED
Mc Rae, GA, KMQW, Takeoff Minimums and Obstacle DP, Amdt 2
Kahului, HI, PHOG, RNAV (GPS) Y RWY 2, Amdt 3
Ottumwa, IA, KOTM, ILS OR LOC RWY 31, Amdt 6
Ottumwa, IA, KOTM, LOC BC RWY 13, Amdt 4
Ottumwa, IA, KOTM, RNAV (GPS) RWY 13, Amdt 1
Ottumwa, IA, KOTM, RNAV (GPS) RWY 31, Amdt 1
Ottumwa, IA, KOTM, Takeoff Minimums and Obstacle DP, Amdt 1
Ottumwa, IA, KOTM, VOR RWY 13, Amdt 8
Belleville, IL, KBLV, ILS OR LOC RWY 14L, Orig–H
Belleville, IL, KBLV, ILS OR LOC RWY 14R, Orig–H
Belleville, IL, KBLV, ILS OR LOC RWY 32L, Amdt 2B
Belleville, IL, KBLV, ILS OR LOC RWY 32R, Orig–K
Belleville, IL, KBLV, RADAR–1, Orig–A
Belleville, IL, KBLV, RNAV (GPS) RWY 14L, Orig–B
Belleville, IL, KBLV, RNAV (GPS) RWY 14R, Orig–G
Belleville, IL, KBLV, RNAV (GPS) RWY 32L, Orig–F
Belleville, IL, KBLV, RNAV (GPS) RWY 32R, Orig–F
Belleville, IL, KBLV, TACAN RWY 14R, Amdt 1D
Belleville, IL, KBLV, TACAN RWY 32L, Amdt 1D
Chicago, IL, KMDW, RNAV (RNP) X RWY 22L, Amdt 2
Chicago, IL, KMDW, RNAV (RNP) Y RWY 4R, Amdt 2
Chicago, IL, KMDW, RNAV (RNP) Y RWY 13C, Amdt 3
Chicago, IL, KMDW, RNAV (RNP) Y RWY 22L, Amdt 4
Chicago, IL, KMDW, RNAV (RNP) Y RWY 31C, Amdt 2
Meade, KS, KMEJ, RNAV (GPS) RWY 17, Orig–D
Ulysses, KS, KULS, NDB RWY 12, Amdt 5
Mount Pleasant, MI, KMOP, Takeoff Minimums and Obstacle DP, Amdt 6
Mount Pleasant, MI, KMOP, VOR RWY 27, Amdt 2
Duluth, MN, KDLH, TACAN Y RWY 9, Amdt 3A
Minneapolis, MN, KANE, ILS OR LOC RWY 27, Amdt1
Minneapolis, MN, KANE, RNAV (GPS) RWY 27, Amdt 1
Rochester, MN, KRST, COPTER ILS Y OR LOC Y RWY 31, Amdt 3B
Rochester, MN, KRST, ILS Z OR LOC Z RWY 31, ILS Z RWY 31 (SA CAT I), ILS Z RWY 31 (SA CAT II), Amdt 23B
Rochester, MN, KRST, RNAV (GPS) RWY 2, Amdt 3D
Rochester, MN, KRST, RNAV (GPS) RWY 13, Amdt 1C
Rochester, MN, KRST, RNAV (GPS) RWY 20, Amdt 2D
Rochester, MN, KRST, RNAV (GPS) RWY 31, Amdt 2B
Erwin, NC, KHRJ, RNAV (GPS) RWY 5, Amdt 2D
Erwin, NC, KHRJ, RNAV (GPS) RWY 23, Amdt 2C
Monroe, NC, KEQY, ILS OR LOC RWY 5, Amdt 3
Monroe, NC, KEQY, RNAV (GPS) RWY 5, Amdt 3
Monroe, NC, KEQY, RNAV (GPS) RWY 23, Amdt 1B
East Hampton, NY, KJPX, RNAV (GPS) Z RWY 10, Orig
East Hampton, NY, KJPX, RNAV (GPS) Z RWY 28, Orig
East Hampton, NY, KJPX, Takeoff Minimums and Obstacle DP, Orig
Johnstown, NY, NY0, RNAV (GPS) RWY 10, Amdt 1
Johnstown, NY, NY0, RNAV (GPS) RWY 28, Amdt 1
Pendleton, OR, KPDT, ILS OR LOC RWY 26, Amdt 25E
Portland, OR, KPDX, RNAV (RNP) Z RWY 10R, Orig–C
Toughkenamon, PA, N57, Takeoff Minimums and Obstacle DP, Amdt 1A
Walla Walla, WA, KALW, ILS OR LOC RWY 20, Amdt 1A
Walla Walla, WA, KALW, ILS Y OR LOC RWY 20, Amdt 10, CANCELLED
Walla Walla, WA, KALW, RNAV (GPS) RWY 2, Amdt 2A
Walla Walla, WA, KALW, RNAV (GPS) RWY 20, Amdt 1B
Walla Walla, WA, KALW, Takeoff Minimums and Obstacle DP, Amdt 5
Walla Walla, WA, KALW, VOR RWY 2, Orig–D
Walla Walla, WA, KALW, VOR RWY 20, Orig–A
Afton, WY, KAFO, RNAV (GPS) RWY 16, Amdt 3
Afton, WY, KAFO, RNAV (GPS) RWY 34, Amdt 3

[FR Doc. 2022–18221 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31443; Amdt. No. 4022]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 24, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 2022.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 5, 2022.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Sep–22	SD	Madison	Madison Muni	2/0006	7/12/22	This NOTAM, published in Docket No. 31441, Amdt No. 4020, TL 22–19, (87 FR 48087, August 8, 2022) is hereby rescinded in its entirety.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Sep–22	AR	Magnolia	Ralph C Weiser Fld	2/0078	7/13/22	This NOTAM, published in Docket No. 31441, Amdt No. 4020, TL 22–19, (87 FR 48087, August 8, 2022) is hereby rescinded in its entirety.
8–Sep–22	AR	Magnolia	Ralph C Weiser Fld	2/0079	7/13/22	This NOTAM, published in Docket No. 31441, Amdt No. 4020, TL 22–19, (87 FR 48087, August 8, 2022) is hereby rescinded in its entirety.
8–Sep–22	IA	Des Moines	Des Moines Intl	2/4423	4/28/22	This NOTAM, published in Docket No. 31441, Amdt No. 4020, TL 22–19, (87 FR 48087, August 8, 2022) is hereby rescinded in its entirety.
8–Sep–22	ID	Burley	Burley Muni	2/5029	4/19/22	This NOTAM, published in Docket No. 31441, Amdt No. 4020, TL 22–19, (87 FR 48087, August 8, 2022) is hereby rescinded in its entirety.
8–Sep–22	NJ	Cross Keys	Cross Keys	2/8232	5/23/22	This NOTAM, published in Docket No. 31441, Amdt No. 4020, TL 22–19, (87 FR 48087, August 8, 2022) is hereby rescinded in its entirety.
8–Sep–22	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	2/8314	5/23/22	This NOTAM, published in Docket No. 31441, Amdt No. 4020, TL 22–19, (87 FR 48087, August 8, 2022) is hereby rescinded in its entirety.
8–Sep–22	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	2/0410	7/28/22	ILS OR LOC RWY 10, ILS RWY 10 (SA CAT I), ILS RWY 10 (CAT II & CAT III), Amdt 21C.
8–Sep–22	NJ	Trenton	Trenton Mercer	2/1070	7/21/22	RNAV (GPS) Z RWY 6, Orig-D.
8–Sep–22	IL	Chicago/Aurora	Aurora Muni	2/1100	7/20/22	RNAV (GPS) RWY 27, Amdt 1B.
8–Sep–22	WY	Big Piney	Miley Meml Fld	2/2347	7/21/22	VOR RWY 31, Amdt 3E.
8–Sep–22	CT	New Haven	Tweed/New Haven	2/2776	7/22/22	RNAV (GPS) RWY 2, Amdt 1.
8–Sep–22	CT	New Haven	Tweed/New Haven	2/2779	7/22/22	ILS OR LOC RWY 2, Amdt 18.
8–Sep–22	MI	South Haven	South Haven Area Rgnl	2/3064	7/25/22	Takeoff Minimums and Obstacle DP, Amdt 4.
8–Sep–22	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	2/3413	7/28/22	ILS OR LOC RWY 33L, ILS RWY 33L (SA CAT I–II), Amdt 12A.
8–Sep–22	MN	Appleton	Appleton Muni	2/3551	7/19/22	RNAV (GPS) RWY 13, Orig-A.
8–Sep–22	AK	St Mary's	St Mary's	2/4436	7/25/22	RNAV (GPS) RWY 17, Amdt 3D.
8–Sep–22	PR	Aguadilla	Rafael Hernandez	2/6013	7/21/22	Takeoff Minimums and Obstacle DP, Orig.
8–Sep–22	CO	Montrose	Montrose Rgnl	2/6275	7/22/22	RNAV (GPS) RWY 35, Orig-C.
8–Sep–22	CO	Montrose	Montrose Rgnl	2/6282	7/22/22	VOR RWY 13, Amdt 9C.
8–Sep–22	FL	Lakeland	Lakeland Linder Intl	2/6473	7/22/22	RNAV (GPS) RWY 23, Orig-G.
8–Sep–22	MA	Bedford	Laurence G Hanscom Fld	2/6477	7/22/22	RNAV (GPS) RWY 23, Amdt 1.
8–Sep–22	TX	Marfa	Marfa Muni	2/6533	7/21/22	RNAV (GPS) RWY 31, Orig-B.
8–Sep–22	TX	Marfa	Marfa Muni	2/6535	7/21/22	VOR RWY 31, Amdt 6B.
8–Sep–22	TX	Pearsall	McKinley Fld	2/6716	7/26/22	VOR/DME OR GPS–A, Amdt 2C.
8–Sep–22	MO	Warrensburg	Skyhaven	2/7294	7/22/22	Takeoff Minimums and Obstacle DP, Amdt 2.
8–Sep–22	SD	Madison	Madison Muni	2/7303	7/25/22	RNAV (GPS) RWY 33, Orig-B.
8–Sep–22	CA	Bishop	Bishop	2/7491	7/26/22	RNAV (GPS) Y RWY 12, Orig-E.
8–Sep–22	OR	Albany	Albany Muni	2/7819	7/27/22	VOR–A, Amdt 5.
8–Sep–22	WY	Laramie	Laramie Rgnl	2/8007	7/18/22	RNAV (GPS) RWY 12, Orig-A.
8–Sep–22	MD	Easton	Easton/Newnam Fld	2/8111	7/26/22	ILS OR LOC RWY 4, Amdt 2C.
8–Sep–22	AK	Wrangell	Wrangell	2/8164	7/25/22	RNAV (GPS) RWY 10, Orig-A.
8–Sep–22	SD	Britton	Britton Muni	2/8405	7/26/22	RNAV (GPS) RWY 13, Amdt 1B.
8–Sep–22	SD	Britton	Britton Muni	2/8406	7/26/22	RNAV (GPS) RWY 31, Amdt 1B.
8–Sep–22	MP	Saipan Island	Francisco C Ada/Saipan Intl	2/8429	7/25/22	RNAV (GPS) RWY 25, Amdt 1.
8–Sep–22	PA	Titusville	Titusville	2/8458	7/20/22	Takeoff Minimums and Obstacle DP, Orig.
8–Sep–22	CA	Bishop	Bishop	2/8688	7/26/22	RNAV (GPS) Z RWY 12, Orig-E.
8–Sep–22	WY	Cowley/Lovell/Byron	North Big Horn County	2/8848	7/25/22	Takeoff Minimums and Obstacle DP, Amdt 2.
8–Sep–22	CO	Pueblo	Pueblo Meml	2/8884	6/15/22	RNAV (GPS) RWY 26L, Amdt 1A.
8–Sep–22	CO	Pueblo	Pueblo Meml	2/8886	6/15/22	ILS OR LOC RWY 8R, Amdt 1C.
8–Sep–22	CO	Pueblo	Pueblo Meml	2/8888	6/15/22	VOR RWY 26L, Amdt 1.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
8–Sep–22	CO	Pueblo	Pueblo Meml	2/8889	6/15/22	RNAV (GPS) RWY 35, Orig-B.
8–Sep–22	CO	Pueblo	Pueblo Meml	2/8891	6/15/22	RNAV (GPS) RWY 17, Orig-A.
8–Sep–22	CO	Pueblo	Pueblo Meml	2/8892	7/25/22	RNAV (GPS) RWY 8R, Amdt 1A.
8–Sep–22	CO	Pueblo	Pueblo Meml	2/8893	6/15/22	ILS OR LOC RWY 26L, Amdt 1.
8–Sep–22	MT	Anaconda	Bowman Fld	2/9223	7/25/22	VOR/DME OR GPS–A, Amdt 1A.
8–Sep–22	GA	Americus	Jimmy Carter Rgnl	2/9511	7/27/22	ILS OR LOC RWY 23, Amdt 1D.
8–Sep–22	NJ	Trenton	Trenton Mercer	2/9704	7/20/22	ILS OR LOC RWY 6, Amdt 10E.
8–Sep–22	IL	Chicago/Aurora	Aurora Muni	2/9919	7/20/22	ILS OR LOC RWY 9, Amdt 4.
8–Sep–22	IL	Chicago/Aurora	Aurora Muni	2/9925	7/20/22	LOC RWY 33, Amdt 1.
8–Sep–22	IL	Chicago/Aurora	Aurora Muni	2/9928	7/20/22	RNAV (GPS) RWY 9, Amdt 2.
8–Sep–22	IL	Chicago/Aurora	Aurora Muni	2/9929	7/20/22	VOR RWY 36, Amdt 3A.
8–Sep–22	IL	Chicago/Aurora	Aurora Muni	2/9944	7/20/22	RNAV (GPS) RWY 15, Amdt 1.
8–Sep–22	IL	Chicago/Aurora	Aurora Muni	2/9948	7/20/22	RNAV (GPS) RWY 33, Amdt 1A.

[FR Doc. 2022–18222 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 220818–0172]

RIN 0694–AI79

Additions of Entities to the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending the Export Administration Regulations (EAR) by adding seven entities under seven entries to the Entity List. These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States and will be listed on the Entity List under the destination of the People's Republic of China (China). This final rule also corrects typographical errors in two existing entries on the Entity List.

DATES: This rule is effective August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Additions to the Entity List

The Entity List (supplement No. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR imposes additional license requirements on, and limits the availability of, most license exceptions for exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote. This rule implements the ERC's decisions to add seven entities to the Entity List on the basis of § 744.11(b). Paragraphs (b)(1) through (5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The ERC determined to add China Aerospace Science and Technology Corporation (CASC) 9th Academy 771 Research Institute, China Aerospace Science and Technology Corporation (CASC) 9th Academy 772 Research Institute, China Academy of Space Technology 502 Research Institute, China Academy of Space Technology 513 Research Institute, China Electronics Technology Group Corporation 43 Research Institute, China Electronics Technology Group Corporation 58 Research Institute, and Zhuhai Orbita Control Systems to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of China's military modernization efforts. This activity is contrary to national security and foreign policy interests under § 744.11(b) of the EAR. For these seven entities added to the Entity List, BIS imposes a license requirement for all items subject to the EAR. For these seven entities, BIS will review license applications under a presumption of denial.

For the reasons described above, this final rule adds the following seven entities under seven entries to the Entity List and includes, where appropriate, aliases:

China

- China Aerospace Science and Technology Corporation (CASC) 9th Academy 771 Research Institute,
- China Aerospace Science and Technology Corporation (CASC) 9th Academy 772 Research Institute,
- China Academy of Space Technology 502 Research Institute,
- China Academy of Space Technology 513 Research Institute,
- China Electronics Technology Group Corporation 43 Research Institute,
- China Electronics Technology Group Corporation 58 Research Institute, *and*
- Zhuhai Orbita Control Systems

Corrections to the Entity List

This final rule also makes typographical corrections to two existing entities on the Entity List. Beijing Tianhua and Tenfine Ltd. are revised by correcting ''Haidain'' to ''Haidian'' in their addresses.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on August 24, 2022, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—CONTROL POLICY: END–USER AND END–USE BASED

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 15, 2021, 86 FR 52069 (September 17, 2021); Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 2. Supplement No. 4 to part 744 is amended under CHINA, PEOPLE'S REPUBLIC OF:

■ a. By revising the entry for ''Beijing Tianhua'';

■ a. By adding, in alphabetical order, entries for ''China Aerospace Science and Technology Corporation (CASC) 9th Academy 771 Research Institute'', ''China Aerospace Science and Technology Corporation (CASC) 9th Academy 772 Research Institute'', ''China Academy of Space Technology 502 Research Institute, China Academy of Space Technology 513 Research Institute'', ''China Electronics Technology Group Corporation 43 Research Institute'', ''China Electronics Technology Group Corporation 58 Research Institute'';

■ c. By revising the entry for ''Tenfine Ltd.'', and

■ d. By adding, in alphabetical order, an entry for ''Zhuhai Orbita Control Systems''.

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	Beijing Tianhua, a.k.a., the following seventeen aliases: —Beijing Tianhua International Co., Ltd.; —Beijing BUAA Tianhua Technology Company; —Beijing BUAA Tianhua Technology Co., Ltd.; —Beijing Aerospace Technology Limited Liability Company; —Beihang Tenfine Industry Group; —Beijing Beihang Assets Management Co., Ltd.; —Beijing Beihang Science & Technology Co., Ltd.; —Beijing Aerospace Technology LLC;	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463 12/12/13. 87 FR [INSERT FR PAGE NUMBER] 8/24/22.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	—Beijing North China Aerospace Science & Technology Ltd., Co.; —Beijing North Space Technology Co., Ltd.; —Beijing the Tianhua Easytouch International Trade Co., Ltd.; —North and Astronautics, Beijing China Times Technology Co., Ltd.; —Beijing Beihang Haier Software Co., Ltd.; —Red Technology; —TRW Navigation Communication Technology Co., Ltd.; —Beijing North Aerospace Co-Technology Co., Ltd.; and —Beijing Full Three Dimensional Power Engineering Co., Ltd. —37 Xue Yuan Rd., Beijing, China; and —Room 301, 3f Shining Tower, 35 Xue Yuan Lu, Haidian District, Beijing, China; and —Room 311A, 3f Shining Tower, 35 Xue Yuan Lu, Haidian, Beijing, China; and —Room 411A, 4f Shining Tower, 35 Xue Yuan Lu, Haidian, Beijing, China; and —Room 401, 4f Shining Tower, 35 Xue Yuan Lu, Haidian District, Beijing, China; and —Room 402a, 4f Shining Tower, 35 Xue Yuan Lu, Haidian, Beijing, China; and —Xueyan Road, Haidian District, Beijing City, 35th Ning Building, Room 402a.			
	* *	*	* *	*
	China Aerospace Science and Technology Corporation (CASC) 9th Academy 771 Research Institute, a.k.a., the following five aliases: —Xi'an Institute of Microelectronics; —Xi'an Microelectronics Technology Institute; —XMTI; —771 Research Institute; *and* —Lishan Microelectronics Company. —No. 198 Taibai South Road, Shaanxi, China; *and* No. 198 Taibai Nan Road, Xian, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of Denial	87 FR [INSERT FR PAGE NUMBER] 8/24/22.
	China Aerospace Science and Technology Corporation (CASC) 9th Academy 772 Research Institute a.k.a., the following four aliases: —772 Research Institute; —Beijing Institute of Microelectronics Technology; —Beijing Microelectronics Technology Institute; *and* —BMTI. —No. 2, Siyingmen North Road, Donggaodi, Fengtai District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of Denial	87 FR [INSERT FR PAGE NUMBER] 8/24/22.
	China Academy of Space Technology 502 Research Institute, a.k.a., the following three aliases: —502 Research Institute; —Beijing Institute of Control Engineering; *and* —BICE.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of Denial	87 FR [INSERT FR PAGE NUMBER] 8/24/22.

Country	Entity	License requirement	License review policy	Federal Register citation
	—No. 31 Zhongguancun Nan Street, Beijing, China; *and* No. 16 South 3rd Street, Zhonggu, Haidian District, Beijing, China.			
	China Academy of Space Technology 513 Research Institute, a.k.a., the following three aliases: —513 Research Institute; —Shandong Institute of Space Electronic Technology; *and* —SISET. —No. 513 Spaceflight Road, High-Tech Zone, Shandong, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of Denial	87 FR [INSERT FR PAGE NUMBER] 8/24/22.
	* *	*	* *	*
	China Electronics Technology Group Corporation 43 Research Institute, a.k.a., the following three aliases: —East China Research Institute of Microelectronics; —ECRIM; *and* —CETC 43. —No. 19, Hehuan Road, High-tech Zone, Hefei City, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of Denial	87 FR [INSERT FR PAGE NUMBER] 8/24/22.
	China Electronics Technology Group Corporation 58 Research Institute, a.k.a., the following two aliases: —Wuxi Microelectronics Research Center; *and* —CETC 58. —No. 777 Jianzhu West Road, Wuxi City, China, *and* No. 5 Huihe Road, Wuxi City, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of Denial	87 FR [INSERT FR PAGE NUMBER] 8/24/22.
	* *	*	* *	*
	Tenfine Ltd., a.k.a., the following two aliases: —Beijing Beihang Assets Management Co. Ltd.; and —Tenfine Limited Company. —No 37 Xue Yuan Lu, Haidian, Beijing, China; and —37 Xue Yuan Road, Beijing, China; and —Room 401, 4f Shining Tower, 35 Xue Yuan Lu, Haidian District, Beijing, China; and —Room 402b, 4F Shining Tower, 35 Xue Yuan Lu, Haidian, Beijing, China; and —Xueyan Road, Haidian District, Beijing City, 35th Ning Building, Room 402a.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463 12/12/13. 87 FR [INSERT FR PAGE NUMBER] 8/24/22.
	* *	*	* *	*
	Zhuhai Orbita Control Systems, a.k.a., the following three aliases: —Zhuhai Orbita Control Engineering; —Zhuhai Orbita Aerospace Science and Technology; *and* —Orbita. —Orbita Tech Park, No.1, Baisha Road, Tangjia Dongan, Zhuhai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of Denial	87 FR [INSERT FR PAGE NUMBER] 8/24/22.
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Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–18268 Filed 8–23–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 24

[Docket No. TTB–2016–0010; T.D. TTB–185; Re: Notice No. 164]

RIN 1513–AB61

Wine Treating Materials and Related Regulations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending its regulations pertaining to the production of wine to add to the list of materials and processes authorized for the treatment of wine and of the juice from which wine is made, and to expand the authorized uses of certain materials already authorized under the regulations. TTB is finalizing amendments to the regulations proposed in a notice of proposed rulemaking, Notice No. 164, with some changes in response to comments received. Adding these wine treating materials and processes to the TTB regulations will increase the acceptability in export markets of wine produced using these materials and processes.

DATES: This final rule is effective August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. TTB Authority

TTB authorizes the use of certain wine treating materials and processes under the authority of chapter 51 of the Internal Revenue Code of 1986, as amended (IRC), 26 U.S.C. chapter 51. Specifically, certain provisions of the IRC apply to the production of ''natural wine,'' which is defined at 26 U.S.C. 5381 as the product of the juice or must of sound, ripe grapes or other sound, ripe fruit, made with such cellar treatment as authorized under the IRC at 26 U.S.C. 5382. Section 5382(a) of the IRC (26 U.S.C. 5382(a)) provides that proper cellar treatment of natural wine constitutes those practices and procedures in the United States, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice as prescribed by regulation. Section 5382(c) authorizes the Secretary of the Treasury (Secretary) to prescribe, by regulation, limitations on the preparation and use of methods and materials for clarifying, stabilizing, preserving, fermenting, and correcting wine and juice. In addition, section 5387(a) of the IRC (26 U.S.C. 5387(a)), which authorizes the production of agricultural wine from agricultural products other than the juice of fruit, provides that such agricultural wine must be made in accordance with good commercial practice as prescribed by regulation and may be cellar treated in accordance with sections 5382(a) and (c) of the IRC.

TTB administers chapter 51 of the IRC and its implementing regulations pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). The Secretary has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

The regulations promulgated under these authorities are set forth in part 24 of title 27 of the Code of Federal Regulations (27 CFR part 24). The TTB regulations at 27 CFR 24.246 list materials authorized for the treatment of wine and juice; 27 CFR 24.247 lists materials authorized for the treatment of distilling material used in the production of wine; and 27 CFR 24.248 lists processes authorized for the treatment of wine, juice, and distilling material. The materials and processes listed in these regulatory sections are approved as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine, and where applicable in the treatment of juice and distilling material, within limitations provided.

B. Process for Approval of Wine Treating Materials

Industry members wanting to use a treating material or process not specifically authorized in part 24 may request authorization to do so. TTB may administratively approve the use of treating materials and processes not listed in the regulations, either as an experiment under 27 CFR 24.249 or for continual use (acceptable in good commercial practice) under 27 CFR 24.250. Applicants for such approvals must submit to TTB a request describing the material or process and the purpose, manner, and extent to which the material or process is to be used; certain samples and test results; and any other relevant information, as described in the regulations. If the request is for the approval of a material, the applicant must also submit documentary evidence of the U.S. Food and Drug Administration (FDA) approval of the material for its intended purpose in the amounts, along with the recommended minimum and maximum amounts of the material, if any. Consistent with §§ 24.246, 24.247, and 24.248, TTB may approve the use of treating materials

and processes that are determined to be acceptable in good commercial practice. In Notice No. 164, TTB explained that it considers good commercial practice to include addressing the reasonable technological or practical need to enhance the keeping, stability, or other qualities of the wine, and achieving the winemaker's desired effect but not creating an erroneous impression about the character and composition of the wine.

When TTB approves the continued commercial use of a treating material or process under § 24.250, it provides public notice of such approval on its website at *https://www.ttb.gov/wine/treating-materials.* The listing of such administrative approvals on the TTB website affords all industry members the opportunity to use an administratively approved wine treating material or process pending future rulemaking.

For several reasons, TTB conducts rulemaking to consider adding to or amending the materials and processes authorized in the regulations for treating wine, juice, and distilling material listed in §§ 24.246 through 24.248. One reason is that when TTB administratively approves wine treatments or processes for continued commercial use under § 24.250, TTB is making an initial determination that the treatment is consistent with ''good commercial practice.'' The subsequent rulemaking process allows industry members and other members of the public an opportunity to publicly comment on, and specifically to confirm or refute, the initial determination that the use of a material or process is consistent with good commercial practice. TTB can then determine whether to add the material or process to its regulations.

Administrative approval of a wine treatment under § 24.250 does not guarantee acceptance in foreign markets of any wine so treated. Therefore, conducting rulemaking to add wine treating materials and processes to the regulations may also result in acceptance of the treated wines in certain foreign jurisdictions. For example, under Article 4.2 of the 2006 Agreement between the United States of America and the European Community on Trade in Wine (Wine Agreement), the United States and the European Union agreed not to restrict ''on the basis of either wine-making practices or product specifications, the importation, marketing or sale of wine originating in the territory of the other Party that is produced using wine-making practices that are authorized under laws, regulations and requirements of the other Party . . . and published or communicated to it by that other Party.'' Article 5.1 of the Wine Agreement also contains provisions to authorize new or modified wine-making practices if a party to the Wine Agreement provides public notice and specific notice to the other party, and provides a reasonable opportunity for comment and to have those comments considered. Through the rulemaking process, TTB provides such public notice and opportunity to comment on wine treating materials and processes that had been administratively approved. As a result, incorporation of the treating materials and processes in the regulations provides domestic winemakers with greater flexibility in producing wines for sale in foreign markets.

C. Consultation With U.S. Food and Drug Administration

TTB also consults with the U.S. Food and Drug Administration (FDA) on whether alcohol beverages are adulterated under the Federal Food, Drug, and Cosmetic Act (FD&C Act), including whether a substance added to an alcohol beverage is an unapproved food additive. Alcohol beverages are considered ''food'' under the FD&C Act. A substance added to food is a food additive unless it is otherwise excluded from the definition of a food additive under the FD&C Act. For example, the use of a substance in food that is generally recognized as safe by qualified experts (GRAS) is excluded from the definition of a food additive under the FD&C Act. See 21 U.S.C. 321(s), 21 CFR 170.30. The use of a food additive in food must be authorized by FDA either through a food additive regulation in 21 CFR or an effective food contact notification (FCN).[1] FDA has listed certain GRAS uses in its regulations. In addition, FDA has a voluntary notification procedure by which any person may notify FDA of a conclusion that a use of a substance is GRAS. FDA evaluates whether the notice provides a sufficient basis for a GRAS conclusion (which results in a ''no questions'' response) or whether FDA believes there is an insufficient basis for a GRAS conclusion (which results in an ''insufficient basis'' response).[2] For the purpose of this rulemaking, TTB is using the term ''consistent with the food additive requirements under the FD&C Act'' to refer to: (1) Authorized food additive uses; (2) uses that are GRAS under FDA's regulations, that are the subject of a ''no questions'' letter from FDA in response to a GRAS notice or that are subject to an opinion letter from FDA stating that the use is GRAS or otherwise permissible; or (3) uses that are otherwise excluded from regulation as a food additive.

[1] *https://www.fda.gov/food/packaging-food-contact-substances-fcs/inventory-effective-food-contact-substance-fcs-notifications.*

[2] *https://www.cfsanappsexternal.fda.gov/scripts/fdcc/?set=GRASNotices.*

II. Publication of Notice of Proposed Rulemaking

On November 22, 2016, TTB published in the **Federal Register** (81 FR 83752) a notice of proposed rulemaking, Notice No. 164, proposing to amend its regulations to incorporate 15 wine and juice treating materials and the combined use of two existing wine treatment processes it had administratively approved. TTB also proposed some clarifying and editorial changes. In response to requests by commenters, TTB reopened the comment period for 90 days and then subsequently extended it for another 90 days. The comment period finally closed on April 9, 2018. TTB received 33 comments from major trade organizations, suppliers of wine treating materials and processes, winemakers, the public, and the European Union. The comments generally support the treating materials and processes proposed in Notice No. 164. Notice No. 164 and the comments received may be viewed in their entirety in Docket No. TTB–2016–0010 at the *Regulations.gov* website (*www.regulations.gov*). The primary proposals, comments received, and TTB responses to those comments are discussed in the following sections of this document. The clarifying and editorial changes to the regulations are described in detail in Notice No. 164, and unless subject of comments received, are incorporated in the final regulations below and not further discussed here.

III. Scope of Rulemaking and Petition for Additional Changes

On March 5, 2015, the Wine Institute, a wine industry trade association, petitioned TTB to amend §§ 24.246 and 24.247 to replace many of the numerical limits for wine treating materials and processes with a usage standard of ''good manufacturing practice.'' Wine Institute noted in its petition that the current provisions generally limit the authorized usage of a material to the particular use of the material by the industry member who originally petitioned for its use. It also submitted a comment to Notice No. 164 and reiterated its request for ''a default limit of good manufacturing practice (GMP) for those [treating] materials unless otherwise dictated by health concerns.''

TTB agrees that the current process, as described above, results in TTB's authorizing materials at specific usage levels reflecting the parameters detailed in requests by winemakers, and therefore reflects winemakers' actual use, or expressed interest in use, and TTB's evaluation of wine or juice to which the materials and processes have been applied, rather than potential use. This reflects TTB's longstanding application of ''good commercial practice'' as that term is described above. TTB intends to publish separate rulemaking to obtain public comment on the broader approach proposed in the Wine Institute's petition. TTB is not addressing the entirety of the petition in this rulemaking as it would entail many more amendments to the relevant regulations than were proposed in Notice No. 164. In this final rule, TTB is addressing the proposals regarding materials and processes that already had been the subject of notice and comment under Notice No. 164.

IV. Discussion of Comments

A. Comment Overview

TTB received 33 comments in response to Notice No. 164, of which 3 were requests for extension of the comment period (Wine Institute (2 requests), and David Douglas). The remainder were comments submitted by or on behalf of: Six members of the public (Alice Feiring, Dr. Robert Kreisher (2 comments), Heather Nenow, Coleman Reardon, and Samantha Hunter); 13 wine industry members (vineyards and/or wineries) (Adelsheim Vineyard, Bear Creek Winery; Clover Hill Winery, Deerfield Ranch, Domaine Serene, Don Sebastiani and Sons, E&J Gallo Winery, Firestone Vineyard, Halter Ranch Vineyard, South Coast Winery Resort and Spa, Toni Stockhausen, Wine by Joe, WX Brands); 2 trade organizations (Enzyme Technical Association and Wine Institute); 4 companies that produce wine treating materials or processes (Beverage Supply Group, Erbslöh Geisenheim (2 comments), ConeTech, and Laffort USA); 1 industry consultant (Richard Gahagan); and the European Union (2 comments).

Eleven of the commenters submitted essentially the same letter containing no substantive differences (Adelsheim Vineyard, Bear Creek Winery, Deerfield Ranch Winery, Domaine Serene, Don and Sons, Firestone Winery, Halter Ranch Vineyard, Laffort, South Coast Winery Resort and Spa, Wine by Joe, and WX Brands). These comments will be referred as the ''11 form letter comments'' for ease of reference.

B. General Support for the Regulatory Amendments

The 11 form letter comments expressed support for amending the regulations to incorporate the proposed additional wine treating materials, stating that these additions would positively affect their ability to export their wine and allow them to continue to grow their business in export markets by offering wines with better stability and quality. They also provided specific support for certain of the materials, and their comments are included in the comment discussion for each of these materials below. They further noted that the materials they addressed in their comment are used in multiple countries, including all countries following the International Organization of Vine and Wine (OIV), in good commercial practice at dose rates like those suggested by TTB in Notice No. 164.

The Wine Institute also expressed general agreement that the administratively approved wine and juice treating materials and processes proposed for authorization in Notice No. 164 ''have accumulated sufficient analytical data and should be added to §§ 24.246 and 24.248 as appropriate.''

C. General Comment of Opposition

One commenter, Alice Feiring, expressed discontent with the number of authorized wine and juice treating materials for wine, stating that they ''interfere with the taste and liveliness of the wine.'' The commenter asserted that ''none of these additives—other than sulfite addition . . . —are evaluated for their health impact and allergen potential,'' and that ''tannins and enzymes are the primary materials that trigger allergic reactions.'' The commenter pointed to the proposal in Notice No. 164 to add polyvinylpyrrolidone (PVP) to the list of authorized wine and juice treating materials in § 24.246 and raised concerns regarding the safety of its use, which TTB addresses in the discussion of PVP later in this document. The commenter further suggested that TTB consider requiring the labeling of ingredients in wine.

TTB Response. As discussed in Notice No. 164, all proposed wine and juice treating materials authorized for use under § 24.246 must have documentary evidence from the FDA that the material is consistent with the food additive requirements under the FD&C Act for its intended purpose in the amounts proposed for the particular treatment contemplated. Therefore, TTB disagrees with the assertion that the wine and juice treating materials currently authorized in § 24.246 and proposed in Notice No. 164 for addition to the authorized list are not evaluated for their impact on health, and TTB notes that the table in § 24.246 includes references to the relevant FDA regulations and advisory opinions for each material. Further, TTB consulted with FDA on the proposed amendments in Notice No. 164 prior to its publication, and the materials proposed in Notice No. 164 have been found to be consistent with the FD&C Act.

Concerning the labeling of ingredients in wine, TTB is separately considering rulemaking regarding ingredient labeling, as noted in Treasury's February 2022 report on ''Competition in the Markets for Beer, Wine, and Spirits,'' [3] issued in response to Executive Order 14036, ''Promoting Competition in the American Economy.''

D. Wine Treating Materials

Below is a summary of the actions TTB is taking in this final rule, including a discussion of, and response to, comments received regarding the wine treating materials that were the subject of TTB proposals in Notice No. 164.

1. Blends and Other Combinations of Approved Treating Materials

TTB proposed to include in § 24.246(b) a general, clarifying statement that approved materials may be used in a blend or otherwise in combination with other approved materials, provided that each material is used for its specified use and in accordance with any limitation specified for that use.

Comments. In its comment, Wine Institute agreed that approved wine treating materials may be blended or used in combination provided that each material is used in accordance with the individual limitations and allowable uses for that material.

The 11 commenters who submitted the form letter did not directly address the proposed language pertaining to blends; however, they did comment on the use of blends for yeast nutrients. These commenters stated in part that yeast nutrient blends mitigate the risk of sluggish or stuck fermentation.

TTB Response. TTB agrees that blends of authorized wine treating materials, including yeast nutrients, are consistent with good commercial practice, provided that the use of each material conforms to the conditions specified for that material (that is, the reason or

[3] *home.treasury.gov/system/files/136/Competition-Report.pdf.*

purpose for its use and the references and limitations that apply to its use). Accordingly, TTB is finalizing the proposal on blends in § 24.246.

2. Yeast Nutrients

In Notice No. 164, TTB proposed to add six ''yeast nutrients'' to the list of approved treating materials and expand the approved use of a seventh that already appears on the list. Specifically, TTB proposed to add biotin, folic acid, inositol, magnesium sulfate, niacin, and pyridoxine hydrochloride to the list of authorized wine and juice treating materials in § 24.246, and to expand the current permitted use of calcium pantothenate in that section. The inclusion of these yeast nutrients was in response to a petition and to industry member requests. The specific proposals, comments, and final action are described below.

i. Use of the Term ''Yeast Nutrients''

As described in Notice No. 164, TTB and its predecessor agencies have recognized the need to supply yeast with appropriate nutrients to facilitate fermentation of juice to wine and to prevent ''stuck fermentation'' (fermentation that has halted before completion due to, among other things, high sugar levels or nutrient deficiencies). In both the current and proposed regulations, TTB has referred to these nutrients as ''yeast nutrients.''

Comments. The 11 submitters of the form letter, as well as Wine Institute and Richard Gahagan, addressed the use of the term ''yeast nutrients.'' The 11 form letter submitters requested that TTB omit the word ''yeast'' or conversely include the word ''bacteria'' in the heading used in the regulations. Wine Institute stated their belief that the term ''yeast nutrients'' is ''misleading'' and expressed a concern that ''[t]he use of the word 'nutrient' suggests there is some nutritive value to humans, which is not the case.'' Instead of ''yeast nutrients'', Wine Institute suggested TTB use the term ''Fermentation Aids'', noting that ''yeast nutrients'' serve no purpose after completion of fermentation. Rather, they ''are for the sole purpose of creating and maintaining a robust environment for yeast and/or malolactic bacteria during the fermentation process.''

Mr. Gahagan also opposed the use of the term ''yeast nutrients'' and suggested that a more appropriate heading would be ''fermentation aids'' or ''fermentation adjuncts.'' Mr. Gahagan points out that ''yeast cell walls/membranes'', which are authorized for use in § 24.246 and proposed under the heading ''yeast nutrients'' in Notice No. 164, ''are not yeast nutrients.'' Mr. Gahagan cited scientific literature in support of his argument.

TTB Response. TTB agrees with the comments and is replacing the term ''yeast nutrients'' with the term ''fermentation aids'' in the regulations, where applicable. TTB is using the term ''yeast nutrients'' and ''fermentation aid'' as synonyms throughout the rest of this document, as the former reflects the terminology used in the proposal.

ii. Specific Yeast Nutrients

In Notice No. 164, TTB proposed to add biotin (vitamin B7), folic acid, inositol (myo-inositol), magnesium sulfate, niacin (vitamin B3), and pyridoxine hydrochloride (vitamin B6) to the list of authorized materials in § 24.246 for use as yeast nutrients. TTB had previously administratively approved all six materials but had not yet included them in the list of authorized materials in § 24.246. The proposed use limitations for each material were as follows:

- Biotin: 25 parts per billion (ppb).
- Folic acid: 100 ppb.
- Inositol (myo-inositol): 2 parts per million (ppm).
- Magnesium sulfate: 15 ppm.
- Niacin (vitamin B3): 1 ppm.
- Pyridoxine hydrochloride (vitamin B6): 150 ppb.

Additionally, TTB proposed to expand the authorized use of calcium pantothenate (vitamin B5) from use solely as a yeast nutrient in apple wine to use as a yeast nutrient in all juice and wine. The use limitation of 0.1 pound of calcium pantothenate per 25,000 gallons (0.48 ppm) would remain unchanged.

Comments. The Wine Institute and the 11 form letter comments supported including all six administratively approved materials as authorized materials in § 24.246, as well as approving calcium pantothenate for use in all juices and wines. While the 11 form letter comments supported the use of the materials at the usage rates proposed in Notice No. 164, Wine Institute requested that the usage rate for the materials be ''good manufacturing practice.''

Additionally, Richard Gahagan supported the addition of magnesium sulfate to the list of authorized wine and juice treating materials in § 24.246 but concludes that the ''qualitative limits'' proposed in Notice No. 164 ''may not be adequate in all cases.'' Mr. Gahagan referenced scientific articles for his assertion that the proposed use level for magnesium sulfate ''is not adequate'' and recommended a use rate not to exceed 200 ppm (200 mg/L).

Mr. Gahagan also expressed his concern that the use rates for the proposed yeast nutrients in Notice No. 164 consist ''essentially of the Gusmer commercial product'', which in his opinion, ''would limit the United States wine industry to the use of only the Gusmer product, or products that contain no more of any one of the materials contained in Gusmer's product.'' He argued that ''commercial fermentation aid products would be excluded, severely limiting the choices of available fermentation aides [sic] to domestic winemakers.'' Mr. Gahagan referred to the proposed yeast nutrients with use rates (''quantitative limitations'') and the fact that the use rates were proposed by the petitioner. Mr. Gahagan asserted that the FDA advisory opinion of August 29, 2016, referenced in Notice No. 164, states that the proposed yeast nutrients can be used in accordance with ''good manufacturing practice.'' He further pointed to *www.ttb.gov* where the list of administratively approved yeast nutrients are listed and noted that as a use rate for the listed yeast nutrients, the website reads ''the amount used must not exceed that of good commercial practice'' and includes a reference to the appropriate FDA regulation followed by the acronym GRAS, for ''Generally Recognized As Safe.'' He further stated that ''[t]he limitations on all the fermentation aids should be good commercial practice or GRAS, rather than quantitative limits.''

TTB Response. TTB is finalizing the proposals for all seven materials, including the proposed use rates. TTB believes that additional public comment is needed to authorize a usage rate other than what was proposed in Notice No. 164 for any of the yeast nutrients, since the proposed rule did not include the prospect of different usage rates. However, TTB is considering the request to consider the yeast nutrient usage rate at ''good manufacturing practice'' for separate rulemaking in which TTB intends to address Wine Institute's petition, described above, to authorize usage rates of ''good manufacturing practice'' more broadly.

With respect to Mr. Gahagan's comment about the proposed use rate limits, under the regulatory provisions of §§ 24.249 and 24.250, TTB reviews and approves or denies proposed wine treating materials based on the information provided by the industry member who submitted the request. TTB does not have reason or resources to test experimentally treated wine containing a new wine treating material

at a use rate greater than that which is being requested. In the case of the yeast nutrients that were administratively approved subsequent to the Gusmer petition, TTB proposed in Notice No. 164 to limit the amount of usage to the amounts provided in the Gusmer petition because TTB believes it is important to place limitations on the use of vitamins and minerals as nutrients for yeast growth. This belief is consistent with FDA's fortification policy in 21 CFR 104.20, as discussed in Notice No. 164. The FDA advisory opinion cited in the proposed regulations and referred to by Mr. Gahagan does not state that vitamins and minerals used in the production of wine are limited only by good manufacturing practice. Rather, in their advisory opinion, FDA referred to its regulations in which certain vitamins and minerals may be used in accordance with good manufacturing practice [4] if they are used in accordance with the intended purpose as stated by the regulations.

As noted in Notice No. 164, many of the yeast nutrients are vitamins and minerals that are authorized for use in food, and FDA has informed TTB that FDA regulations for certain vitamins (*e.g.,* folic acid and inositol) would not authorize their use in alcohol beverages as nutrients. Therefore, a cross-reference to the FDA regulations is not appropriate for yeast nutrients. Notice No. 164 further states that FDA has stated to TTB that the proposed vitamins and minerals could be used for the purpose of providing nutrients to the yeast, where the levels of the vitamins and minerals remaining in the wine would be of a de minimis level, and not to fortify the wine. In the interim, TTB is placing limitations on these substances to permit their use as nutrients for yeast growth but not as a source of nutrients in the finished wine.

TTB notes that among the 11 submitters of the form letter is Laffort U.S.A., a supplier of wine treating materials. Laffort U.S.A. wrote that they support the addition of yeast nutrients proposed by TTB ''at the levels recommended by TTB.'' This support indicates that Laffort U.S.A. is not concerned that the proposed use rates for yeast nutrients would exclude any of their products from the market. Another supplier of wine treating materials (including yeast nutrients), Beverage Supply Group, commented on Notice No. 164, and while they did not specifically express support for the proposed use rates of the proposed yeast nutrients, they did not expressly voice concern that the proposed use rates are insufficient and possibly exclude their products from the marketplace.

3. Specific Wine Treating Materials

i. Acacia (Gum Arabic)

In Notice No. 164, TTB proposed to amend its regulations in § 24.246 to identify, for the purpose of clarifying and stabilizing wine, a maximum use rate of 8 pounds of acacia per 1,000 gallons (0.96 grams per liter (g/L)) of wine. Acacia (gum arabic) is listed in § 24.246 as authorized for such purposes, but currently subject to the limitation that its use not exceed 2 pounds per 1,000 gallons (0.24 g/L) of wine. TTB explained in Notice No. 164 that TTB had administratively approved several requests from industry members for use rates up to 16 pounds per 1,000 gallons of wine, but was proposing a use rate of 8 pounds per 1,000 gallons of wine as it believed that rate was consistent with the maximum rate authorized in FDA regulations at 21 CFR 184.1330. Based on that, TTB noted that any administrative approvals authorizing use rates greater than 8 pounds per 1,000 gallons of wine would be revoked.

Comments. The 11 submitters of the form letter indicated that acacia is necessary for the stabilization of coloring matter and potassium bitartrates as well as to clarify wine. They also stated that the dose rate recommended by TTB in the proposed rule is appropriate for good commercial practice. In its comment, the Wine Institute welcomed the proposal to increase the allowable level for acacia when used for its intended purpose of clarifying and stabilizing wine.

TTB Response. The regulations finalized through this rulemaking authorize the use of acacia for clarifying and stabilizing wine at a use rate of 16 pounds per 1,000 gallons of wine (1.9 g/L), or 0.19 percent, which is within the 1 percent use rate limitation set forth in the FDA regulations for these purposes. In Notice No. 164, TTB had erroneously calculated that 8 pounds per 1,000 gallons of wine was the maximum allowable within the FDA limitations. As a result, instead of 8 pounds per 1,000 gallons of wine, TTB is amending its regulations to correspond to the administrative approvals of 16 pounds per 1,000 gallons of wine, as discussed in Notice No. 164, as TTB believes this limit is consistent with good commercial practice for clarifying and stabilizing wine.

With regard to the comment that refers to acacia's use for stabilization of ''coloring matter,'' TTB notes that the stabilization of anthocyanins for color is consistent with how TTB interprets ''stabilization'' under § 24.246.

ii. Bakers Yeast Mannoprotein

TTB proposed to add bakers yeast mannoprotein, at a use rate of 50–400 milligram per liter (mg/L) of wine, to the list of approved wine and juice treating materials contained in § 24.246, for the purpose of stabilizing wine from the precipitation of potassium bitartrate crystals. TTB had already administratively approved the use of bakers yeast mannoprotein for this purpose and with that limit.

Comments. The 11 commenters who submitted the form letter stated their support of TTB's proposal to add bakers yeast mannoprotein to the list of authorized treating materials contained in § 24.246 to stabilize wine from the precipitation of potassium bitartrate crystals. The commenters noted that bakers yeast mannoprotein is an efficient alternative for the stabilization of red wines and that it is appropriate for good commercial practice at the dose rates proposed by TTB.

The Wine Institute suggested GMP as the appropriate limit for bakers yeast mannoprotein, without a numerical limit, but stated that, if numerical limits are to be required, the proposed limit is ''too low.'' The Wine Institute stated that ''a quick review of recommended usage rates . . . by Suppliers of this material to the Industry suggest usage rates up to 1500 mg/L as a more appropriate limit.''

The European Union (EU), in its comment, informed TTB that the EU does not have a fixed limit for bakers yeast mannoproteins, ''which means that their use is based on the best manufacturing practice criteria.'' They further state that the proposed limit for bakers yeast mannoproteins ''may be insufficient for tartaric stabilization thus creating a possible barrier to trade.''

TTB Response. TTB received no additional comments from industry members regarding the usage rates, and has not received requests from industry members for approval to use bakers yeast mannoprotein at a rate higher than 400 mg/L. TTB notes that the proposed use for bakers yeast mannoprotein in TTB Notice No. 164 (not to exceed 400 mg/L) is consistent with the use rate considered by FDA in GRAS Notice No. GRN 000284. TTB does not approve the use of a material at a rate greater than that which FDA has determined is consistent with the food additive requirements under the FD&C Act.

[4] FDA defines ''good manufacturing practice'' in the context of food additives and GRAS substances in 21 CFR 172.5, 174.5, 182.1, and 184.1.

Considering this and the rulemaking record before it, TTB does not believe there is an adequate basis for establishing a limit different from that proposed in Notice No. 164, but will consider the comments of the European Union and the Wine Institute as suggestions for further broader rulemaking relating to GMP. This rulemaking finalizes the proposed use of bakers yeast mannoprotein to stabilize wine from the precipitation of potassium bitartrate crystals at an amount not to exceed 400 mg/L.

iii. Beta-Glucanase Having an Enzyme Activity Derived From *Trichoderma harzianum* and Beta-Glucanase Having an Enzyme Activity Derived From *Trichoderma longibrachiatum*

TTB proposed in Notice No. 164 to add beta-glucanase derived from *Trichoderma harzianum,* at a use rate not to exceed 30 parts per million (ppm) of wine, as an approved treating material in § 24.246 for the purpose of clarifying and filtering wine. *Trichoderma harzianum* had been administratively approved prior to the proposed rulemaking. Beta-glucanase derived from *Trichoderma longibrachiatum* is currently listed in § 24.246 as approved for use for clarifying and filtering wine at a rate not to exceed 3 grams per hectoliter of wine (30 ppm), and in Notice No. 164 TTB also solicited comments on whether Beta-glucanase derived from *Trichoderma longibrachiatum* is still relevant and should be retained as an authorized treatment.

Comments. The form letter submitted by 11 commenters specifically addressed beta-glucanase, as did comments from the Wine Institute, the Enzyme Technical Association, and an individual commenter. The 11 submitters of the form letter stated that the use rate of beta-glucanase proposed in Notice No. 164 is appropriate for good commercial practice to filter wine, whether the enzymatic activity is derived from *Trichoderma harzianum* or *Trichoderma longibrachiatum.* They also proposed that beta-glucanase should be authorized for use in juice prior to fermentation. In support of this, the commenters wrote that mold growth, specifically from *Botrytis cinera,* on grapes increase the content of glucans in the resultant wine. The commenters claimed that the glucans ''can render the wine difficult or impossible to filter using available filter media.'' Adding beta-glucanase to the juice or wine ''will allow the reduction of glucan levels and improved filterability.'' The commenters noted that unfiltered wines ''can potentially have negative flavor profiles due to instabilities.''

Wine Institute recommended using GMP as a use rate for beta-glucanase. In the absence of GMP, Wine Institute recommended a use rate of 80 mg/L based on a review it performed of usage rates recommended by suppliers of this material to the industry. Wine Institute also noted TTB's comment in Notice No. 164 about the agency inadvertently stating that the amount of beta-glucanase derived from *Trichoderma harzianum* used must not exceed 300 ppm, and suggested that industry members are currently using beta-glucanase at higher use levels than 30 ppm because suppliers recommend a level higher than 30 ppm and because TTB administratively approved usage up to 300 ppm. As a result, Wine Institute argued that reducing the authorized use rate of beta-glucanase from an amount not to exceed 300 ppm to an amount not to exceed 30 ppm may cause difficulty to winemakers and impact the quality of resulting wines. With regard to beta-glucanase derived from *Trichoderma longibrachiatum,* Wine Institute supported retaining its authorized use.

The Enzyme Technical Association supported the addition of *Trichoderma harzianum* as a source of beta-glucanase. However, the association recommended TTB align the use rate of beta-glucanase derived from *Trichoderma harzianum* and that derived from *Trichoderma longibrachiatum,* and that the usage rate limitation for both should be ''good manufacturing practice.'' The association indicated that the proposed use rate limit of 30 ppm for beta-glucanase derived from *Trichoderma harzianum* is insufficient. It expressed its position that the FDA GRAS Notice No. GRN 000149, which TTB cites for its support of a 30 ppm limitation on beta-glucanase derived from *Trichoderma harzianum,* actually supports a higher use rate. Enzyme Technical Association argued that the range provided in GRAS Notice No. GRN 000149 ''was not set as a maximum use'' and stated that ''what was not discussed in the FDA No Questions Letter is the wide safety margin of the beta-glucanase enzyme preparation that was included in the notifier's original submission.'' It further stated that ''[A] wide safety margin suggests that the enzyme preparation can be used well outside the range of 30 ppm with no toxic effects.'' Enzyme Technical Association ''agrees that beta-glucanase enzymatic activity derived from *Trichoderma longibrachiatum* (also known as *T. reesei*) is still relevant for and used in wine treatments.''

In its second comment submitted in response to Notice No. 164, Erbslöh Geisenheim suggested that TTB add the microorganism species *Penicillium funiculosum* (synonym: *Talaromyces versatilis*) as a third source besides *Trichoderma longibrachiatum* and *Trichoderma harzianum* for the entry ''Enzymatic activity, intended for clarifying and filtering wine.'' It noted that FDA already considers *Penicillium funiculosum* as GRAS for ''use in various food applications in the US.'' It also stated that both the International Oenological Codex and the European Commission recognize *Penicillium funiculosum* as a wine treating material.

TTB Response. After considering the comments, TTB is finalizing regulations that remove any specific use rate limitation other than that set forth in the FDA regulations at 21 CFR 184.1250. In effect, this implements the limitation that has applied during the time TTB had inadvertently authorized 300 ppm rather than 30 ppm, as described above, as use of the material above the 30 ppm rate would still have been subject to any limit set forth in FDA regulation. Similarly, TTB is also finalizing its proposal in Notice No. 164, to add to the regulations authorization for beta-glucanase derived from *Trichoderma harzianum* as an approved treating material in § 24.246 for the purpose of clarifying and filtering wine, with the only use rate limitation specified by a reference to FDA GRAS Notice No. GRN 000149. TTB has confirmed with FDA that a limitation of ''good manufacturing practice'' would be consistent with both 21 CFR 184.1250 and GRAS Notice No. GRN 000149, and that additional advisory opinions specifying that would be unnecessary. With regard to the use of the materials in juice, TTB is authorizing the use of both beta-glucanase derived from *Trichoderma harzianum* and beta-glucanase derived from *Trichoderma longibrachiatum* in juice, which is consistent with GRAS Notice No. GRN 000149 and 21 CFR 184.1250,[5] respectively.

With respect to the use of *Penicillium funiculosum,* TTB notes that it has not received any requests from winemakers to use this microorganism as a source of beta-glucanase for clarifying or filtering wine. Therefore, TTB has not had the opportunity to analyze wine treated with *Penicillium funiculosum* and cannot add it to its list of approved wine treating materials at this time. However, TTB would consider requests from

[5] 21 CFR 184.1250 describes a type of a cellulase that is also known as endo-1,4-beta-glucanase.

individual industry members under §§ 24.249 and 24.250 for use of *Penicillium funiculosum* as a wine treating material.

iv. Chitosan

In Notice No. 164, TTB proposed to authorize chitosan for the removal of spoilage organisms from wine at a usage rate not to exceed 10 grams per 100 liters (or 10g/hL) of wine.

Comments. The 11 submitters of the form letter agreed with TTB's proposal that chitosan should be authorized for use in the treatment of wine to remove spoilage organisms such as *Brettanomyces* from wine. They stated that the ''unchecked growth of *Brettanomysces* [sic] organisms in wine can lead to highly negative flavor profiles'' and that chitosan is ''an efficient and effective treatment to destroy these spoilage organisms.'' Further, submitters of the form letter confirmed that chitosan is consistent with good commercial practice at the levels proposed by TTB.

In its comment, Wine Institute welcomed the proposed addition of chitosan to the list of allowable treating materials but suggested that GMP is a more appropriate usage limit.

In his comment, Richard Gahagan supported the inclusion of chitosan but stated that the limitation should be ''GRAS, or if TTB decides on a quantitative limit, 100 g/hL would be consistent with the OIV limitation.'' Mr. Gahagan's comment regarding the authorized use of chitosan with OIV limitations was consistent with that of the EU, which stated that the TTB proposed use rate of 10 g/hL for chitosan is ''10 times lower than the EU limit,'' and indicated that the use rate proposed by TTB for chitosan ''could create a trade barrier.'' (TTB notes that OIV's use rate for chitosan was raised in 2015, to a rate not to exceed 500 g/hL of wine.)

TTB Response. Since TTB's publication of Notice No. 164, TTB has received numerous requests to experiment with chitosan at levels greater than 10 g/hL of wine. The most recent requests for experimentation sought to use chitosan at a rate of no more than 500 g/hL. TTB approved the experimentation of those requests because in GRAS Notice No. GRN 000397, FDA had ''no questions'' with regard to the stated intended use rate of 10 to 500 g/hL of wine. After the evaluation of numerous samples of wine experimentally treated with chitosan at rates exceeding 10 g/hL and including 500 g/hL, TTB administratively approved an increased use rate of chitosan not to exceed 500 g/hL of wine in 2021.

After considering comments from Wine Institute, the EU, and Mr. Gahagan supporting an increased level of chitosan, the use range specified in GRAS Notice No. 000397, and TTB's experience with recent administrative approvals, TTB is amending § 24.246 to include chitosan from *Aspergillus niger,* with a use rate not to exceed 500 g/hL of wine, for use in removing spoilage organisms, such as *Brettanomyces,* from wine.

v. L(+) Tartaric Acid

Tartaric acid is currently listed in § 24.246 as a material authorized for the treatment of wine and juice for the purpose of correcting natural acid deficiencies in grape juice or wine and to reduce the pH of grape juice or wine. In Notice No. 164, TTB proposed to amend the entry for ''tartaric acid'' in the table at the end of § 24.246 to indicate that tartaric acid may be manufactured by either the method specified in 21 CFR 184.1099 (which allows for L(+) tartaric acid obtained as a byproduct of wine production) or the method specified for L(+) tartaric acid in GRAS Notice No. GRN 000187 (which allows L(+) tartaric acid manufactured using an enzyme from immobilized *Rhodococcus ruber* cells). TTB also proposed to add the citation for the FDA GRAS notice in the ''Specific limitation'' column.

Comments. In its comment, the EU stated that it and the OIV both authorize the use of L(+) tartaric acid with limits of 2.5g/L and 4g/L, respectively. The EU argued that ''[t]hese limits are justified by the assessment made by JECFA fixing the acceptable daily intake (ADI) is between 0 and 30mg/kg of body weight.'' Accordingly, the EU does not believe that GMP is an appropriate use rate for L(+) tartaric acid. The EU further stated that an excess of L(+) tartaric may ''modify the natural and essential characteristics of the wine'', resulting in a possible breach of the Article 80(3)(d) of Regulation No. 1380/2013, which states that oenological practices shall ''allow the preservation of the natural and essential characteristics of the wine and not cause a substantial change in the composition of the product.''

In her comment, Toni Stockhausen argued that ''synthetically derived L(+) Tartaric Acid, or L(+) Tartaric Acid (alternate method) per FDA GRAS notice GRN 000187 . . . should not be considered Good Manufacturing Practice for use in winemaking in the USA.'' In support of this, Ms. Stockhausen stated: (1) That FDA GRAS Notice No. GRN 000187 for L(+) tartaric acid ''does not comment on the source of the maleic acid or on the safety of potentially unconverted maleic acid or other contaminants unique to the alternate production method;'' (2) ''Despite GRN 000187, issued in 2006, in 10 years the FDA has not updated the list of direct food substances affirmed as generally regarded as safe;'' and, (3) ''For the purposes of exportation, jurisdictions including the European Union have confirmed or amended their food safety regulations to specify the source of Tartaric Acid as wine or grape derived, including the most recent European Pharmacopeia (9th Edition, effective January 1, 2017).''

In its comment, Wine Institute stated that it understands that ''synthetic (L(+)) tartaric acid, which was administratively approved by TTB,'' is not currently being used for the production of wine within the United States.

TTB Response. TTB is finalizing in this rulemaking document the proposal in Notice No. 164 to include in the TTB regulations a reference to tartaric acid manufactured using an enzyme from immobilized *Rhodococcus ruber* cells (as described in FDA GRAS Notice No. GRN 000187) to correct natural acid deficiencies in grape juice/wine and to reduce the pH of grape juice/wine. TTB believes that this form of tartaric acid is the form commenters refer to as ''synthetic.'' The regulatory text uses the spelling ''L-(+)-tartaric acid,'' as TTB understands that this is the scientifically preferred spelling for the material, rather than the ''L(+) tartaric acid'' spelling used in the proposed rule document.

In response to the comments submitted by the EU and Wine Institute, TTB notes that with regard to the use rates for tartaric acid, the current regulations refer to TTB regulations at 27 CFR 24.182 and 24.192 that provide additional detail about its use, and to FDA regulations in 21 CFR 184.1099. The uses prescribed in the TTB regulations do not authorize a use rate that would ''modify the natural and essential characteristics of the wine.'' TTB did not propose to change the limitations on the use of tartaric acid, and is not changing those limits at this time. However, TTB will consider including the more limited use rates in any subsequent rulemaking for additional comment.

In her comment, Ms. Stockhausen claimed that the EU only allows tartaric acid derived from wine or grapes. TTB notes that in its comments on the proposal in Notice No. 186, the EU only addressed its belief that GMP was not an appropriate use rate for L(+) tartaric

acid. The EU did not distinguish between L(+) tartaric acid derived from wine or grapes and L(+) tartaric acid manufactured using *Rhodococcus ruber* cells. Therefore, TTB does not believe that the EU objects to TTB's proposal to allow the alternate method of producing L(+) tartaric acid.

In response to Ms. Stockhausen's comments regarding GRAS Notice No. GRN 000187, the FDA has stated to TTB that GRAS Notice No. GRN 000187 does not specifically state the source of maleic acid, and that maleic acid may be an impurity in the starting material (*i.e.,* maleic anhydride), or it can be a byproduct of the reaction of maleic anhydride and hydrogen peroxide that is used to produce tartaric acid. GRAS Notice No. GRN 000187 does specify that the content of maleic acid in the final tartaric acid must be less than or equal to 0.05 percent. FDA also noted that the GRAS Notice process is an alternative to GRAS affirmation petitions, and that the FDA regulations do not provide a comprehensive list of GRAS substances.

vi. Polyvinylpyrrolidone (PVP)/ Polyvinylimidazole (PVI) Polymer

TTB proposed to add polyvinylpyrrolidone (PVP)/ polyvinylimidazole (PVI) polymer (terpolymer of 1-vinylimidazole, 1-vinylpyrrolidone, and 1,2-divinylimidazolidinone; CAS 87865–40–5 [6]) to remove heavy metal ions and sulfides from wine to the list of authorized wine and juice treating materials in § 24.246.

Comments. In their comment, the 11 submitters of the form letter expressed support for the proposal in Notice No. 164 to add polyvinylpyrrolidone (PVP)/ polyvinylimadazole (PVI) polymer to the list of authorized wine and juice treating materials in § 24.246 to remove heavy metal ions and sulfides from wine at a level not to exceed 80 grams per 100 liters of wine. They stated that PVP/PVI polymer would ''provide the US wineries with an effective tool to eliminate these metals'', and further stated that the ''current US regulations provide unfair trade advantage for non-US wine producers in both domestic and international markets.''

The 11 commenters of the form letter also recommended that the approval of PVP/PVI be extended to use in juice and must. They argued that this will give wineries the ability to ''remove excessive copper (from vineyard treatments) before starting fermentation or the early stages.'' They also stated that adoption of this recommendation ''would align the US regulation with other countries.''

One commenter, Alice Feiring, raised concerns regarding the safety of PVP. She described PVP as a material that should not be authorized for use in the production of wine, stating that it ''is classified as 'expected to be toxic or harmful,' by the Environment Canada Domestic Substance List.''

TTB Response. TTB is finalizing the use of PVP/PVI polymer as proposed in TTB Notice No. 164, for use at a level not to exceed 80 grams per 100 liters of wine to remove heavy metal ions and sulfides from wine. TTB did not propose the use of PVP/PVI in juice and has not had the opportunity to analyze juice treated with PVP/PVI. Accordingly, TTB is not including such authorization in its regulations at this time, but will consider for future action.

With regards to the comment regarding the Canadian classification of PVP, TTB notes that under the Canada Food and Drug Regulations (see C.R.C., c 807 B.02.100(b)(xii)(D)), PVP may be used in the production of wine ''in an amount that does not exceed 2 parts per million in the finished product.''

vii. Potato Protein Isolates

In Notice No. 164, TTB proposed to add potato protein isolates, at a use rate of 500 ppm or 50 grams per 100 liters (50 g/hL) of wine, as a fining agent, to the list of approved treating materials contained in § 24.246.

Comments. In their form letter, 11 commenters supported the addition of potato protein isolate to the list of authorized treating materials in § 24.246 and stated that ''potato protein isolate is an effective fining agent for both juice and wine to remove phenolic components effecting [sic] astringency and bitterness, as well as to aid in settling juice and wine . . .'' at the use rate of 500 ppm (50 g/hL), which is the proposed use rate in wine, not juice. These commenters suggested that TTB authorize the use of potato protein isolate in the use of juice because ''it is equally effective in application.'' They also stated that in its first additional correspondence to GRAS Notice No. GRN 000447, the FDA considered the use of potato proteins in wine-must, which the commenters noted is ''considered as 'grape juice' prior to fermentation.'' According to the commenters, ''Many winemakers choose to use fining products on juice in preference to wine as the process is more efficient and ha[s] less impact on resulting wine flavor.''

In its comment, the Wine Institute indicated its support of the addition of potato protein isolates to the list of authorized treating materials contained in § 24.246. It also recommended the use rate of good manufacturing practice for the use of potato protein isolates as a ''clarification'' material.

Erbslöh Geisenheim indicated its support of the addition of potato protein isolates to the list of authorized treating materials contained in § 24.246, noting that proteins from plant origins, including potatoes, have been authorized by the International Oenological Codex as a wine and juice treating material. It further stated, ''Vegetable based fining agents have become increasingly important for the production of beverages that are suitable for a vegetarian or vegan diet.''

TTB Response. TTB is finalizing the proposal to authorize fractionated potato protein isolate for use at a rate of 500 ppm or 50 grams per 100 liters (50 g/hL) of wine, as a fining agent. TTB believes the use of fractionated potato protein isolate in juice should be subject to public comment, and plans to include such use among other proposals in a separate rulemaking.

viii. Sodium Carboxymethyl Cellulose

TTB proposed to add sodium carboxymethyl cellulose (CMC) to the list of authorized wine and juice treating materials in § 24.246 at a level not to exceed 0.8 percent of the wine, to stabilize wine from tartrate precipitation.

Comments. In their form letter, 11 commenters supported TTB's proposal in Notice No. 164 to add CMC to the list of authorized wine and juice treating materials contained in § 24.246. These commenters stated that the 0.8 percent use rate proposed by TTB is appropriate for good commercial practice. They also stated that CMC ''is one of many tools the wine industry can use to stabilize wines, depending on unique wine chemistry and consumer preferences.''

Wine Institute supported the addition of CMC to the list of authorized wine and juice treating materials; however, they recommended a use rate of GMP. Wine Institute recommended that if TTB does not adopt GMP, it should decrease the authorized amount of CMC from proposed 0.8% (8,000 mg/L) to 0.1% (1,000 mg/L), which according to Wine Institute, is the standard in international markets. It is Wine Institute's belief that the use of CMC at the maximum proposed level of 8,000 mg/L ''could create quality issues in wines.''

TTB response. As noted in Notice No. 164, FDA regulations at 21 CFR 182.1745 state that CMC is GRAS when used in accordance with good manufacturing practice. In light of this

[6] CAS = Chemical Abstracts Service Registration Number.

and the concern expressed in the Wine Institute's comment, this final rule amends the proposal to remove a specific use rate other than that contained in the reference to the FDA's regulations in 21 CFR 182.1745.

E. Proposed Processes for the Treatment of Wine, Juice, and Distilling Material

TTB proposed to amend the regulations in § 24.248, which set forth certain processes that TTB has approved as being consistent with good commercial practice for use by proprietors in the production, cellar treatment, or finishing of wine, juice, and distilling materials, within the limitations of that section. A discussion of the specific proposals, comments received, and TTB responses follows.

1. Cross Flow Filtration

TTB proposed to expand the authorized use of nanofiltration and ultrafiltration in § 24.248 (Processes authorized for the treatment of wine, juice, and distilling material) to include dealcoholization (reduction of the alcohol content). Currently, nanofiltration is authorized to reduce the level of volatile acidity in wine when used with ion exchange. Ultrafiltration is authorized for use to remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove color from blanc de noir wine; and to separate red wine into high color and low color wine fractions for blending purposes. Because both nanofiltration and ultrafiltration are capable of reducing alcohol content in wine, the proposed liberalization will provide industry members with more tools to reduce the alcohol content of wine.

Comments. In its comment, Wine Institute agreed with the proposal in Notice No. 164 to group nanofiltration, ultrafiltration, and reverse osmosis under the general category of ''cross flow filtration'' and welcomed the expansion of authorized uses for this category to include reduction of alcohol content.

In his comment, Dr. Robert Kreisher disagreed with TTB's proposal to expand the authorized uses of nanofiltration and ultrafiltration to include dealcoholization. Dr. Kreisher indicated that TTB considered nanofiltration for purposes of alcohol reduction in 2007 and found that such a process is not consistent with good commercial practice because ''nanofiltration permeate contained too great a quantity of volatile esters and fixed acids.'' Dr. Kreisher further stated that ultrafiltration has the same problems as nanofiltration, at a greater magnitude. If authorized, Dr. Kreisher advised TTB that it should be made clear that nanofiltration, ultrafiltration, and reverse osmosis may only be used in combination with distillation.

TTB Response. This rulemaking finalizes TTB's proposal in Notice No. 164 to expand the use of nanofiltration and ultrafiltration to include dealcoholization (reduction of alcohol).

In 2007, TTB reviewed a petition for the use of nanofiltration and ultrafiltration for purposes of removing off-flavors in wine. It did not review the processes for the purpose of alcohol reduction. However, TTB reviewed nanofiltration and ultrafiltration for purposes of alcohol reduction in 2013 and found that on a preliminary basis nanofiltration and ultrafiltration were acceptable for alcohol reduction pending future rulemaking.

In Notice No. 164, TTB proposed amending § 24.248 to state that nanofiltration, ultrafiltration, and reverse osmosis must be conducted on distilled spirits plant premises when used to remove ethyl alcohol (dealcoholization). The proposed amendment also provided a specific exemption to this rule for reverse osmosis and nanofiltration if ethyl alcohol is only temporarily created within a closed system. In this rulemaking document, TTB is adopting these amendments as final.

2. Reverse Osmosis in Combination With Osmotic Transport

TTB proposed to amend the table of authorized processes in § 24.248 by revising the listings for reverse osmosis and osmotic transport to state that each process can be used in combination with the other to reduce the ethyl alcohol content of wine. These processes, whether used separately or in combination, must take place on distilled spirits plant premises.

Comment. Wine Institute expressed its support of the proposal and also requested that TTB expand the authorized use of osmotic transport to include removal of off flavors, indicating that this would maintain consistency between reverse osmosis and osmotic transport.

TTB Response. TTB is finalizing the proposal as set forth in Notice No. 164 to amend § 24.248 to allow reverse osmosis and osmotic transport to be used in combination with the other. TTB is not expanding the authorized use of osmotic transport to remove off flavors at this time, and intends to include that proposal in separate rulemaking as TTB believes that additional public comment is needed. TTB would consider individual industry member requests under §§ 24.249 and 24.250 for use of osmotic transport to remove off flavors from wine.

3. Ultrafiltration

In Notice No. 164, TTB proposed amending § 24.248 to allow the use of ultrafiltration to separate red grape juice into high and low color fractions for blending purposes, and to separate white grape juice that had darkened due to oxidation during storage into high and low color fractions for blending purposes. TTB had previously administratively approved the use of ultrafiltration to separate red grape juice into low and high color fractions, and the proposed amendment would amend the table at § 24.248 accordingly. However, TTB had not administratively approved the use of ultrafiltration to separate high and low colored fractions of discolored white grape juice, so, in Notice No. 164, TTB did invite comments on whether this practice constitutes good commercial practice.

Comments. In its comment, Wine Institute welcomed TTB's proposal to authorize the use of ultrafiltration to separate red grape juice into low and high color fractions. Wine Institute also made two recommendations for the ''Reference or limitation'' column for ultrafiltration in § 24.248. The first recommendation was to change the phrase ''greater than 500 and less than 25,000 molecular weight'' to ''not less than 500 and not greater than 25,000'' molecular weight. This change, which Wine Institute implied would be an ''edit'', would have the effect of including molecular weights of ''500'' and ''25,000'' as opposed to excluding them, which is what the current regulatory language does. Wine Institute's second recommendation was to allow transmembrane pressure up to 500 psi rather than limit the transmembrane pressure to less than 200 psi. Wine Institute stated that ''limiting the transmembrane pressure to 200 psi incorporates obsolete technology into the regulation'' and allowing transmembrane pressure up to 500 psi will ''allow use of recent improvements in technology that allow more effective use of Ultrafiltration . . . without altering vinous character.''

TTB Response. TTB is finalizing in this rulemaking its proposal to expand the use of ultrafiltration to separate red grape juice into low and high color fractions. TTB does not consider the language change suggested by Wine Institute to be an editorial change, because the change would effectively allow the inclusion of molecular

weights of 500 and 25,000, which are currently not permitted and were not proposed to be allowed in Notice No. 164. TTB also did not propose in Notice No. 164 an increase to the transmembrane pressure from less than 200 psi to 500 psi. TTB believes further notice and comment on these proposed substantive changes is needed. TTB would consider requests from industry members under §§ 24.249 and 24.250 to use membranes that are selected for weights outside what is currently authorized and to increase the authorized limit on transmembrane pressure for ultrafiltration.

4. Use of Wood To Treat Natural Wine

TTB proposed a new 27 CFR 24.185 to maintain in one location all regulatory provisions pertaining to the treatment of wine with wood. Section 24.185(a) clarifies TTB's current policy that natural wine may be treated by contact with any wood that is consistent with the food additive requirements under the FD&C Act and that wood may be toasted, but not charred. Toasted wood refers to wood that has been heated but has not undergone combustion (that is, has not been burned or blackened).

Proposed § 24.185(b) states TTB's position on the use of wood essences and extracts in the production of wine. In the proposal, wood preparations made with an alcohol solution stronger than 24 percent alcohol by volume would be considered ''essences'' and must be used in accordance with § 24.85. Wood essences and extracts must be consistent with the food additive requirements of the FD&C Act for that purpose and could only be used in ''other wines'' in accordance with § 24.218.

TTB also proposed to remove the last sentence from § 24.225 (''Wooden storage tanks used for the addition of spirits may be used for the baking of wine'') and include it in the new § 24.185. Additionally, the proposal would remove the reference to oak chips from § 24.246 and include it in the new § 24.185.

Comment. In response to the proposals related to the use of wood to treat natural wine, Wine Institute expressed concern with the language in proposed § 24.185(a) ''that would not allow the use of charred barrels in winemaking.'' Wine Institute pointed to the standard of identity in TTB regulations for ''Bourbon whisky'', which requires use of charred new oak containers (see 27 CFR 5.22(b)(1)(i)) and to the longstanding use of bourbon barrels by both winemakers and brewers and requested ''equal regulatory treatment with respect to barrel requirements across all alcohol types and sectors.''

Wine Institute also noted that TTB did not propose language indicating how it will determine whether wood has been charred. Wine Institute noted that the proposed regulation would allow ''toasting'', which does not include ''undergoing combustion.'' Wine Institute refuted this by arguing that ''during the toasting process, minor blisters may occur on the wood, which can be significantly darker in color than the rest of the wood and thus suggests—inaccurately—that combustion has occurred.'' For this reason Wine Institute believed that a color test would be ''insufficient to determine if combustion, and thus charring, has occurred'' and asked TTB to clarify how it would ''identify improperly 'charred' wood containers.''

TTB response. TTB notes that, in part, the proposed change in Notice No. 164 regarding the treatment of wine with wood stems from current § 24.246, which authorizes the use of uncharred and untreated oak chips or particles to smooth wine. TTB proposed to liberalize the current restriction on the treatment of wine with wood by authorizing the use of any wood that is consistent with the food additive requirements under the FD&C Act (not just oak) and to allow wood that has been toasted to be used for the purpose of smoothing wine. It was not TTB's intent to indicate that used distilled spirits barrels that were charred prior to use for storage of distilled spirits could not be used to store wine. TTB has considered Wine Institute's comment and has determined that the proposed language in § 24.185 may cause confusion. TTB has also determined that the restriction on charred wood as a treatment for wine is no longer necessary because one concern with charred wood was that it may, depending on the amount of charring, remove color from wine. However, TTB regulations have for many decades authorized the use of activated carbon to remove color from wine. Accordingly, TTB is finalizing new § 24.185 as proposed, with the exception that charred wood that is consistent with the requirements under the FD&C Act may be used to treat natural wine. Also, if charred wood is used to treat wine, it cannot remove color from the wine. TTB is retaining the restriction that the wood must not be otherwise treated.

F. Wine Spirits

TTB proposed to amend § 24.225, which sets forth rules under which proprietors of a bonded wine premises may withdraw and receive spirits without payment of tax from the bonded premises of a distilled spirits plant and add the spirits to natural wine on bonded wine premises. The proposals included amendments to:

- Incorporate the terms of section 5373(a) of the IRC related to standards for the production of wine spirits (that is, spirits distilled from fresh or dried fruit, or the wine or wine residue therefrom), to clarify that natural wine or special natural wine to which sugar has been added after fermentation may not be refermented to develop alcohol from the added sugar and then used to produce wine spirits;
- Specify that wine spirits derived from special natural wine (that is, a wine produced from a base of natural wine and to which natural flavorings are added) may be used only in the production of a special natural wine if those spirits retain any flavor characteristics of the special natural wine; and
- Specify that spirits derived from authorized alcohol reduction treatments may be used as wine spirits, if such spirits are distilled at a rate of 100 degrees proof or more (rather than the general IRC standard of 140 degrees proof or more), and if the spirits conform to the other terms of section 5373(a) of the IRC.

TTB also proposed the following non-substantive technical amendments:

- Moving the sentence allowing the use of wooden storage tanks used for the addition of spirits for the baking of wine to a new § 24.185 that is related solely to the use of wood to treat natural wine; and
- Reorganizing the entire § 24.225 to improve readability and clarity.

Comment. Wine Institute agreed with the proposals set out in Notice No. 164 for § 24.225 and welcomed the ''use of clarifying and simplified language to amend the regulation.'' Wine Institute believed that TTB's proposal of allowing the byproducts of alcohol reduction to be used as wine spirits if they are 100 degrees proof or more ''will provide a useful opportunity for the by-products of the alcohol reduction process.'' Wine Institute also stated that it ''welcomes the clarifying language concerning wine spirits produced from special natural wine.''

TTB Response. TTB is finalizing all the amendments to § 24.225 as proposed in Notice No. 164. However, TTB is lowering the degrees of proof for which spirits byproducts of alcohol reduction processing deemed as wine spirits may be distilled from the proposed ''100 degrees of proof or more'' to ''not less than 90 degrees proof.'' As discussed in

the preamble of Notice No. 164, section 5373(a) of the IRC sets a general standard of 140 degrees of proof or above for wine spirits used in wine production but also provides exceptions for other wine spirits ''if regulations so provide.'' The IRC allows for regulations to provide for distillation at less than 140 degrees of proof, and TTB did not receive any comments objecting to its original proposal of ''100 degrees of proof or more.'' TTB has previously authorized experiments for the use of the byproduct of spinning cone column at 90 degrees of proof for use as wine spirits. Because of its experience with the experimental use of lower-proof byproducts of alcohol reduction methods, and because TTB believes the use of such byproducts are consistent with the intent of the IRC, TTB is incorporating the 90 degrees of proof rate into its regulations to provide winemakers greater flexibility in their winemaking processes.

G. Accidental Water Additions

TTB proposed to add what would have been a new 27 CFR 24.251, to provide for the correction of standard wine when the wine becomes other than standard wine due to accidental water additions in excess of the authorized levels provided for in 27 CFR part 24, subparts F and L. The proposed text set forth the authority and standards to allow for removal of accidental additions of water of not more than 10 percent of the original volume of the wine without the need to first seek TTB approval. The proposal also stated that the appropriate TTB officer could approve other removals of accidentally added water upon application by a proprietor and sets forth the requirements for submitting an application to TTB. It also specified that, in evaluating any request under this section, TTB may consider as a factor whether the proprietor has demonstrated good commercial practices, taking into account the proprietor's prior history of accidental additions of water to wine and of compliance with other regulations in part 24.

Comment: In its comment, the Wine Institute expressed its support for the proposal to allow for removal of accidental additions of water of not more than 10 percent of the original volume of the wine without the need to first seek TTB approval. It also agreed with ''the conditions of usage of reverse osmosis and distillation as outlined'' in the proposed regulations for the purpose of removing accidentally added water. However, Wine Institute pointed out that the regulations were proposed for ''new'' § 24.251, which already exists.

Additionally, Wine Institute expressed its support for language in proposed § 24.186(a), which provides that wine shall remain ''standard wine'' if water is accidentally added to standard wine in an amount that does not exceed 1 percent of the total volume of the wine, and the proprietor need not take any action to correct the wine. Wine Institute also suggested amending § 24.186(b), which allows for the correction of accidental water additions, to allow ''the addition of grape juice concentrate to correct an accidental dilution of grape wine.'' Wine Institute argued that since grape juice and grape juice concentrate is authorized to be added to standard wine (see 27 CFR 24.186), TTB should authorize the addition of grape juice and grape juice concentrate to wine that has been accidentally diluted with water. Wine Institute expressed its belief that water accidentally added can be completely or partially accounted for by an appropriate amount of juice concentrate because water is necessary to reconstitute juice concentrate back to original Brix. It argued that this approach eliminates the need for processing (such as reverse osmosis) that, according to Wine Institute, is expensive and can potentially impact the quality of the wine. Wine Institute further suggested that the process proposed in § 24.251 be used on a portion of the wine if concentrate does not fully account for the accidental water addition.

Clover Hill Winery expressed concern that the authority of removing accidentally added water from wine under the standards as proposed could be abused by winemakers to fortify wines by distilling ''slightly past the original concentration.'' With no record of this distillation, Clover Hill Winery stated ''there would be no red flags at the regulatory agencies and customers would be none the wiser.''

In its comment, the EU quoted the EU–US agreement [7] on wine in article 3, which provides that ''the term wine shall cover beverages which contain no added water beyond technical necessity.'' As stated in their comment, the ''EU considers adding water intentionally to wine products as fraud.'' They further noted, ''[I]n EU, any addition of water for facilitating the solution or dispersion of oenological products must be reported in a register held by the producer.'' It is for these reasons that the EU recommended that ''any accidental addition of water should be reported to the competent authority and duly recorded even if it is in the context of its subsequent removal.'' The EU further commented that ''the blending of a watered wine with a non-watered wine is not considered by EU as an acceptable solution to reduce the proportion of added water within the limit of 1 percent, this limit being accepted only in the context of the addition of water for facilitating solution or dispersion of oenological products.'' They also corrected a statement made in Notice No. 164 by stating that ''concentration techniques including reverse osmosis are allowed in EU for the enrichment of musts used to produce any category of wine under the conditions referred to in Annex VIII(I)(B)(1)(b) to regulation (EU) No 1308/2017.''

TTB Response. In Notice No. 164, TTB referenced having received requests to allow wine to be salvaged by blending the accidentally diluted wine with standard wine to reduce the level of unauthorized water addition to less than 1 percent of the volume of the blended wine. TTB also stated that it has not approved these requests because, in accordance with § 24.218, the accidental addition of water renders the wine an ''other than standard wine.'' Further, § 24.218 provides that other than standard wine must be segregated from standard wine, thus generally prohibiting the blending of other than standard wine with standard wine.

TTB proposed in new § 24.186 to permit the blending of other than standard wine with standard wine to reduce the amount of accidentally added water to 1 percent or less of the total volume of the blended wine. The intent was that the resulting wine would be considered to be standard wine.

In response to the comment received by the EU, TTB has reconsidered this proposal and is removing it from § 24.186 in this final rulemaking document. Accordingly, this final rule will not allow for the ''salvage'' of wine by blending the accidentally diluted wine (other than standard wine) with a standard wine. However, in response to the Wine Institute's suggestion of allowing the addition of juice concentrate to wine that has been diluted with water, TTB has added language to proposed § 24.251 (which is redesignated as § 24.252 in this document) that authorizes the salvage of wine that has been diluted with water by adding concentrate under certain conditions.

TTB is codifying these provisions in a new section, § 24.252. TTB originally proposed them in § 24.251. However,

[7] *https://www.ttb.gov/agreements/us-eu-wine-agreement.pdf.*

that section was added by a rulemaking subsequent to the publication of Notice No. 164. TTB notes that the provisions in § 24.252 only apply to wine that contains water in excess of the limits provided for standard wine in part 24 that was ''accidentally added,'' not ''intentionally.'' TTB also notes that the recordkeeping requirements in § 24.252 provide that the industry member retain records that document the accidental addition of water, the use of any treatment or process to remove the water from the wine, and the fact that only the amount of water that was accidentally added to the wine was removed as a result of the treatment or process. Because the regulations already address these matters, TTB does not believe that there is a need to amend the proposed regulations to further clarify that the water must be ''accidentally'' added in order to take advantage of the provisions of § 24.252, nor does TTB believe that additional recordkeeping requirements are necessary.

In response to Clover Hill Winery's comment, TTB notes that in general, wine spirits are authorized to be added to standard wine (see 27 CFR part 24, subpart K). It is unclear to TTB what is meant by ''distill slightly past the point of concentration.'' Currently, there are no labeling requirements in 27 CFR part 24 that require an industry member to indicate on the label of their product that it contains wine spirits. In fact, such practices are generally prohibited for wines that are required to be covered by a Certificate of Label Approval (COLA) under TTB's regulations in 27 CFR part 4.

Labeling concerns aside, the issue at hand is that alcohol that was removed from the permeate stream resulting from reverse osmosis is distilled and returned to the wine. As provided in the proposed regulations, the wine must be returned to its original condition by removing an amount of water equal to the amount that was accidentally added to the wine. ''Returned to its original condition'' includes alcohol content. TTB is adding clarifying language to the provisions of § 24.252 to address this issue.

H. Other Proposed Regulatory Amendments

In addition to the changes discussed previously, TTB Notice No. 164 included the following proposed regulatory amendments.

1. Technical Amendments to the List of Authorized Wine and Juice Treating Materials

i. General Amendments to § 24.246

TTB proposed numerous technical and clarifying changes to § 24.246. First, TTB proposed to amend the heading in paragraph (a) of § 24.246 to read ''Wine and juice'' rather than just ''Wine.'' TTB also proposed a number of technical changes to the table in § 24.246. A significant portion of these technical changes involve revising the measurement references specified for the limitation on use of the authorized wine treating materials by making the notation of units of measurement consistent throughout the chart, supplying closing parentheses where they were absent, and removing decimal points followed only by zeroes. In addition, where units were only in U.S. Common (English) units or SI (International Standard, or metric) units, TTB proposed adding the other unit of measure for reference purposes, where appropriate. Other technical changes in the proposed rule include: (1) Adding a footnote reference after each use of ppm and ppb in the chart to address parts per million and parts per billion, respectively; (2) including a definition of the word ''stabilize'' at the end of the chart; (3) adding a third column to the table in § 24.246 titled ''FDA reference'' to provide references to relevant FDA regulations in title 21 of the CFR, FDA GRAS Notices, and FDA advisory opinions; and (4) updating references to FDA opinions.

Comments. Wine Institute submitted the only comment specifically referencing the technical amendments to § 24.246. In its comment, Wine Institute expressed its support of TTB's proposal of ''expressing units first in U.S. common units and then in SI units'' for the specified limitations of use in the list of authorized wine and juice treating materials listed in § 24.246. Wine Institute ''appreciates the fact that the limits are expressed using both conventions'', and suggested ''that a common SI unit form, *i.e.* mg/L or g/L, be expressed wherever possible.'' Wine Institute argues that ''mg/L or g/L'' is a ''more correct from a scientific perspective than 'ppm' or 'ppb.' '' Wine Institute also stated that ''in some instances, limits are expressed in grams per hectoliter or similar; use of mg/L would be more consistent and more useful and relevant to the Industry.''

TTB Response. TTB is amending its regulations to add the appropriate SI unit to the specified limitations of use in the list of authorized wine and juice treating materials listed in § 24.246. TTB notes that many of the limitations in the table in § 24.246 include both common and SI units. Adding the actual SI units to the remaining limitations in the table, in addition to the footnote regarding the relationship between ppm or ppb and the common SI units, would not change the substance of the limitations and would be useful to industry members and provide consistency within the table.

ii. Activated Carbon

In the entry for activated carbon in § 24.246, TTB proposed to amend one of the entries in the ''Materials and use'' column for clarity by revising the phrase ''remove color in wine and/or juice'' to read ''remove color from wine and/or juice.''

Comments. Although Wine Institute stated that the simplified proposed language for activated carbon would assist in clarification, it was uncertain as to why a limit on the use of activated carbon is necessary, provided that the wine retains its vinous character after the decoloring process is complete. Instead, Wine Institute suggested GMP as an appropriate limit under the belief that ''[t]he need to limit color removal is unnecessary.''

TTB Response. TTB is finalizing its proposal for the entry for activated carbon in § 24.246, and notes that Notice No. 164 did not include a specific proposal to change the use rate of activated carbon. TTB intends to seek comment on the Wine Institute recommendation in separate rulemaking. As a result, TTB is not adopting the recommendation at this time, but will consider requests from individual industry members under §§ 24.249 and 24.250 to use different levels of activated carbon to remove color from juice and/or wine as needed.

iii. Ammonium Phosphate (*mono-* and *di-* basic)

TTB proposed to revise the name of the material to ''Ammonium phosphate/diammonium phosphate (*mono* and *di* basic)'' and place the entry under a new entry for ''Yeast nutrients'' in the table in § 24.246. (TTB also proposed a conforming change revising the name of the material in § 24.247.)

Comments. Wine Institute expressed its belief that the current use rate of ammonium phosphate ''is insufficient in certain circumstances.'' Wine Institute stated ''[a]n addition of 8lbs. DAP per 1000 gallons of juice results in an addition of approximately 200 mg/L of Nitrogen to the juice.'' Wine Institute referred to scientific articles (Butzke et

al. (U.C. Davis, 1998))[8] that suggested ''[i]n juices with high Brix levels, . . . as much as 350 mg/L of Nitrogen will be required for a healthy fermentation, thus it is possible that if the high Brix juice is naturally deficient in Nitrogen, then an addition of 8lbs/1000 gallons may be insufficient.''

In her comment, Heather Nenow expressed her concern that the current authorized use rate of ammonium/diammonium phosphate at 8 pounds per 1000 gallons of wine is insufficient to finish fermentation with grapes grown in certain regions of the country. Ms. Nenow referred to uncited studies that indicate yeast-assimilable nitrogen of 250 to 350 ppm is required to finish fermentation. According to Ms. Nenow, 1 pound of diammonium phosphate added to juice provides 22 ppm of yeast-assimilable nitrogen. With a limit of 8 pounds per 1000 gallons for addition of diammonium phosphate, the maximum increase of yeast-assimilable nitrogen the winemaker can add is 176 ppm, which is well below the 250-to-350 ppm of yeast-assimilable nitrogen that Ms. Nenow indicated is necessary to complete fermentation. She recommended a use rate for diammonium phosphate of 15 pounds per 1000 gallons of wine.

TTB Response. TTB is revising the name of the material to ''Ammonium phosphate/diammonium phosphate (*mono* and *di* basic)'' and adding it to the new entry ''Fermentation aid'' in the table in § 24.246 (as noted above, for clarity, TTB is replacing the term ''Yeast nutrients'' with the term ''Fermentation aids'' in the regulations). TTB notes that it has not yet received requests from winemakers to use ammonium phosphate at levels higher than proposed. TTB plans to include this recommendation in separate rulemaking in relation to Wine Institute's recommendation of GMP.

iv. Casein, Potassium Salt of Casein

In the ''Specific limitation'' column, TTB proposed to remove the references to FDA's GRAS opinions. The opinions were from 1960 and 1961, and copies were no longer available from either TTB or FDA.

Comments. The 11 submitters of the form letter stated that casein, which is currently authorized for use to clarify wine under § 24.246, should also be authorized for use in grape juice. They argued that the use of casein in juice is as effective as its use in wine. They further stated that ''[m]any winemakers choose to use fining products on juice in preference to wine as the process is more efficient and ha[s] less impact on resultant wine flavor.''

TTB Response. TTB notes that it has not received applications from winemakers submitted under § 24.250 for the approval of the use of casein as a clarifying agent for juice. As a result, TTB did not propose to extend its authorized use to include juice in Notice No. 164. TTB believes that additional notice and opportunity for comment is necessary, and plans to include this recommendation in separate rulemaking. Thus, TTB is not authorizing the use of casein in grape juice in the production of wine at this time, but will consider requests from individual industry members under §§ 24.249 and 24.250 for the use of casein as a treatment material for grape juice.

v. Technical Amendments to Other Specific Wine Treating Materials

TTB also proposed to make the following technical changes to the current entries in the table in § 24.246:

- Albumen. In the ''Specific limitation'' column, TTB proposed to revise the words ''of solution'' in the second sentence to read ''of wine.''
- Calcium carbonate. In the ''Materials and use'' column, TTB proposed to add the abbreviation ''$CaCO_3$'' to the material name, to revise the phrase ''and juice'' to read ''or juice'' in the first use entry, and to revise the phrase ''A fining agent'' to read ''As a fining agent'' in the second use entry.
- Citric acid. In the ''Materials and use'' column, TTB proposed revising the phrase ''deficiencies in wine'' to read ''deficiencies in juice and wine.''
- Copper sulfate. In the ''Specific limitation'' column, TTB proposed to revise the phrase ''sulfate added (calculated as copper)'' to read ''sulfate (calculated as copper) added to wine.''
- Dimethyl dicarbonate. For purposes of clarity, in the ''Materials and use'' column, TTB proposed to add the abbreviation ''(DMDC)'' after the material name and also proposed to remove the phrases ''dealcoholized wine'' and ''low alcohol wine'' from the entry to reduce redundancy.
- Ferrocyanide. TTB proposed to remove ''ferrocyanide'' from the list of authorized wine treating materials because TTB believes that ferrocyanide compounds are no longer available on the United States market and no longer being used by the U.S. wine industry.
- Milk products. Because milk products are currently approved for use as fining agents in all wines, TTB proposed to remove the phrase ''Fining agent for grape wine or sherry.'' TTB believes this phrase may cause confusion because under the standards of identity in § 4.21(a), sherry is a grape wine.
- Oxygen and compressed air. In the ''Materials and use'' column, TTB replaced the words ''May be used in juice and wine'' with the words ''Various uses in juice and wine.''
- Polyvinylpolypyrrolidone (PVPP). In the ''Materials and use'' column, TTB proposed removing the phrase ''black wine'' because this term for a very dark red wine is no longer commonly used by industry members; the material will still be allowed in red wines, which covers so-called ''black wines.''
- Sorbic acid and potassium salt of sorbic acid. In the ''Materials and use'' column, TTB proposed adding the words ''potassium sorbate'' in parentheses immediately after the material name because ''potassium salt of sorbic acid'' is commonly referred to as ''potassium sorbate.''
- Sulfur dioxide. TTB proposed to correct the entry for sulfur dioxide to include its use in juice.
- Thiamine hydrochloride. TTB proposed to move the material thiamine hydrochloride under a new heading, ''Yeast nutrients.''

Comments. In its comment, Wine Institute agreed with the proposed clarifying changes for albumen, ammonium phosphate (mono- and di basic), calcium carbonate, casein, citric acid, copper sulfate, dimethyl dicarbonate, ferrocyanide compounds, milk products, oxygen and compressed air, polyvinylpolypyrrolidone (PVPP), sorbic acid, sulfur dioxide, and thiamine hydrochloride.

TTB Response. This rule will finalize the technical changes to albumen, calcium carbonate, citric acid, copper sulfate, dimethyl dicarbonate, ferrocyanide compounds, milk products, oxygen and compressed air, polyvinylpolypyrrolidone (PVPP), sorbic acid, sulfur dioxide, and thiamine hydrochloride as proposed in Notice No. 164.

2. Application for Use of New Treating Material or Process

TTB proposed a technical amendment to clarify the requirements in § 24.250 for applications for use of new wine treating materials or processes. The amendment would require evidence that the proposed material is ''consistent with the food additive requirements under the FD&C Act for its intended purpose in the amounts proposed for the particular treatment contemplated.'' TTB believes the proposed language is

[8] Butzke, C.E. 1998. Survey of yeast assimilable nitrogen status in musts from California, Oregon and Washington. American Journal of Enology and Viticulture. 49(2):220–224.

clearer than the current language which requires proof of FDA ''approval of the material.'' TTB received no comments specifically related to this proposed amendment. Therefore, TTB is adopting the amendment as proposed in Notice No. 164 as final.

I. Other Issues for Public Comment and Possible Regulatory Action Discussed in Notice No. 164

In Notice No. 164, TTB invited public comments on a number of additional potential changes to part 24. Most of these issues had been raised in petitions for rulemaking or arose in connection with wine treatment approval requests under § 24.249 or § 24.250. The issues in question, and the specific points on which TTB requested public comments, are outlined below.

1. Alcoholic Oak Extract

In 2008, Oak Tannin Technologies submitted a petition to amend the TTB regulations to allow ''alcoholic oak extracts for use in natural wines as a stabilizing, enriching and integrating agent.'' The petitioner stated that use of such extracts in wine is approved by the South African Wine and Spirit Board. However, TTB and its predecessor agencies' longstanding policy has been to treat such materials as essences or extracts, which, under § 24.85, may be used only in the production of formula wines [9] except agricultural wine.[10]

In Notice No. 164, TTB sought comments regarding the use of an alcoholic oak extract in the production of natural wines, in particular, as a material for use as a wine stabilizer, but also for any other purpose that is consistent with good commercial practice. TTB also advised that a manufacturer of alcoholic oak extract must contact FDA and go through the FDA pre-market review process.

Comment. In its comment, Clover Hill Winery indicated its support for the use of alcoholic oak extract in the production of standard wines because it ''may be beneficial to smaller wineries.'' However, they also expressed concern that the authorized use of alcoholic oak extract in standard wine would detract ''from the individuals who take time to age in barrels or with oak substitutes.'' To resolve this concern and dispel possible consumer confusion, Clover Hill Winery offered a ''middle ground'' suggestion, which would include a statement on the label indicating whether or not wine was aged in oak or with alcoholic oak.

TTB Response. TTB appreciates Clover Hill Winery's comment and will take it into consideration in any future decisions regarding the use of alcoholic oak extract. TTB notes that as of the date of this document, the use of alcoholic oak extract as a stabilizing, enriching, and integrating agent has not gone through the FDA pre-market review processes. Therefore, TTB is not amending its regulations to allow the use of alcoholic oak extract at this time.

2. Lactic Acid

In 2007, Hyman, Philips, & McNamara, P.C. petitioned TTB to amend §§ 24.182 and 24.246 to allow use of lactic acid in juice, must, and wine prior to fermentation. Lactic acid is most commonly found in dairy products and is a common component in both plant and animal metabolic processes. Under § 24.246, lactic acid is currently authorized for use in grape wine to correct natural acid deficiencies. In the table in § 24.246, the entry in the ''Reference or limitation'' column for lactic acid simply provides a citation to 27 CFR 24.182 and 24.192. Section 24.192 refers back to the limitations on the use of acid, among other things, prescribed in § 24.182. The regulations in § 24.182 state that acids of the kinds occurring in grapes or other fruit (including berries) may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies. Section 24.182 also states that, after fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid, or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies. The petitioner noted that lactic acid is currently allowed by § 24.246 for treatment of wine after fermentation and provided evidence that certain other countries allow the addition of lactic acid before fermentation. Further, the petitioner noted that lactic acid is less expensive and more reliably available than tartaric acid.

In Notice No. 164, TTB did not propose any changes to the regulations concerning the use of lactic acid. However, TTB invited comments regarding whether or not the use of lactic acid prior to fermentation is good commercial practice in the production of natural wine.

Comments. Wine Institute noted that L(+) tartaric acid, malic acid, citric acid, and lactic acid are commonly grouped together in the regulations of other wine producing countries as allowed for acidification purposes. Wine Institute thus suggested that the limitation on use of lactic acid be expanded to allow its use in both juice and wine.

TTB Response. TTB's understanding of Wine Institute's comment is that it was responding to the request for comment in support of allowing the use of lactic acid for use prior to fermentation of natural wine. TTB believes that the Wine Institute's suggestion would benefit from additional public comment and plans to include it in a separate rulemaking document. TTB would also consider requests from individual industry members under §§ 24.249 and 24.250 for the use of lactic acid in juice prior to fermentation.

3. Reverse Osmosis To Enhance the Phenol Flavor and Characteristics of Wine and To Reduce the Water Content of Standard Wine

Section 24.248 currently provides for the use of reverse osmosis to reduce the ethyl alcohol content of wine and to remove off flavors in wine. In 2014, Constellation Wines U.S. Inc. (Constellation) submitted a petition to TTB requesting an expansion of the authorized uses of reverse osmosis in § 24.248 to include: (1) improving the phenol and flavor character of wine; and (2) reducing the water content in standard wine. In Notice No. 164, TTB invited comments on whether the use of reverse osmosis to reduce the water content of wine, improve the phenol and flavor character of wine, or to improve the sensory quality of the wine would be acceptable in good commercial practice. TTB did not, however, propose any amendments to add these uses to the list of authorized uses for reverse osmosis.

TTB stated that if commenters believed that the use of reverse osmosis for these purposes is consistent with good commercial practice, their comments should explain their position in detail, as well as provide guidelines/standards concerning how much water (maximum percentage) may be removed. If commenters believed that the use of reverse osmosis for these purposes is not consistent with good commercial practice, their comments should explain their position in detail.

Comments. In its comment, Wine Institute expressed strong support for the use of reverse osmosis as described in Notice No. 164. It stated that this process ''is consistent with good commercial practice'' and suggested that it be added to the list of allowable uses for reverse osmosis. Wine Institute

[9] 27 CFR 24.10 defines ''formula wine'' as ''Special natural wine, agricultural wine, and other than standard wine (except for distilling material and vinegar stock) produced on bonded wine premises under an approved formula.''

[10] 27 CFR 24.10 defines ''agricultural wine'' as ''Wine made from suitable agricultural products other than the juice of grapes, berries, or other fruit.''

stated that the practice of using reverse osmosis to improve the phenol flavor and character of wine and reduce the water content of wine ''is allowed in other wine producing countries such as Australia and New Zealand,'' and argued that ''the lack of ability in the U.S. to use the technology in the proposed manner places the U.S. Industry at a significant competitive disadvantage.'' Wine Institute further stated ''Australia and New Zealand do not set limits on the amount of water that can be removed.'' Rather than setting a numerical use rate on the reverse osmosis for the proposed uses, Wine Institute stressed its desire to base a use rate/limitation on the resultant wine needing to retain vinous character.

In his comment, Coleman Reardon also expressed support for the use of reverse osmosis as requested by Constellation. Mr. Reardon argued that the concentration of standard wine via reverse osmosis would result in wine producers using more grapes in the production of wine, which would benefit grape growers. He also stated that ''[i]ncluding less water in the production of wine would also inherently increase the flavor of wine's other ingredients and characteristics.'' Mr. Reardon further argued that the U.S. is at an international disadvantage by not allowing the proposed use of reverse osmosis because such practice is authorized in some other countries.

In his second comment to Notice No. 164, Dr. Robert Kreisher opposed the proposed use of reverse osmosis and disagreed with Constellation's assertion that wine resulting from reverse osmosis to improve the phenol flavor and character of wine and reduce the water content ''is considered to be standard wine but with reduced levels of alcohol and water.'' Dr. Kreisher stated that Constellation's assertion was incorrect because, under current regulation, the concentration of wine via reverse osmosis is not authorized and, therefore, such a practice does not result in a standard wine.

Dr. Kreisher also argued that Constellation's statement that concentration of wine via reverse osmosis will result in ''reduced levels of alcohol and water'' is inaccurate. Dr. Kreisher indicated that concentration of wine cannot result in both a reduction of alcohol and water. He stated that reverse osmosis passes water (through a membrane) preferentially to alcohol and thus reduces water content, while concentrating (increasing) alcohol in the wine. Therefore, the alcohol in the retentate, *i.e,* ''wine'', is increased.

Dr. Kreisher also refuted Constellation's assertion ''that many foreign countries permit the use of reverse osmosis as an acceptable winemaking practice to concentrate phenols and flavors in wine and in grape must'' and that ''[t]he expanded use of reverse osmosis would provide winemakers with better ability to regulate the alcohol content of wines.'' He argued that the alcohol content of wine would only be regulated upward when reverse osmosis is used and further indicated that the claim that foreign countries authorize such practices is incorrect.

Finally, Dr. Kreisher argued that the prohibition on the concentration of wine to improve phenolic flavor and character and to reduce the water content does not subject anyone to unfair competition because wine produced with the use of such practices ''may not be sold in any major market, including the U.S.'' Dr. Kreisher stated ''[t]his isn't unfair, it's parity.''

In her comment, Alice Feiring opposed the proposed use of reverse osmosis, stating that such a practice would be used ''to cover up sloppy and unclean winemaking.''

TTB Response. TTB has decided not to set out regulations pertaining to this issue in this rulemaking. However, TTB will consider seeking additional comment in separate rulemaking.

4. Ultrafiltration To Separate White Grape Juice

In Notice No. 164, TTB discussed an industry member's request to use ultrafiltration to separate white grape juice that had darkened due to oxidation during storage into high and low color fractions for blending purposes. The low color fraction would be blended with white wine, and the high color fraction would be blended with red wine. TTB sought comment on whether the use of ultrafiltration to separate discolored wine for blending would be acceptable in good commercial practice. In its request for comment, TTB stated that a comment should explain in detail the commenter's position as to why the use of ultrafiltration in this manner is or is not acceptable in good commercial practice.

Comments. In its comment, E&J Gallo Winery (Gallo) acknowledged that TTB's request for comments on this matter was in response to a request the agency received from Gallo. Gallo responded that ''ultrafiltration should be permitted to be used for both discolored white grape juice and discolored white wine.'' In support of its position, Gallo noted that ''unprocessed discolored white grape juice and/or discolored white wine can currently be blended with red grape juice and/or red grape wine without any limitations.'' It further argued that ''[u]sing a processing step to separate white juice into color fractions should not alter where it can subsequently be used as is currently allowed today.''

In his second comment in response to Notice No. 164, Dr. Robert Kreisher expressed support for extending the authorized use of ultrafiltration to separate discolored white wine. He further argued that the use of ultrafiltration gives winemakers greater control over the wine they produce.

TTB Response. Because TTB did not receive any negative comments in its request for comments, the agency is authorizing the use of ultrafiltration to separate white grape juice into low and high color fractions.

5. Additional Yeast Nutrients

In 2007, TTB received a petition from Gusmer Enterprises Inc. (Gusmer) requesting approval of eight vitamins and minerals for use as yeast nutrients in the production of wine—cobalamin (vitamin B12), iodine (potassium iodide), iron, manganese sulfate, nickel, potassium chloride, riboflavin (Vitamin B2), and zinc sulfate. Prior to the publication of Notice No. 164, TTB had not administratively approved these vitamins and minerals under § 24.250. In Notice No. 164, TTB sought comments supporting or rejecting the argument that the use of these vitamins and minerals as yeast nutrients in the production of wine is consistent with good commercial practice.

Comments. In response to TTB's request for comment on the eight vitamins and minerals, Wine Institute said that it has ''no position on whether any of the other materials identified in the Gusmer Enterprises, Inc. petition should be approved as authorized wine treatment materials.''

In its comment, Beverage Supply Group stated support for Gusmer's petition, specifically the use of zinc sulfate and manganese sulfate as yeast nutrients. Beverage Supply Group expressed their belief that the use of zinc sulfate and manganese sulfate is consistent with good commercial practice and also provided scientific data that they believe supports allowing the use of these two materials as yeast nutrients.

TTB Response. TTB did not receive comments supporting the addition of cobalamin (vitamin B12), iodine (potassium iodide), iron, nickel, potassium chloride, and riboflavin (vitamin B2), to the list of authorized wine and juice treating materials in § 24.246. TTB also has not had an opportunity to analyze wine or juice

treated with these substances. Accordingly, TTB does not believe it has enough information to add these vitamins and nutrients to the list of authorized wine and juice treating materials at this time. However, TTB would consider requests from individual industry members under the procedures of §§ 24.249 and 24.250 for use of any of these materials to aid in the fermentation of wine.

6. Comments on Matters on Which TTB Did Not Seek Comments

i. Flowers and Botanical Wines

Comment. In her comment, Samantha Hunter asked TTB to ''highlight'' flower and botanical wines to ''preserve historical methodologies and treatments in [w]inemaking.'' Ms. Hunter further suggested that TTB add ''flowers or botanicals'' to the definition of ''essences.'' She also suggested that TTB amend its regulations pertaining to ''other wine'' to allow wine to be made ''by blending wines or co-fermenting flowers with fruits or, juice.''

TTB Response. TTB notes that wine made with flowers, such as dandelions, are considered ''agricultural wines'' under its regulations in 27 CFR part 24, subpart I. Wine derived from flowers may be blended with wine made from fruit; TTB considers this type of wine to be an ''other than standard wine.'' TTB will propose clarifying language to resolve this issue in future rulemaking. With regard to adding flowers and botanicals to the regulations pertaining to essences, TTB will consider this issue for future rulemaking.

ii. Malolactic Bacteria

Comments. In their form letter, 11 commenters notified TTB that the type of malolactic bacteria authorized by § 24.246 (*Leuconostoc oenos*) for use in wine is no longer current. The commenters cited a scientific article which proposes assigning *Leuconostoc oenos* to a new genus, *Oenococcus oeni.* The 11 commenters, who are mostly winemakers, stated that *Oenococcus oeni* ''was adopted by the wine industry and the U.S. regulations should be updated to reflect that.'' The 11 commenters also expressed concern over competing with wines produced in other countries because those producers are authorized to use other types of malolactic bacteria, such as those belonging to *Leuconostoc, Lactobacillus,* and *Pediococcus* genus. They believed that this creates an unfair trade advantage for wines produced in other countries and stated that ''[a]ligning the designation of the authorized bacteria with current OIV standards as outlined in document OIV–Oeno 328–2009, Oeno 494–2012 (*https://www.oiv.int/public/medias/4054/e-coei-1-balact.pdf*) would provide U.S. wine producers with relative competitive equality in all trade markets.''

In his comment, Richard Gahagan stated that he does not believe that malolactic fermentation should be limited to *Leuconostoc oenos.* He stated that ''taxonomists have reclassified this organism to *Oenococcus oeni* (Dicks, Dellaglio and Collins (1995).'' He also stated that researchers from University of California Davis isolated three genera of lactic acid bacteria (*Lactobacillus, Leuconostoc,* and *Pediococcus*) from California wine (references to scientific articles were provided).

TTB Response. TTB is amending its regulations to add the name *Oenococcus oeni* as a synonym for *Leuconostoc oenos.* TTB has considered these comments and notes that the agency received several requests in the past to experiment with a different type of malolactic bacteria than that which is authorized for use in § 24.246, namely, *Lactobacillus plantarum.* In the responses to these previous requests, TTB stated that although the use of *Leuconostic oenos* as a stabilizing agent in wine is considered GRAS by FDA, the Bureau has been unable to ascertain that *Lactobacillus plantarum* is likewise considered GRAS by FDA. Therefore, TTB did not approve commercial use of *Lactobacillus plantarum.* In 2021, FDA did evaluate *Lactobacillus plantarum* in GRAS Notice No. GRN 000953, but only for use in ''conventional foods, such as yogurt and other dairy products, soy products, chewing gum, and confectionary snacks.'' Alcohol beverages were not among the uses evaluated. As a result, TTB is still not approving commercial use of *Lactobacillus plantarum* in wine.

TTB has not received requests to experiment with malolactic bacteria belonging to the genera *Leuconostoc, Lactobacillus,* or *Pediococcus.* Further, because these types of malolactic bacteria were not discussed in the proposed rule, the public has not had the opportunity to review a proposal on this matter. Accordingly, TTB is not incorporating the commenters' recommendations in this final rule but plans to include them in future rulemaking.

iii. Pea Protein

Comments. The 11 submitters of the form letter, in addition to the Wine Institute and Erbslöh Geisenheim (in its first comment), all commented that they support the addition of pea protein to the list of authorized wine and juice treating materials in § 24.246 as a source of plant protein. It is TTB's understanding that pea protein is intended to be used as a clarifying material. The 11 submitters of the form letter stated that: ''Current US regulations provide unfair trade advantage for non-US wine producers in both domestic and international markets.'' The Wine Institute's comment agreed with this assertion. The 11 commenters further argued that pea protein should be in the list of authorized treating materials because TTB has received ''multiple'' submissions from wineries requesting experimentation under § 24.246.

TTB Response. Since the publication of Notice No. 164, TTB has administratively approved the use of pea protein as a fining agent and to remove off flavors from wine and juice. Because TTB did not propose pea protein for such uses in Notice No. 164, the public has not had sufficient opportunity to comment. TTB is not adding pea protein to the list of approved treating materials in § 24.246 at this time but will include it in a future rulemaking document.

iv. Potassium Polyaspartate

Comment. In its comment, the Wine Institute suggested that TTB consider the addition of potassium polyaspartate to the list of approved materials. It stated that ''potassium polyaspartate has recently been approved for use in winemaking in the European Union as a tartrate stabilization tool, similar to CMC.''

TTB Response. TTB understands that the potassium polyaspartate that the Wine Institute is recommending for addition to the authorized list of wine treating materials is ''potassium polyaspartate A–5D K/SD.'' Since the publication of Notice No. 164, the FDA has evaluated potassium polyaspartate for use as a wine stabilizer (see GRAS Notice No. GRN 000770) and TTB has administratively approved its use to stabilize wine by preventing tartrate crystal precipitation. However, because Notice No. 164 did not include a proposal to add this material to the authorized list of wine treating materials, TTB believes the public needs an opportunity to comment. TTB plans to include potassium polyaspartate in a separate rulemaking document.

v. Use of Spinning Cone Column for Adding the Original Water Back to Wine

Comment. In its comment, ConeTech argued that the ''Reference or limitation'' column for spinning cone column in § 24.248 should be amended to allow for addition of the original

water that was removed via spinning cone column back to the wine, with the resulting wine being considered standard wine. ConeTech supplied arguments in its comments for the addition of this proposal to the final rule.

TTB Response. TTB administratively approved the process proposed by ConeTech subsequent to the publication of Notice No. 164. Because TTB has not aired this proposal for public comment, it is not incorporated in this final rule, but TTB plans to include it in a separate rulemaking document.

vi. Use of Spinning Cone Column on Winery Premises

Comment. In its comment, Clover Hill Winery recommended that TTB authorize the use of spinning cone column for purposes of alcohol reduction on winery premises rather than requiring it be used on a distilled spirits plant premises.

TTB Response. Spinning cone column is considered to be a distillation process. In general, statutory requirements require that distillation processes take place on distilled spirits plant premises. Therefore, TTB is not authorizing the use of spinning cone column on winery premises.

vii. Thin-Film Evaporation

Comment. In its comment, Wine Institute suggested that TTB authorize the use of thin-film evaporation to separate juice into low Brix and high Brix fractions. It claims that such an authorization ''would conform the allowable use of Thin-film evaporation to the allowable use of thermal gradient processing.''

TTB Response. Because TTB did not air this proposal for public comment in Notice No. 164, it is not incorporated in this final rule, but TTB plans to include it in a separate rulemaking document.

Regulatory Analysis and Notices

Executive Order 12866

It has been determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that these final regulations will not have an economic impact on a substantial number of small entities. This final rule provides for the voluntary use of additional wine and juice treating materials and processes in the production of wine. This authorization does not impose any required change to current winemaking practices, nor does it impose additional compliance burden on small businesses. TTB authorizes new wine treating materials and processes by evaluating proprietors' requests to experiment with such materials and processes, such requests being made via application to TTB. This rule allows for certain treatments, under limited circumstances, without the submission of an application to TTB. TTB estimates that the regulation will reduce the number of respondents by approximately 10 applicants per year, thus slightly reducing the overall burden of the information collection.

In addition, TTB currently requires wineries to maintain usual and customary business records. Included in these records are those records that evidence the details and results of experiments approved by TTB under § 24.249. This recordkeeping requirement remains unchanged by this rule as wineries subject to part 24 still will be required to maintain those usual and customary records.

Pursuant to section 7805(f) of the IRC (26 U.S.C. 7805(f)), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Paperwork Reduction Act

Regulations in this document contain current collections of information that have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0057, titled ''Letterhead Applications and Notices Related to Wine (TTB REC 5120/2),'' and 1513–0115, titled, ''Usual and Customary Business Records Relating to Wine (TTB REC 5120/1).'' Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

In conjunction with Notice No. 164, TTB submitted revisions to OMB control numbers 1513–0057 to OMB for review. That revision accounted for the anticipated reduction in the number of respondents as a result of the proposal to no longer require proprietors to submit an application to TTB prior to correcting accidentally diluted wine. The proposal was included in Notice No. 164 and is adopted as final in this document. The revision and its connection to the proposed regulatory amendments are described in detail in Notice No. 164, which also solicited comments regarding the information collection revision. TTB received no comments in response to the revision, which OMB has now approved.

Administrative Procedure Act

TTB finds good cause under 5 U.S.C. 553(d)(3) to dispense with the effective date limitation in 5 U.S.C. 553(d)(3). A 30-day delayed effective date is unnecessary because the regulatory changes in this final rule that authorize the use of wine treating materials are optional, and making the changes effective immediately upon publication will give wineries the option of using these newly-approved materials and processes as soon as possible.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

Amendments to the Regulations

For the reasons discussed above in the preamble, TTB amends 27 CFR part 24 as follows:

PART 24—WINE

■ 1. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 24.10 is amended by:
■ a. Removing the number ''60'' in the definition of ''Brix'' and adding, in its place, the number ''68''; and
■ b. Revising the definition of ''Wine spirits''.

The revision reads as follows:

§ 24.10 Meaning of terms.

* * * * *

Wine spirits. Brandy or wine spirits authorized under 26 U.S.C. 5373 and § 24.225 for use in wine production.

§ 24.85 [Amended]

■ 3. Section 24.85 is amended by:
■ a. In the first sentence adding the word ''wood,'' after the word ''berries,''; and
■ b. Removing the parenthetical authority citation at the end of the section.

■ 4. Section 24.185 is added to read as follows:

§ 24.185 Use of wood to treat natural wine.

(a) *Treatment by contact.* Natural wine may be treated with any wood that is consistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act. The wood may be in the form of barrels, staves, chips, particles, or storage tanks that were used for the addition of wine spirits if the tanks are used for the baking of wine. The wood may be toasted (that is, heated to low, medium, or high, temperature without undergoing combustion), or charred and the wood must not be otherwise treated. If wine is treated with charred wood, the wood may not remove color from the wine.

(b) *Use of wood essences and extracts.* A proprietor may make or purchase for blending purposes wine that has been heavily treated with wood; however, wood preparations made with an alcohol solution stronger than 24 percent alcohol by volume are essences and must be used in accordance with § 24.85. Wood essences and extracts must be consistent with the requirements of the Federal Food, Drug, and Cosmetics Act for that purpose and may be used only in ''other wine'' in accordance with § 24.218. This paragraph (b) applies to liquid extracts and essences and to the extracts and essences in powder form or dissolved in water after the solvent has been evaporated.

(c) *Use of wooden storage tanks.* Wooden storage tanks used for the addition of spirits may be used for the baking of wine.

■ 5. Section 24.186 is added to read as follows:

§ 24.186 Accidental additions of water.

(a) *Accidental additions of water totaling 1 percent or less of the volume of standard wine.* When in the production, storage, treatment, or finishing of standard wine, water is accidentally added to a standard wine in an amount that does not exceed 1 percent of the total volume of the wine, such wine shall remain standard wine and the proprietor need not take any action to correct the wine.

(b) *Correction of accidental additions of water.* When in the production, storage, treatment, or finishing of standard wine water is accidentally added to a standard wine in an amount that exceeds 1 percent of the volume of the wine, such wine may be corrected by removal of the accidentally added water from the wine in accordance with § 24.252.

■ 6. Section 24.225 is revised to read as follows:

§ 24.225 Production and use of spirits.

(a) *Withdrawal of spirits.* The proprietor of a bonded wine premises may withdraw and receive wine spirits without payment of tax from the bonded premises of a distilled spirits plant for use as provided in this section.

(b) *Production and use of wine spirits*—(1) *In general.* The only products considered to be wine spirits authorized for use in wine production under this section are brandy or wine spirits produced in a distilled spirits plant (with or without the use of water to facilitate the extraction and distillation) exclusively from:

(i) Fresh or dried fruit or their residues;

(ii) Natural wine or wine residues from fresh or dried fruit, including spirits byproducts of authorized wine treatments to reduce alcohol; or

(iii) Special natural wine. If wine spirits produced from special natural wine contain any flavor characteristics of the special natural wine, those wine spirits may be used only in the production of a special natural wine.

(2) *Distillation proof requirements.* The proof of wine spirits at distillation must not be reduced by the addition of water. In addition, a product is not considered to be wine spirits if it is distilled at less than 140 degrees of proof except in the following cases:

(i) Commercial brandy aged in wood for a period of not less than 2 years, and barreled at not less than 100 degrees of proof, shall be deemed wine spirits for purposes of this section; and

(ii) Spirits byproducts of alcohol reduction processing authorized under § 24.248 that are produced at a distilled spirits plant and distilled, if necessary, at not less than 90 degrees of proof shall be deemed wine spirits for purposes of this section.

(3) *Addition of sugar after fermentation.* When, in the production of natural wine or special natural wine, sugar has been added after fermentation, the wine may not be refermented to develop alcohol from such added sugar and then used in the production of wine spirits.

(4) *Addition of wine spirits to natural wine.* (i) Wine spirits produced in the United States may be added to natural wine on bonded wine premises if both the wine and the spirits are produced from the same kind of fruit.

(ii) In the case of natural still wine, wine spirits may be added in any State only to wine produced by fermentation on bonded wine premises located within the same State.

(iii) If wine has been ameliorated, wine spirits may be added (whether or not wine spirits were previously added) only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation.

(c) *Spirits other than wine spirits.* Spirits other than wine spirits may be received, stored, and used on bonded premises only for the production of nonbeverage wine products.

■ 7. Section 24.246 is revised to read as follows:

§ 24.246 Materials authorized for the treatment of wine and juice.

(a) *Wine and juice.* Materials used in the process of filtering, clarifying, or purifying wine may remove cloudiness, precipitation, and undesirable odors and flavors, but the addition of any substance foreign to wine that changes the character of the wine, or the abstraction of ingredients so as to change the character of the wine, if not consistent with good commercial practice, is not permitted on bonded wine premises. The materials listed in this section are approved as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine and, where applicable, in the treatment of juice, within the ''Specific TTB limitation'' of this section and subject to the following conditions:

(1) If the U.S. Food and Drug Administration (FDA) informs TTB that a specified use or limitation of any material listed in this section is inconsistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act, the appropriate TTB officer may cancel or amend the approval for use of the material in the treatment of wine and juice in the production, cellar treatment, or finishing of wine; and

(2) Where water is added to facilitate the solution or dispersal of a material, the volume of water added, whether the material is used singly or in combination with other water-based treating materials, may not total more than 1 percent of the volume of the treated wine or juice, or of both the wine and the juice, from which the wine is produced.

(b) *Use in combination or in multiple lots.* Subject to the conditions specified in paragraph (a) of this section, a proprietor may use the materials listed in this section in combination, provided that each material is used for its specified use and in accordance with any limitation specified for that use. If a proprietor uses several lots that contain the same material, it is the proprietor's responsibility to ensure that

the cumulative amount of the material does not exceed the limitation specified in this section for that material.

(c) *Formula wine.* In addition to the materials listed in this section, other materials may be used in formula wine if approved for such use.

TABLE 1 TO PARAGRAPH (c)—MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Acacia (gum arabic): To clarify and stabilize [1] wine.	The amount used must not exceed 16 pounds per 1,000 gallons (1.9 g/L) of wine.	21 CFR 184.1330.
Acetaldehyde: For color stabilization of juice prior to concentration.	The amount used must not exceed 300 ppm (300 mg/L), and the finished concentrate must have no detectable level of the material.[2].	FDA advisory opinion dated September 8, 2016.
Activated carbon:		
To assist precipitation during fermentation	27 CFR 24.176	FDA advisory opinion dated September 8, 2016, which states that the activated carbon must meet the specifications in the Food Chemicals Codex and be removed from the wine.
To clarify and purify wine	The amount used to clarify and purify wine must be included in the total amount of activated carbon used to remove excessive color from wine and/or juice. 27 CFR 24.241 and 24.242.	FDA advisory opinion dated January 26, 1979, which states that the activated carbon must meet the specifications in the Food Chemicals Codex and be removed from the wine.
To remove color from wine and/or juice from which wine is produced.	The amount used to treat the wine, including the juice from which the wine was produced, must not exceed 25 pounds per 1000 gallons (3 g/L). If the amount necessary exceeds this limit, a notice is required pursuant to 27 CFR 24.242.	FDA advisory opinion dated January 26, 1979, which states that the activated carbon must meet the specifications in the Food Chemicals Codex and be removed from the wine.
Albumen (egg white): Fining agent for wine	May be prepared in a light brine 1 ounce (28.35 grams) potassium chloride, 2 pounds (907.2 grams) egg white, 1 gallon (3.785 L) of water. Usage of brine not to exceed 1.5 gallons per 1,000 gallons (1.5 milliliters per liter) of wine.	FDA advisory opinion dated September 8, 2016.
Alumino-silicates (hydrated) e.g., Bentonite (Wyoming clay) and Kaolin: To clarify and stabilize [1] wine or juice.	None	21 CFR 184.1155 FDA advisory opinion dated July 26, 1985.
Ascorbic acid *iso*-ascorbic acid (erythorbic acid): To prevent oxidation of color and flavor components of juice or wine.	May be added to grapes, other fruit (including berries), and other primary wine making materials, or to the juice of such materials, or to the wine, within limitations which do not alter the class or type of the wine.	21 CFR 182.3013 and 182.3041.
Bakers yeast mannoprotein: To stabilize [1] wine from the precipitation of potassium bitartrate crystals.	The amount used must not exceed 3.3 pounds per 1000 gallons (400 mg/L) of wine.	GRAS (generally recognized as safe) Notice No. GRN 000284.
Calcium carbonate ($CaCO_3$) (with or without calcium salts of tartaric and malic acids):		
To reduce the excess natural acids in high acid wine, or in juice prior to or during fermentation.	The natural or fixed acids must not be reduced below 40 pounds per 1000 gallons (4.79 g/L).	21 CFR 184.1069, 184.1099, and 184.1191.
As a fining agent for cold stabilization	The amount used must not exceed 30 pounds per 1000 gallons (3.59 g/L) of wine..	
Calcium sulfate (gypsum): To lower pH in sherry wine.	The sulfate content of the finished wine must not exceed 1.67 pounds per 1000 gallons (0.2 g/L), expressed as potassium sulfate. 27 CFR 24.214.	21 CFR 184.1230.
Carbon dioxide (including food grade dry ice): To stabilize [1] and preserve wine.	See 27 CFR 24.245	21 CFR 184.1240.
Casein, potassium salt of casein: To clarify wine.	See 27 CFR 24.243	FDA advisory opinion dated September 8, 2016.
Chitosan from *Aspergillus niger:* To remove spoilage organisms such as *Brettanomyces* from wine.	The amount used must not exceed 0.04 pounds per 1 gallon (500 g/100 L) of wine.	GRAS Notice No. GRN 000397.
Citric acid:		
To correct natural acid deficiencies in certain juice or wine.	See 27 CFR 24.182 and 24.192	21 CFR 184.1033.
To stabilize [1] wine other than citrus wine	The amount of citric acid must not exceed 5.8 pounds per 1000 gallons (0.7 g/L). 27 CFR 24.244.	21 CFR 184.1033.

TABLE 1 TO PARAGRAPH (c)—MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Copper sulfate: To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate (calculated as copper) added to wine must not exceed 6 ppm (6mg/L).[2] The residual level of copper in the finished wine must not exceed 0.5 ppm (0.5 mg/L).[2].	21 CFR 184.1261.
Defoaming agents (polyoxyethylene 40 monostearate, silicon dioxide, dimethylpoly-siloxane, sorbitan monostearate, glyceryl monooleate and glyceryl dioleate): To control foaming, fermentation adjunct.	Defoaming agents which are 100 percent active may be used in amounts not exceeding 0.15 pounds per 1000 gallons (18 mg/L) of wine. Defoaming agents which are 30 percent active may be used in amounts not exceeding 0.5 pounds per 1000 gallons (60 mg/L) of wine. Silicon dioxide must be completely removed by filtration. The amount of silicon remaining in the wine must not exceed 10 ppm (10 mg/L).[2].	21 CFR 173.340 and 184.1505.
Dimethyl dicarbonate (DMDC): To sterilize and stabilize [1] wine.	DMDC may be added to wine in a cumulative amount not to exceed 200 ppm (200 mg/L).[2].	21 CFR 172.133.
Enzymatic activity: Various enzymes and uses, as shown in the following entries:.	The enzyme preparation used must be prepared from nontoxic and nonpathogenic microorganisms..	
Carbohydrase (*alpha*-Amylase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity must be derived from:.	
	Aspergillus niger, Aspergillus oryzae, Bacillus subtilis, or barley malt; or.	FDA advisory opinion of August 18, 1983. 21 CFR 173.130.
	from *Rhizopus oryzae;* or	21 CFR 184.1027.
	from *Bacillus licheniformis.*	
Carbohydrase (*beta*-Amylase): To convert starches to fermentable carbohydrates.	The amylase enzyme must be derived from barley malt.	FDA advisory opinion dated August 18, 1983.
Carbohydrase (Glucoamylase, Amylogluco-sidase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity must be derived from *Aspergillus niger, Aspergillus oryzae,* or.	FDA advisory opinion dated August 18, 1983. 21 CFR 173.130. 21 CFR 173.110.
	from *Rhizopus oryzae,*	
	or from *Rhizopus niveus.*	
Carbohydrase (pectinase, cellulase, hemicellulase): To facilitate separation of juice from the fruit.	The enzyme activity must be derived from *Aspergillus aculeatus*..	FDA advisory opinion dated December 19, 1996.
Catalase: To clarify and stabilize [1] wine	The enzyme activity must be derived from *Aspergillus niger* or bovine liver.	FDA advisory opinion dated August 18, 1983. 21 CFR 184.1034.
Cellulase: To clarify and stabilize [1] wine and facilitate separation of the juice from the fruit.	The enzyme activity must be derived from *Aspergillus niger*.	FDA advisory opinion dated August 18, 1983.
Cellulase (beta-glucanase): To clarify and filter wine and juice.	The enzyme activity must be derived from *Trichoderma longibrachiatum* or *Trichoderma harzianum*..	For beta-glucanase derived from *Trichoderma longibrachiatum,* 21 CFR 184.1250. For beta-glucanase derived from *Trichoderma harzianum,* GRAS Notice No. GRN 000149.
Glucose oxidase: To clarify and stabilize [1] wine.	The enzyme activity must be derived from *Aspergillus niger*.	FDA advisory opinion of August 18, 1983.
Lysozyme: To stabilize [1] wines from malolactic acid bacterial degradation.	The amount used must not exceed 500 ppm (500 mg/L).[2].	FDA advisory opinion dated December 15, 1993.
Pectinase: To clarify and stabilize [1] wine and to facilitate separation of juice from the fruit.	The enzyme activity used must be derived from *Aspergillus niger*.	FDA advisory opinion dated August 18, 1983.
Protease (general): To reduce or to remove heat labile proteins.	The enzyme activity must be derived from:	FDA advisory opinion dated August 18, 1983.
	Aspergillus niger or *Bacillus subtilis;* or	21 CFR 184.1027.
	from *Bacillus licheniformis*	
Protease (Bromelin): To reduce or remove heat labile proteins..	The enzyme activity must be derived from pineapple (*Ananas comosus* (L.) or *Ananas bracteatus* (L.)).	FDA advisory opinion dated August 18, 1983.
Protease (Ficin): To reduce or remove heat labile proteins.	The enzyme activity must be derived from fig (*Ficus spp.*).	21 CFR 184.1316.
Protease (Papain): To reduce or remove heat labile proteins.	The enzyme activity must be derived from papaya (*Carica papaya* (L.)).	21 CFR 184.1585.
Protease (Pepsin): To reduce or remove heat labile proteins.	The enzyme activity must be derived from porcine or bovine stomachs.	21 CFR 184.1595, FDA advisory opinion dated August 18, 1983.
Protease (Trypsin): To reduce or remove heat labile proteins.	The enzyme activity must be derived from porcine or bovine pancreas.	FDA advisory opinion dated August 18, 1983.

TABLE 1 TO PARAGRAPH (c)—MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Urease: To reduce levels of naturally occurring urea in wine to help prevent the formation of ethyl carbamate.	The enzyme activity must be derived from *Lactobacillus fermentum*. Use is limited to not more than 200 ppm (200 mg/L) and must be filtered prior to final packaging.[2].	21 CFR 184.1924.
Ethyl maltol: To stabilize[1] wine	Use authorized at a maximum level of 100 ppm (100 mg/L) in all standard wines except natural wine produced from *Vitis vinifera* grapes.[2].	FDA advisory opinion dated December 1, 1986.
Fermentation aids: To facilitate fermentation of juice and wine..		
Ammonium phosphate/diammonium phosphate (*mono*- and *di* basic).	The amount used must not exceed 8 pounds per 1000 gallons (0.96 g/L).	FDA advisory opinion dated August 29, 2016.
Biotin (vitamin B7)	The amount used must not exceed 25 ppb (25 ng/mL).[3].	FDA advisory opinion dated August 29, 2016.
Calcium pantothenate (vitamin B5)	The amount used must not exceed 1.5 ppm (1.5 mg/L).[2].	FDA advisory opinion dated August 29, 2016.
Folic acid (folate)	The amount used must not exceed 100 ppb (100 ng/mL).[3].	FDA advisory opinion dated August 29, 2016.
Inositol (myo-inositol)	The amount used must not exceed 2 ppm (2 mg/L).[2].	FDA advisory opinion dated August 29, 2016.
Magnesium sulfate	The amount used must not exceed 15 ppm (15 mg/L).[2].	FDA advisory opinion dated August 29, 2016.
Niacin (vitamin B3)	The amount used must not exceed 1 ppm (1 mg/L).[2].	FDA advisory opinion dated August 29, 2016.
Pyridoxine hydrochloride (vitamin B6)	The amount used must not exceed 150 ppb (150 ng/mL).[3].	FDA advisory opinion dated August 29, 2016.
Soy flour (defatted)	The amount used must not exceed 2 pounds per 1000 gallons (0.24 g/L) of wine.	FDA advisory opinion dated August 29, 2016.
Thiamine hydrochloride	The amount used must not exceed 0.005 pounds per 1000 gallons (0.6 mg/L) of wine or juice.	FDA advisory opinion dated August 29, 2016.
Yeast, autolyzed	None	FDA advisory opinion dated August 29, 2016.
Yeast, cell wall/membranes of autolyzed yeast.	The amount used must not exceed 3 pounds per 1000 gallons (0.36 g/L) of wine or juice.	FDA advisory opinion dated August 29, 2016.
Ferrous sulfate: To clarify and stabilize[1] wine	The amount used must not exceed 3 ounces per 1000 gallons (0.022 g/L) of wine.	21 CFR 184.1315.
Fractionated potato protein isolates: Fining agent for wine.	Use must not exceed 500 ppm[2] (50 g/hL) of wine.	GRAS Notice No. GRN 000447.
Fumaric acid:		
To correct natural acid deficiencies in grape wine.	The fumaric acid content of the finished wine must not exceed 25 pounds per 1000 gallons (3 g/L). 27 CFR 24.182 and 24.192.	21 CFR 172.350.
To stabilize[1] wine	The fumaric acid content of the finished wine must not exceed 25 pounds per 1000 gallons (3 g/L). 27 CFR 24.244.	21 CFR 172.350.
Gelatin (food grade): To clarify juice or wine	None	FDA advisory opinion dated September 8, 2016.
Granular cork: To smooth wine	The amount used must not exceed 10 pounds per 1000 gallons of wine (1.2 g/L).	FDA advisory opinion dated February 25, 1985.
Isinglass: To clarify wine	None	FDA advisory opinion dated February 25, 1985.
Lactic acid: To correct natural acid deficiencies in grape wine.	27 CFR 24.182 and 24.192	21 CFR 184.1061.
Malic acid: To correct natural acid deficiencies in juice or wine.	27 CFR 24.182 and 24.192	21 CFR 184.1069.
Malolactic bacteria: To stabilize[1] grape wine	Malolactic bacteria of the type *Leuconostoc oenos* (*Oenococcus oeni)* may be used in treating wine.	FDA advisory opinion dated February 25, 1985.
Maltol: To stabilize[1] wine	Use authorized at a maximum level of 2 pounds per 1000 gallons (240 mg/L) in all standard wine except natural wine produced from *Vitis vinifera* grapes.	FDA advisory opinion dated December 1, 1986.
Milk products (pasteurized whole, skim, or half-and-half):		
Fining agent for grape wine	The amount used must not exceed 2 parts of milk products per 1,000 parts (0.2 percent V/V) of wine.	
To remove off flavors in wine	The amount used must not exceed 10 parts of milk products per 1,000 parts (1 percent V/V) of wine.	

TABLE 1 TO PARAGRAPH (c)—MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Nitrogen gas: To maintain pressure during filtering and bottling or canning of wine and to prevent oxidation of wine.	None	21 CFR 184.1540.
Oxygen and compressed air: Various uses in juice and wine.	None.	
Polyvinylpolypyrrolidone (PVPP): To clarify and stabilize [1] wine and to remove color from red wine or juice.	The amount used to treat the wine, including the juice from which the wine was produced, must not exceed 60 pounds per 1000 gallons (7.19 g/L) and must be removed during filtration. PVPP may be used in a continuous or batch process.	21 CFR 173.50.
Polyvinylpyrrolidone (PVP)/polyvinylimidazole (PVI) polymer (terpolymer of 1-vinylimidazole, 1-vinylpyrrolidone, and 1,2-divinylimidazolidinone; CAS 87865–40–5 (Chemical Abstracts Service Registration Number)): To remove heavy metal ions and sulfides from wine.	The amount used to treat the wine must not exceed 6.7 pounds per 1000 gallons (80 g/hL) of wine.	FDA FCN No. 000320.[4]
Potassium bitartrate: To stabilize [1] grape wine	The amount used must not exceed 35 pounds per 1000 gallons (4.19 g/L) of grape wine.	FDA advisory opinion dated September 8, 2016.
Potassium carbonate and/or potassium bicarbonate: To reduce excess natural acidity in wine and in juice prior to or during fermentation.	The natural or fixed acids must not be reduced below 0.668 ounces per gallon (5 g/L).	21 CFR 184.1619 and 184.1613.
Potassium citrate: pH control agent and sequestrant in the treatment of citrus wines.	The amount of potassium citrate must not exceed 25 pounds per 1000 gallons (3 g/L) of finished wine. 27 CFR 24.182.	21 CFR 184.1625.
Potassium meta-bisulfite: To sterilize and preserve wine.	The sulfur dioxide content of the finished wine must not exceed the limitations prescribed in 27 CFR 4.22.	21 CFR 182.3637.
Silica gel (colloidal silicon dioxide): To clarify wine or juice.	Use must not exceed the equivalent of 20 pounds colloidal silicon dioxide at a 30 percent concentration per 1000 gallons (2.4 g/L) of wine. Silicon dioxide must be completely removed by filtration.	FDA advisory opinion dated September 8, 2016.
Sodium carboxymethyl cellulose: To stabilize [1] wine by preventing tartrate precipitation.		21 CFR 182.1745.
Sorbic acid and potassium salt of sorbic acid (potassium sorbate): To sterilize and preserve wine; to inhibit mold growth and secondary fermentation.	The finished wine must not contain more than 300 ppm (300 mg/L) of sorbic acid.[2].	21 CFR 182.3089 and 182.3640.
Sulfur dioxide: To sterilize and to preserve wine or juice.	The sulfur dioxide content of the finished wine must not exceed the limitations prescribed in 27 CFR 4.22(b)(1).	21 CFR 182.3862.
Tannin:		
To adjust tannin content in apple juice or in apple wine.	The residual amount of tannin must not exceed 24 pounds per 1000 gallons (3 g/L), calculated as gallic acid equivalents (GAE). Total tannin must not be increased by more than 150 ppm (150 mg/L; 0.150 g/L) by the addition of tannic acid (polygalloylglucose).[2].	FDA advisory opinion dated September 8, 2016.
To clarify, or adjust tannin content of, juice or wine (other than apple).	The residual amount of tannin, calculated in GAE, must not exceed 6.4 GAE per 1000 gallons of wine (800 mg/L) in white wine and 24 pounds per 1000 gallons (3 g/L) in red wine. Only tannin which does not impart color may be used in the cellar treatment of juice or wine. Total tannin must not be increased by more than 150 ppm (150 mg/L; 0.150 g/L) by the addition of tannic acid (poly-galloylglucose).[2].	FDA advisory opinion dated September 8, 2016.
Tartaric acid (L-(+)-tartaric acid):		
To correct natural acid deficiencies in grape juice or wine and to reduce the pH of grape juice or wine where ameliorating material is used in the production of grape wine.	Use as prescribed in 27 CFR 24.182 and 24.192.	21 CFR 184.1099 and GRAS Notice No. GRN 000187.

[1] To stabilize—To prevent or to retard unwanted alteration of chemical and/or physical properties.
[2] Parts per million—1 ppm = 0.128 ounces per 1000 gallons = 1 mg/L = 1000 ppb.
[3] Parts per billion—1ppb = 0.000128 ounces per 1000 gallons = 1 mg/1000L.

[4] An effective food contact notification (FCN) applies only to the food contact substance that is the subject of the FCN and is applicable only to the manufacturer/supplier listed within the notification.

■ 8. Section 24.247 is amended by:
■ a. Revising the introductory text;
■ b. Removing the entry in the table for ''Ammonium phosphate (*mono-* and *di* basic'' and adding the entry for ''Ammonium phosphate/diammonium phosphate (*mono*-and *di* basic)'' in its place; and
■ c. Removing the footnote at the end of the table and the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 24.247 Materials authorized for the treatment of distilling material.

The materials listed in this section as well as the materials listed in § 24.246 are approved as being acceptable in good commercial practice for use by proprietors in the treatment of distilling material within the limitations specified in this section. If, however, the U.S. Food and Drug Administration (FDA) informs TTB that a specified use or limitation of any material listed in this section is inconsistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act, the appropriate TTB officer may cancel or amend the approval for use of the material in the treatment of distilling material.

Materials	Use	Reference or limitation
Ammonium phosphate/diammonium phosphate (*mono*-and *di* basic).	Yeast nutrient in distilling material	The amount used shall not exceed 10 pounds per 1000 gallons (1.2 g/L). 21 CFR 184.1141a and 184.1141b.
* * *	* * *	* * *

■ 9. Section 24.248 is amended by:
■ a. Revising the introductory text;
■ b. Adding in alphabetical order an entry for ''Cross flow filtration'', including subentries for ''Nanofiltration'', ''Reverse osmosis'', and ''Ultrafiltration'';
■ c. Removing the entry for ''Nanofiltration'' following the entry ''Metal reducing matrix sheet processing'';
■ d. Revising the entry for ''Osmotic transport'';
■ e. Removing the entry for ''Reverse osmosis'' following the entry ''Osmotic transport'';
■ f. Revising the entry for ''Spinning cone column'';
■ g. Removing the entry for ''Thin-film evaporation under reduced pressure'' and adding the entry ''Thin film evaporation under reduced pressure'' in its place;
■ h. Removing the entry for ''Ultrafiltration'' following the entry ''Thin film evaporation under reduced pressure'';
■ i. Revising footnote 1 and adding footnote 2; and
■ j. Removing the parenthetical authority citation at the end of the section.

The additions and revisions read as follows:

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

The processes listed in this section are approved as being consistent with good commercial practice for use by proprietors in the production, cellar treatment, or finishing of wine, juice, and distilling material, within the general limitations of this section. If, however, the U.S. Food and Drug Administration (FDA) informs TTB that a specified use or limitation of any material listed in this section is inconsistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act, the appropriate TTB officer may cancel or amend the approval for use of the process in the production, cellar treatment, or finishing of wine, juice, and distilling material.

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL

Process	Use	Reference or limitation
Cross flow filtration	Various processes and uses.[1]	
Nanofiltration[2]	To reduce the level of volatile acidity in wine (used with ion exchange), to reduce the ethyl alcohol content of wine..	Permeable membranes that are selective for molecules not greater than 500 molecular weight with transmembrane pressures of 200 pounds per square inch (psi) and greater. The addition of water other than that originally present prior to processing will render standard wine ''other than standard.'' Use must not alter the vinous character of the wine. May be used in combination with osmotic transport.
Reverse osmosis[2]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine..	This process must use permeable membranes which are selective for molecules not greater than 150 molecular weight with transmembrane pressures of 250 psi or less.
Ultrafiltration[2]	To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red and white juice and wine into low color and high color fractions for blending purposes, to reduce the ethyl alcohol content of wine..	Permeable membranes that are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures less than 200 psi. Shall not alter vinous character.

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL—Continued

Process	Use	Reference or limitation
* *	* *	* * *
Osmotic transport[2]	For alcohol reduction.	(1) Use must not alter the vinous character of the wine. (2) None of the stripping solution may migrate into the wine. (3) May be used in combination with reverse osmosis.
* *	* *	* * *
Spinning cone column[2]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine..	Use shall not alter vinous character. For standard wine, the same amount of essence must be added back to any lot of wine as was originally removed.
* *	* *	* * *
Thin film evaporation under reduced pressure[2].	To separate wine into a low alcohol wine fraction and into a higher alcohol distillate..	Use shall not alter vinous character. Water separated with alcohol during processing may be recovered by refluxing in a closed continuous system and returned to the wine. The addition of water other than that originally present in the wine prior to processing, will render standard wine ''other than standard'' wine.

[1] In cross-flow filtration, the wine is passed across the filter membrane (tangentially) at positive pressure relative to the permeate side. A proportion of the wine which is smaller than the membrane pore size passes through the membrane as permeate or filtrate; everything else is retained on the feed side of the membrane as retentate.

[2] When used to remove ethyl alcohol (dealcoholization), this process must be done on distilled spirits plant premises. However, reverse osmosis and nanofiltration, under certain limited conditions, may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

■ 10. Amend § 24.250 by:
■ a. Revising paragraph (b); and
■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 24.250 Application for use of new treating material or process.

* * * * *

(b) *Data required.* The application must include documentary evidence from the U.S. Food and Drug Administration that the material is consistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act for its intended purpose in the amounts proposed for the particular treatment contemplated.

* * * * *

■ 11. Section 24.252 is added prior to the undesignated center heading ''Bottling, Packing, and Labeling of Wine'' to read as follows:

§ 24.252 Salvaging accidentally diluted wine.

(a) *Removal of accidentally added water without prior TTB approval.* If a proprietor accidentally adds to standard wine water in excess of limitations specified in subpart F of this part and this subpart, the accidentally diluted wine may be returned to its original condition through:

(1) The use of reverse osmosis and distillation without prior application to TTB provided that:

(i) The accidentally added water represents no more than 10 percent of the original volume of the wine;

(ii) The wine is returned to its original condition by removing an amount of water equal to the amount that was accidentally added to the wine;

(iii) The vinous character of the wine is not altered;

(iv) The proprietor transfers the wine in bond to a distilled spirits plant for treatment; and

(v) Records are maintained in accordance with paragraph (c) of this section; or

(2) By adding juice concentrate under the conditions outlined in § 24.180 without prior application to TTB provided that:

(i) The accidentally added water represents no more than 10 percent of the original volume of the wine;

(ii) The solids content of the finished wine do not exceed 21 percent by weight;

(iii) The proprietor complies with any State or local rules regarding the addition of juice concentrate; and

(iv) Records are maintained in accordance with paragraph (c) of this section.

(b) *Removal of accidentally added water with TTB approval.* If a proprietor accidentally adds water to standard wine and the accidentally added water represents more than 10 percent of the original volume of the wine, then the proprietor must request permission from TTB prior to treating the wine. A proprietor may submit an application requesting permission to treat the wine to remove the water and return the wine to its original condition. The removal of water may not be conducted until the appropriate TTB officer has approved the request. The application which is to be submitted to the appropriate TTB officer, must be in writing, must provide evidence of the exact amount of water accidentally added to the wine and an explanation of how the water was accidentally added, and must specify the method the proprietor will use to remove the water from the wine. In approving any request under this section, the appropriate TTB officer may require the proprietor to take steps to prevent future accidental additions of water to wine. In evaluating any request under this section, the appropriate TTB officer may consider as a factor whether the proprietor has demonstrated good commercial practices, taking into account the proprietor's prior history of accidental addition of water to wine and of compliance with other regulations in this part.

(c) *Records.* The proprietor must, with respect to removals of water from wine and addition of concentrate authorized under this section, maintain records that document the accidental addition of water, the use of any treatment or process to remove the water from the wine, and the fact that only the amount of water that was accidentally added to the wine was removed as a result of the treatment or process or that only an amount of concentrate sufficient to make up for the amount of water accidentally added is used.

Signed: August 17, 2022.

Mary G. Ryan

Administrator.

Approved: August 18, 2022.

Thomas C. West, Jr.

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022–18060 Filed 8–23–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870 and 872

[Docket ID: OSM 2021–0008; S1D1S SS08011000 SX064A000 221S180110; S2D2S SS08011000 SX064A000 22XS501520]

RIN 1029–AC83

Abandoned Mine Land Reclamation Fee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), and the Department of the Interior are adopting as final the interim final rule published on January 14, 2022, making amendments to the departmental regulations governing the Abandoned Mine Reclamation Fund (AML Fund) to be consistent with the Infrastructure Investment and Jobs Act (IIJA), which included the Abandoned Mine Land Reclamation Amendments of 2021 (the 2021 amendments). The final rule adopts the changes to the regulations reflecting the extension of our statutory authority to collect reclamation fees for an additional 13 years and the 20 percent reduction in fee rates. In addition, the final rule adopts the changes to the regulations reflecting the statutory extension of the dates when moneys derived from these fees will be available for distribution to eligible States and Tribes as grants. The final rule adopts the interim final rule with two revisions to correct grammatical errors. The final rule also corrects two additional grammatical errors in the regulations which were unaffected by the interim final rule.

DATES: Effective August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Harry Payne, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4558, Washington, DC 20240; Telephone (202) 208–5683. Email: *hpayne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. How did the reclamation fee work before the 2021 amendments?

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the AML Fund, which is funded primarily by a reclamation fee (also known as the AML fee) assessed on each ton of coal produced in the United States and that, among other things, provides funding to eligible States and Tribes for the reclamation of coal mining sites abandoned or left in an inadequate reclamation status as of August 3, 1977. As originally enacted, section 402(a) of SMCRA set the reclamation fee at 35 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced by surface mining methods, 15 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever was less) for lignite. Section 402(b) of SMCRA first authorized collection of reclamation fees for 15 years following the date of SMCRA's enactment (August 3, 1977). Subsequently, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388, section 6003(a)) extended our fee collection authority through September 30, 1995, followed by the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776, 3056, section 19143(b)(1) of Title XIX), which extended our fee collection authority through September 30, 2004. A series of short interim extensions in appropriations and other acts further extended our fee collection authority through September 30, 2007.

The Surface Mining Control and Reclamation Act Amendments of 2006 (the 2006 amendments) were signed into law on December 20, 2006, as part of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432, 120 Stat. 2922). The 2006 amendments extended our fee collection authority under section 402(b) through September 30, 2021, and reduced the reclamation fee rates in section 402(a) by 10 percent for the period from October 1, 2007, through September 30, 2012, and an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021. Therefore, the fee rates from October 1, 2012, through September 30, 2021, required coal mine operators to pay 28 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced by surface mining methods, 12 cents per ton (or 10 percent of the value of the coal, whichever was less) for coal other than lignite produced from underground mines, and 8 cents per ton (or 2 percent of the value of the coal, whichever was less) for lignite. OSMRE notified operators in writing of the change in fee rates resulting from the 2006 amendments in January and September 2007. 73 FR 67576, 67578. On November 14, 2008, the Department promulgated final regulations at 30 CFR parts 870 and 872 to codify these changes and other revisions made by the 2006 amendments (73 FR 67576).

B. How did the 2021 amendments change the reclamation fee and the annual AML grant distributions?

The 2021 amendments, signed into law on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, 135 Stat. 429), commonly known as the Bipartisan Infrastructure Law (BIL), extended our fee collection authority under section 402(b) through September 30, 2034, and reduced reclamation fee rates in section 402(a) by 20 percent from the prior rates. Therefore, for the calendar quarter beginning October 1, 2021, the current rates require operators to pay 22.4 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal other than lignite produced by surface mining

methods, 9.6 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal other than lignite produced from underground mines, and 6.4 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite.

In addition, the 2021 amendments extended the current annual AML grant distributions to both uncertified and certified States and Tribes. (A State or Tribe ''certifies'' under section 411(a) of SMCRA (30 U.S.C. 1240a) when it has completed all known coal AML priorities.) Specifically, the 2021 amendments revised section 401(f)(2) of SMCRA to extend the annual grant distributions from the AML Fund to eligible uncertified States and Tribes by 13 years. The extension of our fee collection authority in section 402(b) also effectively extended the AML grant distributions from general Treasury funds (*i.e.,* certified in lieu funds) to certified States and Tribes by 13 years, as provided in sections 402(i)(2) and 411(h)(2) of SMCRA (30 U.S.C. 1232(i)(2) and 1240a(h)(2)).

While we consider the 2021 amendments to be self-executing, some of our regulations were inconsistent with these provisions. To provide consistency between our regulations and the 2021 amendments and to clarify that fee collections continue without interruption at the reduced rates and that annual AML grant distributions to eligible States and Tribes based on fee collections continue using the formula described in sections 401(f) and 402(i)(2) of SMCRA, we published an interim final rule, effective upon publication, that revised 30 CFR parts 870 and 872 to reflect the reduction in reclamation fee rates and the extension of our fee collection authority and annual AML grant distributions (87 FR 2341 (January 14, 2022)). We are finalizing that rule in this document.

II. Overview of the Interim Final Rule and Comments

A. Overview of the Interim Final Rule

The interim final rule revised the Department's regulations to be consistent with the 2021 amendments, which extend our statutory authority to collect reclamation fees for an additional 13 years, reduce reclamation fee rates, and extend the dates when annual grant funding will be available to eligible States and Tribes. Similar to the proposed rule for the 2006 SMCRA amendments, the interim final rule retained certain expired fee rates at 30 CFR 870.13 for historical purposes and for use in future audits of production from the years in which those rates applied. *See* 73 FR 35214, 35219 (June 20, 2008). The interim final rule also made a clarifying change to the introductory text of 30 CFR 872.27(a)(2) by removing reference to Federal fiscal years 2007 through 2022.

B. Discussion of Comments

Summary. OSMRE received two comments on the interim final rule, neither of which was specific to the rule language. One commenter recommended that ''taxpayers not fund reclamation costs or fees'' and suggested that other individuals benefiting from a mine should be responsible for reclamation. Another commenter similarly recommended that ''no tax dollars be used to reclaim damages done by any private, or commercial enterprise on public lands'' and suggested additional enforcement measures for tax crimes.

Response. Pursuant to SMCRA, all current coal mine operators are required to pay a reclamation fee on every ton of coal produced in the United States. These fees are deposited into the AML Fund and primarily used to provide grants to eligible States and Tribes for the reclamation of lands and waters that were mined for coal and abandoned or left in an inadequate reclamation status before August 3, 1977. These lands are characterized as ''abandoned'' because they were unreclaimed or inadequately reclaimed before the enactment of SMCRA, which was the first Federal law that required coal mine operators to restore lands and waters affected by mining practices. In addition, before States and Tribes can use AML moneys to reclaim a specific property, that State or Tribe must first make a determination that ''there is no continuing reclamation responsibility [for that property] under State or other Federal laws.'' Furthermore, if the property to be reclaimed is owned by someone who consented to, participated in, or exercised control over the mining operation that necessitated the reclamation, that property may be subject to a lien if there is a significant increase in the property value subsequent to reclamation. Thus, SMCRA ensures that no Federal funds will be used for reclamation of abandoned mine lands unless there is no continuing reclamation responsibility for those lands under State or Federal laws, and, even if there is no continuing reclamation responsibility, a property owner who consented to, participated in, or exercised control over the mining operation that necessitated the reclamation may not profit from the federally funded reclamation project. The 2021 amendments did not alter these requirements and safeguards, they only extended our authority to collect reclamation fees, reduced reclamation fee rates by 20 percent, and extended annual AML grant distributions. Likewise, the interim final rule and this final rule simply revise the regulations to be consistent with the 2021 amendments and do not alter the requirement that the coal industry internalize the cost of AML reclamation.

III. Summary of the Final Rule

For the reasons discussed above and as provided in the interim final rule, OSMRE is adopting as final the interim final rule with two revisions to correct grammatical errors. Section 870.13(b) of the interim final rule incorrectly expressed the acronym for British Thermal Units as ''Btu's'' rather than ''Btus.'' This rule corrects those grammatical errors in the regulations by replacing ''Btu's'' with ''Btus.'' This rule also corrects two additional grammatical errors in 30 CFR 870.13(a) by replacing ''Btu's'' with ''Btus.''

IV. Procedural Matters

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires that a final rule must be published in the **Federal Register** no less than 30 days before its effective date except for (1) substantive rules, which grant or recognize an exemption or relieve a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause. 5 U.S.C. 553(d). As described below, OSMRE finds good cause to publish this rule with an immediate effective date.

The APA's legislative history indicates that the purpose of the 30-day publication requirement is to ''afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of the rules may prompt.'' S. Rep. No. 79–752, at 201 (1945). However, the final rule merely revises the regulations to be consistent with the requirements of the BIL, which President Biden signed into law on November 15, 2021; thus, coal mine operators have had more than six months to prepare for the extension of our fee collection authority and commensurate reduction in reclamation fee rates, well in excess of the traditional 30-day requirement. Furthermore, the BIL did not create any new requirements with which coal mine operators must comply; both the requirement that coal mine operators pay a reclamation fee and our authority

to collect the fee have existed since August 3, 1977, when SMCRA was enacted. Consequently, any impact on coal mine operators from the extension of our fee collection authority or the reduction in fee rates should be minimal. Finally, it is in the public interest for the final rule to be effective immediately because it revises out-of-date regulations to conform with the changes made by the 2021 amendments. These changes provide clarity and avoid the confusion that might otherwise result from stale regulatory provisions that are inconsistent with current law. The concurrent extension of our fee collection authority and reduction in reclamation fee rates, if not clearly understood by coal mine operators, could result in delayed payment of reclamation fees, which could subject operators to late payment penalties and potentially affect annual AML grant distributions to States and Tribes (30 U.S.C. 1231(f) and 1232(i)(2)) or estimated interest payments to the United Mine Workers of America (UMWA) Health and Retirement Funds' health care plans (30 U.S.C. 1232(h)). Conversely, confusion over reclamation fee rates could also result in overpayments based on the previous, higher reclamation fee rate, which may require OSMRE to process refunds and reduce administrative efficiency. For these reasons, we are availing ourselves of the good cause exemption at 5 U.S.C. 553(d)(3).

In addition, pursuant to 5 U.S.C. 553(b)(3)(B), an agency may waive the prior notice and public comment requirements if it finds, for good cause, that the requirements are impracticable, unnecessary, or contrary to the public interest. We are availing ourselves of the good cause exemption at 5 U.S.C. 553(b)(3)(B) to correct two grammatical errors in 30 CFR 870.13(a) that were the result of an earlier rulemaking and unaffected by the interim final rule. This is a ministerial action that will have no substantive impact on regulated entities or the public. For that reason, we do not anticipate receiving meaningful comments on a proposal to correct these grammatical errors and find good cause to forgo notice and an opportunity for public comment.

B. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) has determined that this rulemaking is not a major rulemaking, as defined by 5 U.S.C. 804(2), because this rulemaking has not resulted in, and is unlikely to result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

As noted above, this rulemaking implements the 2021 amendments to SMCRA, which extended our fee collection authority for an additional 13 years, reduced reclamation fee rates by 20 percent, and extended annual AML grant distributions. Although OSMRE typically collects more than $100 million in reclamation fees annually and distributes over $100 million in annual AML grants to eligible States and Tribes, the reduction in fee collections resulting from the 20 percent reduction in reclamation fee rates is anticipated to be less than $100 million a year when compared to the fees collected and grants distributed in the fiscal years since fiscal year 2013, when the fee rate last changed. And because the 2021 amendments are self-executing, any effects come not from requirements imposed by this rule but rather from the extension of our traditional AML grant program and fee collection authority, and concurrent reduction in reclamation fee rates by Congress. As a result, this rule is not considered a major rulemaking.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that OIRA will review all significant rules before they are issued. Because this final rule merely reflects the 2021 amendments to SMCRA, which extended our fee collection authority for an additional 13 years, reduced reclamation fee rates by 20 percent, and extended annual AML grant distributions, OIRA has concluded that this rulemaking is not a significant regulatory action under Executive Order 12866. Pursuant to Executive Order 12866, an action is a ''significant regulatory action'' if it is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with planned or actual action taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues that are the result of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Although the reclamation fees collected and AML grants distributed typically exceed $100 million annually, this final rule is implementing only the 2021 amendments' continuation of an existing program mandated by Congress for an additional 13 years and is therefore not a change with a significant monetary impact. In addition, because the administrative and procedural provisions of this rule would reflect an annual impact of less than $100 million, it is not significant under Executive Order 12866. Furthermore, as OSMRE has collected reclamation fees and distributed annual AML grants for more than four decades, the agency is not aware of any inconsistencies with other agency actions or novel legal or policy issues that could arise as a result of the reauthorization of the reclamation fee and the extension of AML grants.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), which requires an agency to prepare a regulatory flexibility analysis for all rules, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, applies only where an agency is required to publish a general notice of proposed rulemaking for any proposed rule. *See* 5 U.S.C. 601(2), 603(a), and 604(a). As OSMRE was not required to publish a notice of proposed rulemaking associated with

the interim final rule or this final rule, the RFA does not apply.

E. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. As explained in section III.A. above, this rule:

(a) will not have an annual effect on the economy of $100 million or more;

(b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires that, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of $100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. *See* 2 U.S.C. 1532(a). However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. As OSMRE was not required to publish a notice of proposed rulemaking for the interim final rule or this final rule, the UMRA does not apply.

G. Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

H. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

I. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

J. Consultation With Indian Tribes (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy; Departmental Manual Part 512, Chapters 4 and 5; and Executive Order 13175 and have determined that it has no substantial direct effects on federally-recognized Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's Tribal consultation policy is not required. OSMRE has conducted informal listening sessions with eligible Tribes to provide an overview of the BIL as it relates to the AML program. OSMRE is committed to communication and coordination and will continue engagement strategies as needed to keep Tribes informed of the requirements of the program.

K. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA), OSMRE may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. OSMRE has reviewed this final rule and determined that it does not introduce any new or revised collections of information under the PRA. Therefore, no submission to OMB is required.

L. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of both an administrative and financial nature. *See* 43 CFR 46.210(i). In addition, any environmental effects resulting from this rulemaking as a whole are too broad, speculative, and conjectural because the nature of AML problems vary, occur in numerous locations throughout the country, and will be reclaimed at different times, and because each project completed with these funds is subject to NEPA review closer to the time that the project is undertaken. *Id.* We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

M. Effects on Energy Supply, Distribution, and Use (Executive Order 13211)

This rule is not a significant energy action as defined in Executive Order 13211. A Statement of Energy Effects is not required.

N. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) be logically organized;

(b) use the active voice to address readers directly;

(c) use common, everyday words and clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

O. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

P. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 note *et seq.*) directs Federal agencies to use voluntary consensus standards when implementing regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. This final rule is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA, and the requirements would not be applicable to this final rulemaking.

Q. Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045 requires that environmental and related rules separately evaluate the potential impact to children. However, Executive Order 13045 is inapplicable to this rulemaking because this is not a substantive rulemaking and a notice of proposed rulemaking was neither required nor prepared. *See* section 2–202 and 5–501 of Executive Order 13045.

List of Subjects

30 CFR Part 870

Abandoned Mine Reclamation Fund, Fee collection and coal production reporting, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 872

Indians—land, Moneys available to eligible States and Indian tribes.

Delegation of Signing Authority

The action taken herein is pursuant to an existing delegation of authority.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, the Department of the Interior adopts the interim rule amending 30 CFR parts 870 and 872, which was published at 87 FR 2341 on January 14, 2022, as final with the following changes:

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

■ 1. The authority citation at part 870 is revised to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.,* and Pub. L. 105–277, 112 Stat. 2681.

■ 2. Amend § 870.13 by revising paragraph (a)(4) and (5) and (b)(4) and (5) to read as follows:

§ 870.13 Fee rates.

(a) * * *

Type of fee	Type of coal	Amount of fee
* * *	* * *	* * *
(4) In situ coal mining fee	All types other than lignite	12 cents per ton based on Btus per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	8 cents per ton based on the Btus per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

(b) * * *

Type of fee	Type of coal	Amount of fee
* * *	* * *	* * *
(4) In situ coal mining fee	All types other than lignite	9.6 cents per ton based on Btus per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	6.4 cents per ton based on the Btus per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

[FR Doc. 2022–17676 Filed 8–23–22; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0195]

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

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the waters of San Diego Bay, CA, during the Swim for Special Operations Forces on September 17, 2022. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels of the event, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 for the location described in Item 16 in table 1 to § 100.1101, will be enforced from 7:30 a.m. until 11:30 a.m. on September 17, 2022.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the location identified in Item No. 16 in table 1 to § 100.1101, from 7:30 a.m. until 11:30 a.m. on September 17, 2022, for the Swim for Special Operations Forces in San Diego Bay, CA. This action is being taken to provide for the safety of life on the navigable waterways during the event. Our regulation for recurring marine events in the San Diego Captain of the Port Zone, § 100.1101, Item No. 16 in table 1 to § 100.1101, specifies the location of the regulated area for the Swim for Special

Operations Forces, which encompasses portions of San Diego Bay. Under the provisions of § 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

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

Dated: August 18, 2022.

J.W. Spitler,

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

[FR Doc. 2022–18197 Filed 8–23–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0601]

RIN 1625–AA00

Safety Zone; Sunset Point, San Juan Island, WA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 1000-yard radius of Sunset Point on San Juan Island, WA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the emergency response efforts and the product recovery of a sunken vessel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Puget Sound.

DATES: This rule is effective without actual notice from August 24, 2022, through August 29, 2022, at 10 p.m. For the purposes of enforcement, actual notice will be used from August 18, 2022, at 10 p.m., until August 24, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0601 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Samud I. Looney, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On August 16, 2022, the Coast Guard created a rulemaking that created a temporary safety zone. The safety zone was effective August 16, 2022, to August 18, 2022. A copy of the rulemaking that ended on August 18, 2022, is available in the docket USCG–2022–0600. However, additional time is needed to maintain safe navigation around response equipment and responders while additional damage assessments and salvage operations occurs, and, as a result, the Coast Guard is establishing through temporary regulations a safety zone that will be in effect through August 29, 2022. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond to the safety hazards associated with the emergency response measures in product recovery of a sunken vessel. It is impracticable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the ongoing response and product recovery operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the safety hazards associated with the emergency response and salvage operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Puget Sound (COTP) has determined that potential hazards associated with the emergency response and recovery operations will be a safety concern for anyone within a 1000-yard radius of Sunset Point, San Juan Island, WA. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the emergency response is ongoing and during the pollution mitigation measures and product recovery of the sunken vessel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone that will is subject to enforcement from August 18, 2022, at 10 p.m. through August 29, 2022, at 10 p.m. The safety zone will cover all navigable waters within 1000-yard radius of Sunset Point, San Juan Island, WA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the emergency response of the sunken vessel are ongoing. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The safety zone may be suspended early at the discretion of COTP Sector Puget Sound.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration,

and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Sunset Point on San Juan Island for a total of no more than 11 days and operations may be suspended early at the discretion of the COTP Sector Pudget Sound. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting no more than 11 days that will prohibit entry within 1000 yards of Sunset Point while vessels, equipment, and personnel are being used in the emergency response and removal of a sunken vessel. It is categorically excluded from further review under paragraph L60[c] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–0600 to read as follows:

§ 165.T13–0600 Safety Zone; Sunset Point, San Juan Island, WA.

(a) *Location.* The following area is a safety zones: all navigable waters within a 1000 yard radius of the sunken vessel located at 48°33′10.0008″ N, 123°10′20″ W off of Sunset Point, San Juan Island, WA. These coordinates are based 1984 World Geodetic System (WGS 84).

(b) *Definitions.* As used in this section, a *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Sector Puget Sound in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from August 18, 2022, at 10 p.m. through August 29, 2022, at 10 p.m. unless an earlier end is announced by Broadcase Notice to Mariners on VHF–FM marine channel 16.

Dated: August 18, 2022.

Y. Moon,

Captain, U.S. Coast Guard, Acting Captain of the Port Sector Puget Sound.

[FR Doc. 2022–18263 Filed 8–23–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0711]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Delaware River, Philadelphia, PA; Safety Zone from 8:15 p.m. through 9 p.m. on September 3, 2022 to provide for the safety of life on navigable waterways during the Delaware River Waterfront Corporation fireworks display. Our regulation for fireworks displays in the Fifth Coast Guard District identifies the regulated area for this event in Philadelphia, PA. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation 33 CFR 165.506 will be enforced for the location identified in entry 10 of table 1 to paragraph (h)(1) from 8:15 p.m. through 9 p.m. on September 3, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Petty Officer Dylan Caikowski, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone: (215) 271–4814, Email: *SecDelBayWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 10 for the Delaware River Waterfront Corporation fireworks display from 8:15 p.m. through 9 p.m. on September 3, 2022. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the fireworks display. Our regulation for safety zones of fireworks displays in the Fifth Coast Guard District, table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 10 specifies the location of the regulated area as all waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within a 500-yard radius of the fireworks barge position. The approximate position for the fireworks barge is latitude 39°56′52″ N, longitude 075°08′09″ W. During the enforcement period, as reflected in § 165.506(d), vessels may not enter, remain in, or transit through the safety zone unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on-scene.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via broadcast notice to mariners.

Dated: August 18, 2022.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard Acting Captain of the Port Delaware Bay.

[FR Doc. 2022–18206 Filed 8–23–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0714]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Delaware River, Philadelphia, PA; Safety Zone from 8:45 p.m. through 9:45 p.m. on September 4, 2022 to provide for the safety of life on navigable waterways during the Rivers Casino Philadelphia fireworks display. Our regulation for fireworks displays in the Fifth Coast Guard District identifies the regulated area for this event in Philadelphia, PA. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation 33 CFR 165.506 will be enforced for the location identified in entry 10 of table 1 to paragraph (h)(1) from 8:45 p.m. through 9:45 p.m. on September 4, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Petty Officer Dylan Caikowski, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone: (215) 271–4814, Email: *SecDelBayWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 10 for the Rivers Casino Philadelphia fireworks display from 8:45 p.m. through 9:45 p.m. on September 4, 2022. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the fireworks display. Our regulation for safety zones of fireworks displays in the Fifth Coast Guard District, table 1 to paragraph (h)(1) to 33 CFR 165.506, entry 10 specifies the location of the regulated area as all waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within a 500-yard radius of the fireworks barge position. The approximate position for the fireworks barge is latitude 39°57′39″ N, longitude 075°07′45″ W. During the enforcement period, as reflected in § 165.506(d), vessels may not enter, remain in, or transit through the safety zone unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on-scene.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via broadcast notice to mariners.

Dated: August 18, 2022.

Kate F. Higgins-Bloom,

Captain, U.S. Coast Guard Acting Captain of the Port Delaware Bay.

[FR Doc. 2022–18207 Filed 8–23–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0273; FRL–9963–01–OCSPP]

Streptomyces sp. Strain K61; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing exemption from the requirement of a tolerance for residues

of *Streptomyces* sp. strain K61 in or on all raw agricultural commodities when used as a fungicide for the treatment of seeds, cuttings, transplants, and plants of agricultural crops in accordance with good agricultural practices by removing the fungicidal use stipulation and clarifying that the exemption covers use in or on all food commodities when used in accordance with label directions and good agricultural practices. Danstar Ferment Ag/LALLEMAND PLANT CARE, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting that EPA amend the existing tolerance exemption for *Streptomyces* sp. strain K61. This regulation eliminates the need to establish a maximum permissible level for residues of *Streptomyces* sp. strain K61 under FFDCA.

DATES: This regulation is effective August 24, 2022. Objections and requests for hearings must be received on or before October 24, 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–2022–0273, 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–2022–0273 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 October 24, 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–2022–0273, 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/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

In the **Federal Register** of April 28, 2022 (87 FR 25178) (FRL–9410–12–OCSPP), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 1F8953) by Danstar Ferment Ag/LALLEMAND PLANT CARE, Postsrasse 20, CH–6300 Zug, Switzerland (c/o Amy Plato Roberts, P.O. Box 990, Hailey, ID 83333). The petition requested that 40

CFR part 180.1120 be amended by establishing an exemption from the requirement of a tolerance for residues of *Streptomyces* sp. strain K61 in or on all food commodities. That notice referenced a summary of the petition prepared by the petitioner Danstar Ferment Ag/LALLEMAND PLANT CARE and is available in the docket via *https://www.regulations.gov.* Two comments were received on the notice of filing. EPA's response to these comments is discussed in Unit V.B.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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 establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, an exemption from the requirement of a tolerance may be established. Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for *Streptomyces* sp. strain K61 including exposure resulting from the exemption established by this action. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found in the *Streptomyces* Strain K61 Registration Review Final Decision available in docket EPA–HQ–OPP–2009–0509, *Streptomyces* Strain K61 Biopesticides Registration Action Document available in docket EPA–HQ–OPP–2009–0509, Review of Petition to Amend an Existing Tolerance Exemption for *Streptomyces* sp. Strain K61 and in the document entitled ''Risk Assessment for a FIFRA Section 3 Registration of *Streptomyces* sp. Strain K61 Technical, Containing 100% of the Currently Registered Active Ingredient *Streptomyces* sp. Strain K61'' (a.k.a. *Streptomyces* sp. strain K61 Risk Assessment). *Streptomyces* sp. strain K61 Risk Assessment, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

A. Toxicological Profile

Streptomyces strain K61 is a naturally occurring microbe found in soils throughout the world, and there are no known reports of any deleterious effects associated with its consumption. Additionally, the acute toxicity data on file with the Agency confirm its lack of acute toxicity. There is also no evidence of adverse effects from oral exposure to this microbial agent. Data on file with the Agency confirm the lack of oral toxicity/pathogenicity of *Streptomyces* strain K61. For the full discussion of the Toxicological Profile of *Streptomyces* sp. strain K61, see the *Streptomyces* Strain K61 Registration Review Final Decision and, the *Streptomyces* Strain K61 Biopesticides Registration Action Document, both available in docket EPA–HQ–OPP–2009–0509.

B. Exposure Assessment

1. *Dietary exposure from food, feed uses, and drinking water. Streptomyces* sp. strain K61 is found in soils throughout the world. Dietary exposure to *Streptomyces* strain K61 is expected to be minimal. As the mode of action of *Streptomyces* strain K61 is through root colonization, the majority of applications are to seeds and soil. Certain foliar applications are permitted for the purposes of suppressing *Botrytis* infection and promoting growth; however, direct applications to crops are highly diluted and residues are not expected to persist.

Exposure to *Streptomyces* strain K61 via drinking water when the pesticide is used is not likely to be greater than current/existing exposures. Although *Streptomyces* strain K61 is found naturally, it does not thrive in aquatic environments. There are no aquatic use sites for the pesticide, so exposure in drinking water is not expected.

2. *From non-dietary exposure.* There are no residential uses for *Streptomyces* strain K61. Non-occupational exposures are not expected; in the event of accidental exposure, no non-occupational risks are anticipated.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found that *Streptomyces* sp. strain K61 shares a common mechanism of toxicity with any other substances, and it does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed *Streptomyces* sp. strain K61 does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticides/cumulative.*

C. Safety Factor for Infants and Children

FFDCA Section 408(b)(2)(C) provides that EPA shall retain an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Based on the low toxicity of *Streptomyces* sp. strain K61 in the available studies, EPA has concluded that there are no

toxicological endpoints of concern for the U.S. population, including infants and children, and therefore conducted a qualitative assessment of *Streptomyces* sp. strain K61. As part of its qualitative assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

D. Aggregate Risk

Based on the available data and information, the EPA has concluded that a qualitative aggregate risk assessment is appropriate to support the pesticidal use of *Streptomyces* sp. strain K61, and that risks of concern are not anticipated from aggregate exposure to the substance. This conclusion is based on the low toxicity of the active ingredient.

A full explanation of why the Agency is relying on prior 2011 *Streptomyces* sp. strain K61 registration review risk assessments for addressing the amendment to the exemption of a tolerance can be found within the Review of Petition to Amend an Existing Tolerance Exemption for *Streptomyces* sp. Strain K61 document. This document, as well as other relevant information, are available in the docket for this action as described under **ADDRESSES**.

IV. Determination of Safety for U.S. Population, Infants and Children

Based on the Agency's assessment, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Streptomyces* sp. strain K61.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for *Streptomyces* sp. strain K61 because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Response to Comments

One comment was received in response to the notice of filing. The comment discusses potential risk to humans and nontarget organisms from the use of products containing this active ingredient. Consistent with FFDCA section 408(b)(2)(D), EPA reviews the available scientific data and other relevant information and considers their validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA also considers available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. EPA relied on a variety of data and information to conclude 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 *Streptomyces* sp. strain K61.

VI. Conclusions

Therefore, the existing tolerance exemption for *Streptomyces* sp. strain K61 is amended by establishing an exemption from the requirement of a tolerance for residues of *Streptomyces* sp. strain K61 in or on all food commodities when used in accordance with label directions and good agricultural practices.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance 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, 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 (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 (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 (15 U.S.C. 272 note).

VIII. 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: August 12, 2022.

Charles Smith,

Director, Biopesticides and Pollution Prevention Division.

Therefore, for the reasons stated in the preamble, EPA is amending 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. Revise § 180.1120 to read as follows:

§ 180.1120 *Streptomyces* sp. strain K61; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Streptomyces* sp. strain K61 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2022–18012 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–81

[FMR Case 2018–102–2; Docket No. 2020–0009; Sequence No. 2]

RIN 3090–AJ94

Federal Management Regulation; Physical Security

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending the Federal Management Regulation (FMR) to clarify the responsibilities of agencies for maintaining physical security standards in and at federally owned and leased facilities and grounds under the jurisdiction, custody, or control of GSA, including those facilities and grounds that have been delegated by the Administrator of General Services, in light of current law, Executive orders, and facility security standards. The revision will also update nomenclature and reorganize the subparts for better readability and clarity.

DATES: *Effective:* September 23, 2022.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202–501–2956 or *chris.coneeny@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FMR Case 2018–102–2.

SUPPLEMENTARY INFORMATION:

I. Background and Authority for This Rulemaking

The provisions in 6 U.S.C. 232 reaffirm that, except for the law enforcement and related security functions that were transferred to the U.S. Department of Homeland Security (DHS) under the Homeland Security Act of 2002 (available at *https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf*), Public Law 107–296, 116 Stat. 2135 (the Act), discussed in greater detail below, the GSA Administrator retains the authority to operate, maintain, and protect buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator (GSA-controlled facilities). This final rule amends in its entirety 41 CFR part 102–81, Security, last published in the **Federal Register** on November 8, 2005 (70 FR 67856), in light of changes to law, Executive orders, and facility security standards. This regulation is applicable to all GSA-controlled facilities, including those owned and leased by the Federal Government under GSA authority and those delegated under GSA authority.

Six months after the bombing of the Alfred P. Murrah Federal Building, President William Clinton issued Executive Order (E.O.) 12977: Interagency Security Committee, creating the Interagency Security Committee (ISC) within the Executive Branch (60 FR 54411, Oct. 19, 1995). The ISC, which consists of 66 Federal departments and agencies, has a mandate to enhance the quality and effectiveness of physical security in, and the protection of, nonmilitary Federal facilities, and to provide a permanent body to address continuing governmentwide security issues for these facilities. Pursuant to E.O. 12977, the ISC prepares guidance for the Facility Security Committees (FSC), which are responsible for addressing and implementing facility-specific security issues at each multi-occupant nonmilitary Federal facility.

In response to the terrorist attacks on September 11, 2001, Congress enacted the Act to enhance the protection of the assets and critical infrastructure of the United States. The Act established DHS and transferred the Federal Protective Service (FPS) from GSA to DHS. FPS was established as a component of GSA in January 1971. Historically, FPS serves as the security organization responsible for conducting investigations to protect GSA-controlled facilities, enforce Federal laws to protect persons and property, and make arrests without a warrant for any offense committed on Federal property in the presence of the arresting officer or for any felony that the arresting officer has reasonable grounds to believe the person to be arrested has committed or is committing. Section 1706 of the Act, codified at 40 U.S.C. 1315, transferred FPS's specific security and law enforcement functions and authorities to the Secretary of Homeland Security.

Section 422 of the Act references 6 U.S.C. 232, which reaffirms the authority of the Administrator of General Services to operate, maintain, and protect GSA-controlled facilities.

Following enactment of the Act, President George Bush issued E.O. 13286: Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security, which, among other things, transferred responsibility for chairing the ISC from the Administrator of General Services to the Secretary of Homeland Security (68 FR 10619, March 5, 2003).

In August 2004, President George Bush issued Homeland Security Presidential Directive 12 (HSPD–12) (available at *https://www.dhs.gov/homeland-security-presidential-directive-12*), which requires, to the maximum extent practicable, the use of identification by Federal employees and contractors that meets the standard promulgated by the Secretary of Commerce (*e.g.,* Federal Information Processing Standard Publication 201) to gain physical access to federally controlled facilities.

On December 15, 2020, the Office of Personnel Management issued the memorandum, ''Credentialing Standards Procedures for Issuing Personal Identity Verification Cards under HSPD–12 and New Requirement for Suspension or Revocation of Eligibility for Personal Identity Verification Credentials'' (available at *https://www.opm.gov/suitability/suitability-executive-agent/policy/cred-standards.pdf*), which set forth credentialing standards procedures for Executive Branch departments and agencies to use when making eligibility determinations to issue personal identity verification credentials to Federal employees and contractors for access to federally controlled facilities or information systems, or both.

HSPD–12 was followed by the REAL ID Act of 2005, Public Law 109–13, 119 Stat. 302 (the REAL ID Act), which establishes minimum security standards for license issuance and production and prohibits Federal agencies from accepting for certain purposes driver's licenses and identification cards from States not meeting the REAL ID Act's minimum standards. Accessing Federal facilities, entering nuclear power plants and boarding federally regulated commercial aircraft are within the purview of the Real ID Act.

In June 2006, GSA and DHS signed a Memorandum of Agreement (MOA) outlining the responsibilities of each agency with regard to facility security. According to the MOA, FPS is required to conduct facility security assessments

of GSA buildings in accordance with ISC standards. The resulting facility security assessment report should include recommended countermeasures for identified vulnerabilities. In addition, the MOA clarified that both agencies are responsible for the implementation of approved countermeasures, with FPS responsible for security equipment and GSA responsible for facility security fixtures. This 2006 MOA was superseded by an MOA executed by DHS and GSA as of September 27, 2018.

In February 2013, Presidential Policy Directive 21: Critical Infrastructure Security and Resilience (available at *https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil*) required the Secretary of Homeland Security to conduct comprehensive assessments of the vulnerabilities of the Nation's critical infrastructure. This directive designated both GSA and DHS as the responsible agencies for providing institutional knowledge and specialized expertise in support of security programs and activities for Government buildings.

In August 2013, the ISC issued the initial The Risk Management Process for Federal Facilities (the RMP Standard), a standard to define the criteria and processes to determine the facility security level (FSL) and provide a single source of physical security countermeasures for nonmilitary Federal facilities. The ISC updated the standard in November 2016 and again in March 2021. See, The Risk Management Process for Federal Facilities: An Interagency Security Committee Standard (2021 Edition) *https://www.cisa.gov/publication/risk-management-process.*

The following terms used in this final rule have the same definition as ascribed to them in the RMP Standard:

- Baseline Level of Protection,
- Facility Security Assessment,
- Facility Security Committee,
- Facility Security Level,
- Risk,
- Risk Mitigation,
- Level of Protection,
- Level of Risk, and
- Vulnerability.

Some notable provisions of the RMP Standard are described below:

(a) According to the RMP Standard, buildings with two or more Federal tenants with funding authority will have an FSC. FSCs are responsible for addressing building-specific security issues and approving the implementation of recommended countermeasures and practices. FSCs include representatives of all Federal occupant agencies in the building, as well as FPS and GSA. However, FPS and GSA do not have voting rights unless they are occupants in the building. If the FSC approves a countermeasure, each Federal occupant agency in the building is responsible for funding its *pro rata* share of the cost. According to the RMP Standard, in a building with only one Federal occupant agency, the sole agency with funding authority is the decision-maker for the building's security. Therefore, these types of buildings do not require an FSC.

(b) The RMP Standard requires FPS to conduct facility security assessments to identify vulnerabilities and recommend countermeasures. FSCs use a building's facility security assessment report to—

1. Evaluate security risk;
2. Implement countermeasures to mitigate risk; and
3. Allocate security resources effectively.

For example, a facility security assessment report might include a recommendation to install cameras and relocate a loading dock. Upon deliberation, the FSC might decide only to install the cameras. FPS, in consultation with the FSC, helps determine a facility's security level, which determines the baseline level of protection. FSLs range from Level 1 (lowest risk) to Level 5 (highest risk), and dictate the frequency of the facility security assessments for that building. The FSL is based on five factors: mission criticality, symbolism, facility population, facility size, and threat to occupant agencies. In addition, intangibles (such as short duration occupancy) can be used to adjust the security level.

Occupant agencies or FSCs use the facility security assessment reports prepared by FPS to inform their deliberations regarding recommended risk mitigation countermeasures and other security-related actions. GSA will facilitate the implementation of the countermeasures or other actions after occupant agency or FSC approval and commitment of each occupant agency to pay its *pro rata* share of the cost.

II. Discussion of the Final Rule

A. Summary of Significant Changes

Subpart A—General Provisions

Section 102–81.5

GSA is changing this section to describe more accurately the scope and coverage of the regulation. The regulation uses the phrase ''under the jurisdiction, custody, or control of GSA,'' which is consistent with the terminology that appears in 6 U.S.C. 232, to describe the buildings and grounds owned or occupied by the Federal Government that are covered by this part. This phrase replaces and clarifies the phrase ''operating under, or subject to, the authorities of the Administrator of General Services,'' which was used in the previous version. The definitions of ''Federal facility'' and ''Federal grounds'' are included to clarify any confusion in the scope.

Section 102–81.10

GSA is changing this section to clarify that, under E.O. 12977, the ISC is responsible for setting policies and recommendations that govern physical security at nonmilitary Federal facilities and buildings. The ISC issues standards, such as the ISC Risk Management Process Standard (2021 Edition), which is the current RMP Standard. ISC policies do not supersede other laws, regulations, and Executive orders that are intended to protect unique assets.

Section 102–81.15

GSA is adding this section to clarify the governing authorities that pertain to this regulation.

Section 102–81.20

GSA is eliminating in its entirety the previous § 102–81.20 because the RMP Standard supersedes all previous guidance contained in the Department of Justice's report entitled ''Vulnerability Assessment of Federal Facilities'' (June 28, 1995). GSA is adding the replacement provision to clarify that Federal agencies are required to follow this regulation in nonmilitary Federal facilities and grounds under the jurisdiction, custody, or control of GSA, including those facilities and grounds that have been delegated by the Administrator of General Services. Federal agencies must cooperate and comply with ISC policies and recommendations for nonmilitary facilities, except where the Director of National Intelligence determines that compliance would jeopardize intelligence sources and methods or the Secretary of Energy determines that compliance would conflict with the authorities of the Secretary of Energy over Restricted Data and Special Nuclear Material under, among others, sections 141, 145, 146, 147, and 161 of the Atomic Energy Act of 1954, as amended, the Department of Energy Organization Act, or any other statute.

Subpart B—Physical Security

Section 102–81.25

GSA is eliminating in its entirety the previous § 102–81.25 because the RMP Standard supersedes all previous guidance contained in the Department of Justice's report entitled ''Vulnerability Assessment of Federal Facilities'' (June 28, 1995). GSA is adding the replacement provision to clarify that Federal agencies are responsible for meeting physical security standards at nonmilitary facilities in accordance with ISC standards, policies, and recommendations. An occupant agency, if it is the only Federal occupant agency in the building, or the FSC, as applicable, uses the facility security assessment reports they receive from FPS to inform deliberations regarding recommended countermeasures and other security-related actions, such as the documentation of risk acceptance. GSA will facilitate the implementation of the countermeasures or other actions after occupant agency or FSC approval, as applicable, and commitment of each occupant agency to pay its *pro rata* share of the cost.

Section 102–81.30

GSA is eliminating in its entirety the previous § 102–81.30 because the requirements are addressed in section 231 of Public Law 101–647, now codified at 34 U.S.C. 20351. GSA is adding the replacement provision to be consistent with the RMP Standard. This section now describes physical security considerations associated with existing nonmilitary facilities.

Section 102–81.31

GSA is adding this section to be consistent with the RMP Standard. This section describes physical security considerations associated with nonmilitary leased facilities and new construction.

B. Analysis of Public Comments

In the proposed rule published in the **Federal Register** at 85 FR 12489 on March 3, 2020, GSA provided the public a 60-day comment period, which ended on May 4, 2020. GSA did not receive any comments from the public.

III. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. GSA 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. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because it applies to agency management or personnel.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FMR Case 2018–102–2) in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors or members of the public, that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

VII. Regulatory Impact Analysis

A. Public Costs

GSA determined there is no impact or cost associated with this final rule for either large or small businesses.

B. Government Costs

GSA determined a series of compliance activities for the establishment, training, and operations of future FSCs; initial determination of future FSLs; and future facility risk assessments.

Prior to determining the FSL of a facility, all prospective members of the facility's FSC must successfully complete a series of mandatory training outlined within the ISC's RMP Standard.[1] GSA consulted with ISC subject matter experts (SME) to determine the duration of each training and the average labor category of the FSC members. In addition, GSA consulted with the ISC and GSA Public Buildings Service (PBS) SMEs to determine the number of new facilities for both GSA and GSA-delegated authority agencies entering the portfolio requiring an FSC within the purview of the analysis. ISC SMEs also estimated the number of hours per FSL to determine the initial FSL and conduct a risk assessment at the appropriate juncture of the lease in accordance with the RMP Standard.

GSA identified five training courses required to be completed by FSC members prior to joining the committee. ISC staff estimated it will take an FSC member no more than two hours to complete and review each training. The trainings are the following:

- IS–1170: Introduction to the Interagency Security Committee and Risk Management Process Training
- IS–1171: Introduction to Interagency Security Committee Publications Training
- IS–1172: Interagency Security Committee Risk Management Process: Facility Security Level Determination Training
- IS–1173: Interagency Security Committee Risk Management Process: Levels of Protection and Application of the Design Basis Threat Report
- IS–1174: Interagency Security Committee Risk Management Process: Facility Security Committees.

[1] The Risk Management Process for Federal Facilities: An Interagency Security Committee Standard (2021 Edition) *https://www.cisa.gov/publication/risk-management-process.*

GSA, in consultation with PBS SMEs, determined 263 [2] new facilities are procured each year requiring an FSC to be established after reviewing GSA portfolio historical trends.[3] GSA applied an annual 1% reduction of the portfolio to the analysis in accordance with current portfolio acquisition and disposition trends.[4]

GSA, in consultation with PBS and ISC SMEs, determined the average FSC is composed of four members. For the analysis, GSA assumed an average of two agencies per facility.[5] The FSC consists of a chair and voting member representing the agencies. GSA and FPS are included as non-voting members, unless they are occupants in the building, in which case they would have a vote. Historically, agencies nominate a senior official or the most senior official of the facility to the FSC.[6] Following consultation with PBS and ISC SMEs, GSA assumes the senior official to be the equivalent of a GS–15 at an hourly rate of $94.76. GSA estimated the duration of the activities required to operate an FSC to be four hours; one hour for each quarter.

Based on the analysis resulting from GSA's consultations, GSA estimated the cost to the Government for the training of each FSC member per course on a yearly basis to be $1,993,750 (2 hours × 1,052 FSC members × $94.76 [GS–15 rate]).

GSA determined 130 FSL 1 [7] facilities, 115 FSL 2 facilities, 14 FSL 3 facilities, 3 FSL 4 facilities, and 1 FSL 5 facility [8] will be acquired and introduced to the portfolio on a yearly basis.

GSA estimated the cost to the Government for the operations of an FSC chairperson for an FSL 1 facility on a yearly basis to be $49,275 (4 hours × 130 facilities × $94.76 [GS–15 rate]).[9]

GSA estimated the cost to the Government for the operations of an FSC chairperson for an FSL 2 facility on a yearly basis to be $43,590 (4 hours × 115 facilities × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC chairperson for an FSL 3 facility on a yearly basis to be $5,307 (4 hours × 14 facilities × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC chairperson for an FSL 4 facility on a yearly basis to be $1,137 (4 hours × 3 facilities × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC chairperson for an FSL 5 facility on a yearly basis to be $379 (4 hours × 1 facilities × $94.76 [GS–15 rate]).[10]

GSA estimated the cost to the Government for the operations of an FSC voting member for an FSL 1 facility on a yearly basis to be $49,275 (4 hours × 130 facilities × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC voting member for an FSL 2 facility on a yearly basis to be $43,590 (4 hours × 115 facilities × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC voting member for an FSL 3 facility on a yearly basis to be $5,307 (4 hours × 14 facilities × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC voting member for an FSL 4 facility on a yearly basis to be $1,137 (4 hours × 3 facilities × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC voting member for an FSL 5 facility on a yearly basis to be $379 (4 hours × 1 facility × $94.76 [GS–15 rate]).[11]

GSA estimated the cost to the Government for the operations of the two FSC non-voting members [12] for an FSL 1 facility on a yearly basis to be $98,550 (4 hours × 260 non-voting members × $94.76 [GS–15 rate]).[13]

GSA estimated the cost to the Government for the operations of an FSC non-voting member for an FSL 2 facility on a yearly basis to be $87,179 (4 hours × 230 non-voting members × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC non-voting member for an FSL 3 facility on a yearly basis to be $10,163 (4 hours × 28 non-voting members × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC non-voting member for an FSL 4 facility on a yearly basis to be $2,274 (4 hours × 6 non-voting members × $94.76 [GS–15 rate]).

GSA estimated the cost to the Government for the operations of an FSC non-voting member for an FSL 5 facility on a yearly basis to be $758 (4 hours × 2 non-voting members × $94.76 [GS–15 rate]).[14]

GSA consulted ISC staff to determine the duration per year for single tenant facilities to operate their facility and determined the duration to be ¼ of the time spent by an FSC member.[15] In addition, GSA estimated 360 single tenant facilities per year to be added to the portfolio.[16]

GSA estimated the cost to the Government for the operation of single tenant facilities on a yearly basis to be $34,114 (1 hour × 360 facilities × $94.76 [GS–15 rate]).

GSA consulted with ISC staff to determine the duration of an FSL determination based on the FSL of a facility and the average rate of the individuals performing the assessment.[17] [18] Following consultation with ISC SMEs, GSA assumes the rate to be the equivalent of a GS–12 at an hourly rate of $57.33. Again, GSA used a ¾ reduction of time in the analysis for single agency FSL determinations.

GSA estimated the cost to the Government for the FSL determination for new FSL 1 facilities on a yearly basis to be $149,058 (20 hours × 130 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new FSL 2 facilities on a yearly basis to be $263,718 (40 hours × 115 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new FSL 3 facilities on a yearly basis to be $48,157 (60 hours × 14 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new FSL 4 facilities on a yearly basis to be $13,759 (80 hours × 3 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new FSL 5 facilities on a yearly basis to be $5,733 (100 hours × 1 facility × $57.33 [GS–12 rate]).[19]

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[2] GSA estimated the annual number of new facilities to be 263. The analysis spans 10 years.

[3] GSA determined about 30% of all new facilities require an FSC based on historical PBS data. 7,707 current facilities have an identified FSL; 2,331 of those facilities require an FSC.

[4] GSA PBS SMEs identified a 1% reduction in space per year.

[5] Tenant information was provided by PBS.

[6] FSC chair and voting members should be senior officials with decision-making authority for their respective organization or agency.

[7] FSL Levels are referred to as FSL 1, FSL 2 and so forth in the analysis.

[8] GSA estimates only one Level 5 facility will be added over the duration of the analysis.

[9] GSA estimated one hour per meeting with the FSC conducting one meeting per quarter.

[10] GSA estimates only one Level 5 facility will be added over the duration of the analysis.

[11] GSA estimates only one Level 5 facility will be added over the duration of the analysis.

[12] GSA and FPS

[13] 260=130 facilities × 2 non-voting members, this formula is applied to the following estimates

[14] GSA estimates only one Level 5 facility will be added over the duration of the analysis.

[15] GSA estimated four FSC members. Single agency representative is equal to a single member of an FSC.

[16] GSA estimated the annual number of new facilities to be 360. GSA estimated 3,602 new facilities over the course of the analysis.

[17] ISC estimated it takes between 20–40 work hours per FSL, so an FSL 1 would take 20 hours; FSL 2 would take 40 hours; FSL 3 would take 60 hours; FSL 4 would take 80 hours; and FSL 5 would take 100 hours.

[18] ISC estimated the GS level to be a 12.

[19] GSA estimates only one Level 5 facility will be added over the duration of the analysis.

GSA consulted with ISC staff to determine the duration of an FSL determination based on the FSL of a single agency facility and the average grade of the individuals performing the assessment.[20] [21] [22]

GSA estimated the cost to the Government for the FSL determination for new single agency FSL 1 facilities on a yearly basis to be $16,052 (5 hours × 56 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new single agency FSL 2 facilities on a yearly basis to be $151,925 (10 hours × 265 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new single agency FSL 3 facilities on a yearly basis to be $27,518 (15 hours × 32 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new single agency FSL 4 facilities on a yearly basis to be $8,026 (20 hours × 7 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the FSL determination for new single agency FSL 5 facilities on a yearly basis to be $1,433 (25 hours × 1 facility × $57.33 [GS–12 rate]).[23]

GSA consulted with ISC staff to determine the duration of a risk assessment based on the FSL of a facility and the average grade of the individuals performing the assessment.[24] [25]

GSA estimated the cost to the Government for the risk assessment of new FSL 1 facilities on a yearly basis to be $298,116 (40 hours × 130 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new FSL 2 facilities on a yearly basis to be $527,436 (80 hours × 115 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new FSL 3 facilities on a yearly basis to be $96,314 (120 hours × 14 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new FSL 4 facilities on a yearly basis to be $27,518 (160 hours × 3 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new FSL 5 facilities on a yearly basis to be $11,466 (200 hours × 1 facility × $57.33 [GS–12 rate]).[26]

GSA consulted with ISC staff to determine the duration of a risk assessment based on the FSL of a new single agency facility and the average grade of the individuals performing the assessment.[27] [28] [29]

GSA estimated the cost to the Government for the risk assessment of new single agency FSL 1 facilities on a yearly basis to be $32,105 (10 hours × 56 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new single agency FSL 2 facilities on a yearly basis to be $303,849 (20 hours × 265 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new single agency FSL 3 facilities on a yearly basis to be $55,037 (30 hours × 32 facilities × [$57.33 GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new single agency FSL 4 facilities on a yearly basis to be $16,052 (40 hours × 7 facilities × $57.33 [GS–12 rate]).

GSA estimated the cost to the Government for the risk assessment of new single agency FSL 5 facilities on a yearly basis to be $2,867 (50 hours × 1 facility × $57.33 [GS–12 rate]).[30]

C. Total Government Costs

Summary	Total costs
Present Value (3 percent)	$38,500,867.26
Annualized Costs (3 percent)	4,513,476.26
Present Value (7 percent)	30,305,728.06
Annualized Costs (7 percent)	4,314,853.88

D. Overall Total Additional Costs of This Final Rule

The overall total additional undiscounted cost of this final rule is estimated to be $46,703,404 over a 10-year period. GSA did not identify any cost savings based on the impact of the rule.

Analysis of Alternatives

The preferred alternative is the process laid out in the analysis above. However, GSA has analyzed an alternative to the preferred process below.

Alternative 1: GSA could decide to take no regulatory action. No action from the Government would compromise the security of Federal facilities. The Government would not incur the additional costs associated with this final rule; however, the benefits of a standardized security process outweigh the costs. As a result, GSA rejected this alternative.

List of Subjects in 41 CFR Part 102–81

Federal buildings and facilities, Government property management and physical security measures.

Robin Carnahan,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA revises 41 CFR part 102–81 to read as follows:

PART 102–81—PHYSICAL SECURITY

Subpart A—General Provisions

Sec.

Subpart B—Physical Security

Authority: 40 U.S.C. 121(c) and 581; 6 U.S.C. 232; Pub. L. 109–13, 119 Stat. 302; and Homeland Security Presidential Directive 12.

Subpart A—General Provisions

§ 102–81.5 What does this part cover?

This part covers physical security in and at nonmilitary federally owned and leased facilities and grounds under the jurisdiction, custody, or control of the U.S. General Services Administration (GSA), including those facilities and grounds that have been delegated by the

[20] ISC estimated it takes between 20–40 work-hours per FSL, so an FSL 1 would take 20 hours; FSL 2 would take 40 hours; FSL 3 would take 60 hours; FSL 4 would take 80 hours; and FSL 5 would take 100 hours.

[21] ISC estimated the GS level to be a 12.

[22] GSA assumed a reduction of 75% for single agency FSL determinations, as GSA estimated 4 FSC members per facility for multi-tenant facilities.

[23] GSA estimates only one Level 5 facility will be added over the duration of the analysis.

[24] ISC estimated it takes between 20–40 work-hours per FSL, so an FSL 1 would take 20 hours; FSL 2 would take 40 hours; FSL 3 would take 60 hours; FSL 4 would take 80 hours; and FSL 5 would take 100 hours.

[25] ISC estimated the GS level to be a 12.

[26] GSA estimates only one Level 5 facility will be added over the duration of the analysis.

[27] ISC estimated it takes between 20–40 work-hours per FSL, so an FSL 1 would take 20 hours; FSL 2 would take 40 hours; FSL 3 would take 60 hours; FSL 4 would take 80 hours; and FSL 5 would take 100 hours.

[28] ISC estimated the GS level to be a 12.

[29] GSA assumed a reduction of 75% for single agency risk assessment, as GSA estimated four agencies per facility for multi-tenant facilities.

[30] GSA estimated only one Level 5 facility will be added over the duration of the analysis.

Administrator of General Services. *Federal facility* means all or any part of any federally owned or leased building, physical structure or associated support infrastructure (*e.g.,* parking facilities and utilities) that is under the jurisdiction, custody, or control of GSA. *Federal grounds* mean all or any part of any area outside a Federal facility that is under the jurisdiction, custody, or control of GSA.

§ 102–81.10 What basic physical security policy governs Federal agencies?

The Interagency Security Committee (ISC) is responsible for developing and evaluating physical security standards for nonmilitary Federal facilities. In accordance with E.O. 12977, the ISC sets policies and recommendations that govern physical security at Federal facilities and on Federal grounds occupied by Federal employees for nonmilitary activities. This includes the ISC Risk Management Process Standard (the RMP Standard) that Federal agencies use in the protection of the real property they occupy, including the protection of persons on the property. The goal of the RMP Standard is a level of protection commensurate with the level of risk. ISC policies do not supersede other laws, regulations, and Executive orders that are intended to protect unique assets.

§ 102–81.15 What are the governing authorities for this part?

The governing authorities are as follows:

(a) 40 U.S.C. 121(c) and 581.

(b) E.O. 12977.

(c) E.O. 13286, sec. 23.

(d) 6 U.S.C. 232.

(e) Homeland Security Presidential Directive 12.

(f) REAL ID Act of 2005 (Pub. L. 109–13).

§ 102–81.20 Who must comply with this part?

Each agency occupying a Federal facility or Federal grounds under the jurisdiction, custody, or control of GSA, including those facilities and grounds that have been delegated by the Administrator of General Services, for nonmilitary activities must comply with this part, except where the Director of National Intelligence determines that compliance would jeopardize intelligence sources and methods or the Secretary of Energy determines that compliance would conflict with the authorities of the Secretary of Energy over Restricted Data and Special Nuclear Material under, among others, sections 141, 145, 146, 147, and 161 of the Atomic Energy Act of 1954, as amended, the Department of Energy Organization Act, or any other statute. In situations where a Federal facility is occupied by multiple Federal agencies for both military and nonmilitary activities, and each such occupancy is substantial, those occupants will coordinate on the physical security of the facility.

Subpart B—Physical Security

§ 102–81.25 Who is responsible for implementing, maintaining, and upgrading physical security standards in each Federal facility and on Federal grounds under the jurisdiction, custody, or control of GSA?

Each agency occupying a Federal facility or Federal grounds under the jurisdiction, custody, or control of GSA, including those facilities and grounds that have been delegated by the Administrator of General Services, for nonmilitary activities is responsible for implementing, maintaining, and upgrading the physical security standards, except where the Director of National Intelligence determines that compliance would jeopardize intelligence sources and methods or the Secretary of Energy determines that compliance would conflict with the authorities of the Secretary of Energy over Restricted Data and Special Nuclear Material under, among others, sections 141, 145, 146, 147, and 161 of the Atomic Energy Act of 1954, as amended, the Department of Energy Organization Act, or any other statute. An occupant agency, if it is the only Federal occupant agency in the building, or the Facility Security Committee (FSC), as applicable, uses the facility security assessment reports they receive from the U.S. Department of Homeland Security—Federal Protective Service to inform deliberations regarding recommended countermeasures and other security-related actions. GSA will facilitate the implementation of the countermeasures or other actions after occupant agency or FSC approval, as applicable, and commitment of each occupant agency to pay its *pro rata* share of the cost.

§ 102–81.30 Are there any special considerations for existing Federal facilities and Federal grounds under the jurisdiction, custody, or control of GSA?

No, the RMP Standard applies to existing nonmilitary Federal facilities as part of the periodic risk assessment process. The security organization responsible for the Federal facility or Federal grounds will conduct a periodic risk assessment and recommend countermeasures and design features to be implemented at the Federal facility or on the Federal grounds. The FSC will determine whether the recommended countermeasures will be implemented or if risk will be accepted. The design and implementation of approved countermeasures at existing facilities must comply with applicable laws, regulations, and Executive orders. For approved countermeasures that cannot be implemented immediately, a plan to phase in countermeasures and achieve compliance must be instituted and documented in accordance with the RMP Standard. In some cases, the implementation of countermeasures must be delayed until renovations or modernization programs occur.

§ 102–81.31 Are there any special considerations for leased facilities or new construction?

Yes. GSA will coordinate with the occupant agency and the security organization responsible for the Federal facility or Federal grounds when determining the applicable physical security clauses to use in the procurement package.

[FR Doc. 2022–17950 Filed 8–23–22; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 17–97, FCC 22–37; FR ID 101457]

Advanced Methods To Target and Eliminate Unlawful Robocalls, Sixth Report and Order, CG Docket No. 17–59, Call Authentication Trust Anchor, Fifth Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule and announcement of compliance date.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) announces that the Office of Management and Budget (OMB) has approved the public information collection associated with a rule that requires all voice service providers respond to traceback ''fully and in a timely manner'' and gateway providers must respond within 24 hours adopted in the *Gateway Provider Report and Order,* FCC 22–37, and that compliance with the modified rule will be required. It modifies the paragraph advising that compliance was not required until OMB approval was obtained. This document is consistent with the *Sixth Report and Order* in CG Docket No. 17–59, *Fifth Report and Order* in WC Docket No. 17–97, and *Gateway Provider Report and Order,*

FCC 22–37 adopted on May 19, 2022 and released on May 20, 2022, which states the Commission will publish a document in the **Federal Register** announcing a compliance date for the modified rule section and revise the rules accordingly.

DATES: This rule is effective September 23, 2022. Compliance with 47 CFR 64.1200(n)(1), published at 87 FR 42916, July 18, 2022, is required on September 23, 2022.

FOR FURTHER INFORMATION CONTACT: Jerusha Burnett, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418–0526, or email: *Jerusha.Burnett@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirement in 47 CFR 64.1200(n)(1) on July 20, 2022. The rule was modified in the *Gateway Provider Report and Order,* FCC 22–97 adopted on May 19, 2022 and released on May 20, 2022. The Commission publishes this document as an announcement of the compliance date of the rule. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 3.317, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060–1303, 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).

This document also modifies § 64.1200(p) of the Commission's rules, which advised that compliance was not required until OMB approval was obtained.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 20, 2022, for the information collection requirement contained in the modification to 47 CFR 64.1200(n)(1).

Under 5 CFR part 1320.5(b), 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 for the information collection requirement in 47 CFR 64.1200(n)(1) is 3060–1303.

The foregoing notice 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: 3060–1303.

OMB Approval Date: July 20, 2022.

OMB Expiration Date: January 31, 2023.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, Sixth Report and Order, CG Docket No. 17–59, Call Authentication Trust Anchor, Fifth Report and Order, WC Docket No. 17–97, FCC 22–37.

Form Number: N/A.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 6,493 respondents; 311,664 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 4(i), 4(j), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403.

Total Annual Burden: 77,916 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission adopted a new information collection associated with the Advanced Methods to Target and Eliminate Unlawful Robocalls Sixth Report and Order and Call Authentication Trust Anchor Fifth Report and Order (''Gateway Provider Report and Order''). Unwanted and illegal robocalls have long been the Federal Communication Commission's (''Commission'') top source of consumer complaints and one of the Commission's top consumer protection priorities. Foreign-originated robocalls represent a significant portion of illegal robocalls, and gateway providers serve as a critical choke-point for reducing the number of illegal robocalls received by American consumers. In the Gateway Provider Report and Order, the Commission took steps to prevent these foreign-originated illegal robocalls from reaching consumers and to help track these calls back to the source. Along with further extension of the Commission's caller ID authentication requirements and Robocall Mitigation Database filing requirements, the Commission adopted several robocall mitigation requirements, including a requirement for gateway providers to respond to traceback within 24 hours, mandatory blocking requirements, a ''know your upstream provider'' requirement, and a general mitigation requirement.

This document also modifies § 64.1200(p) of the Commission's rules, which advised that compliance was not required until OMB approval was obtained.

List of Subjects in 47 CFR Part 64

Carrier equipment, Communications common carriers. Reporting and recordkeeping requirements, Telecommunications, Telephone.

The Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

■ 2. Amend § 64.1200 by revising paragraph (p) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(p) Paragraph (o) of this section may contain an information collection and/or recordkeeping requirement. Compliance with paragraph (o) will not be required until this paragraph (p) is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or until after the Consumer and Governmental Affairs Bureau determines that such review is not required. The Commission directs the Consumer and Governmental Affairs Bureau to announce a compliance date for paragraph (o) by subsequent Public Notice and notification in the **Federal Register** and to cause paragraph (o) to be revised accordingly.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–18148 Filed 8–23–22; 8:45 am]

BILLING CODE 6712–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 30)]

Fees for Services Performed in Connection With Licensing and Related Services—2022 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board updates for 2022 the fees that the public must pay to file certain cases and pleadings with the Board. Pursuant to this update, 84 of the Board's 135 fees will increase and 51 fees will remain at their current levels.

DATES: This final rule is effective September 23, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Mizner, (202) 245–0318, or Andrea Pope-Matheson, (202) 245–0363. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3(a) provide for an annual update of the Board's entire user-fee schedule. Fees are generally revised based on the cost study formula set forth at 49 CFR 1002.3(d), which looks to changes in salary costs, publication costs, and Board overhead cost factors. Applying that formula, 84 of the Board's 135 fees will increase and 51 fees will remain at their current levels.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's website at *www.stb.gov* or call (202) 245–0245. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS): (800) 877–8339.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

Decided: August 18, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Aretha Laws-Byrum,

Clearance Clerk.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Section 1002.1 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Records Officer, $21.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $49.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including clerical work, etc. incidental thereto, at a rate of $34.00 per hour.

* * * * *

■ 3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings To Enter Into a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic	$5,700.
(2)(i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$2,500.
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered.	$4,000.
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	$3,300.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	$35,500.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$5,800.
(ii) Minor amendment	$100.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	$600.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	$2,100.
(7)–(10) [Reserved]	
PART II: Rail Licensing Proceedings Other Than Abandonment or Discontinuance Proceedings	
(11)(i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	$9,300.
(ii) Notice of exemption under 49 CFR 1150.31 through 1150.35	$2,200.
(iii) Petition for exemption under 49 U.S.C. 10502	$16,100.
(12)(i) An application involving the construction of a rail line	$96,100.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	$2,200.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	$96,100.
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d).	$350.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	$2,600.
(14)(i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	$7,900.
(ii) Notice of exemption under 49 CFR 1150.41 through 1150.45	$2,200.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	$8,400.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21 through 1150.24	$2,100.
(16) An application for a land-use-exemption permit for a facility existing as of October 16, 2008 under 49 U.S.C. 10909	$7,700.
(17) An application for a land-use-exemption permit for a facility not existing as of October 16, 2008 under 49 U.S.C. 10909	$27,200.

Type of proceeding	Fee
(18)–(20) [Reserved]	
Part III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21)(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	$28,500.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$4,600.
(iii) A petition for exemption under 49 U.S.C. 10502	$8,000.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$600.
(23) Abandonments filed by bankrupt railroads	$2,400.
(24) A request for waiver of filing requirements for abandonment application proceedings	$2,300.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$2,000.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	$29,200.
(27)(i) Request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	$350.
(ii) A request to extend the period to negotiate a trail use agreement	$550.
(28)–(35) [Reserved]	
PART IV: Rail Applications To Enter Into a Particular Financial Transaction or Joint Arrangement	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$24,300.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$13,100.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$1,920,200.
(ii) Significant transaction	$384,000.
(iii) Minor transaction	$9,100.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$2,100.
(v) Responsive application	$9,100.
(vi) Petition for exemption under 49 U.S.C. 10502	$12,000.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$7,100.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,920,200.
(ii) Significant transaction	$384,000.
(iii) Minor transaction	$9,100.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$1,600.
(v) Responsive application	$9,100.
(vi) Petition for exemption under 49 U.S.C. 10502	$12,000.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$7,100.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$1,920,200.
(ii) Significant transaction	$384,000.
(iii) Minor transaction	$9,100.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,400.
(v) Responsive application	$9,100.
(vi) Petition for exemption under 49 U.S.C. 10502	$12,000.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$7,100.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,920,200.
(ii) Significant transaction	$384,000.
(iii) Minor transaction	9,100.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,700.
(v) Responsive application	$9,100.
(vi) Petition for exemption under 49 U.S.C. 10502	$8,400.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	$7,100.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	$2,900.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$89,900.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$16,600.
(ii) Minor amendment	$100.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$1,000.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	$10,200.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$350.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$350.
(49)–(55) [Reserved]	
PART V: Formal Proceedings	
(56) A formal complaint alleging unlawful rates or practices of carriers:	

Type of proceeding	Fee
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	$350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology	$150.
(iv) All other formal complaints (except competitive access complaints)	$350.
(v) Competitive access complaints	$150.
(vi) A request for an order compelling a rail carrier to establish a common carrier rate	$350.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705	$11,400.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$9,000.
(60) Labor arbitration proceedings	$350.
(61)(i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$350.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	$450.
(62) Motor carrier undercharge proceedings	$350.
(63)(i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.	$350.
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy.	$350.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).	$750.
(65)–(75) [Reserved]	
PART VI: Informal Proceedings	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$1,600.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	$150.
(78)(i) The filing of tariffs, including supplements, or contract summaries	$1 per page. ($30 min. charge.)
(ii) The filing of water carrier annual certifications	$30.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	$75.
(ii) Applications involving over $25,000	$200.
(80) Informal complaint about rail rate applications	$750.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$75.
(ii) Petitions involving over $25,000	$200.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$300.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	$50 per document.
(84) Informal opinions about rate applications (all modes)	$300.
(85) A railroad accounting interpretation	$1,400.
(86)(i) A request for an informal opinion not otherwise covered	$1,900.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR part 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).	$6,600.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered	$650.
(87) Arbitration of certain disputes subject to the statutory jurisdiction of the Surface Transportation Board under 49 CFR part 1108:	
(i) Complaint	$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(iii) Third Party Complaint	$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	$150.
(88) Basic fee for STB adjudicatory services not otherwise covered	$350.
(89)–(95) [Reserved]	
PART VII: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC agent	$40 per delivery.
(97) Request for service or pleading list for proceedings	$30 per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in an STB or State proceeding that:	
(i) Annual request does not require a **Federal Register** (FR) notice:	
(A) Set cost portion	$200.
(B) Sliding cost portion	$60 per party.
(ii) Annual request does require a FR notice:	

Type of proceeding	Fee
(A) Set cost portion	$450.
(B) Sliding cost portion	$60 per party.
(iii) Quarterly request does not require a FR notice:	
(A) Set cost portion	$50.
(B) Sliding cost portion	$15 per party.
(iv) Quarterly request does require a FR notice:	
(A) Set cost portion	$233.
(B) Sliding cost portion	$15 per party.
(v) Monthly request does not require a FR notice:	
(A) Set cost portion	$17.
(B) Sliding cost portion	$5 per party.
(vi) Monthly request does require a FR notice:	
(A) Set cost portion	$178.
(B) Sliding cost portion	$5 per party.
(99)(i) Application fee for the STB's Practitioners' Exam	$200.
(ii) Practitioners' Exam Information Package	$25.
(100) Carload Waybill Sample data:	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD–R.	$250 per year.
(ii) Specialized programming for Waybill requests to the Board	$134 per hour.

* * * * *

[FR Doc. 2022–18245 Filed 8–23–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0054; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BE43

Endangered and Threatened Wildlife and Plants; Removing the Braken Bat Cave Meshweaver From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the Braken Bat Cave meshweaver (*Cicurina venii*), an arachnid, from the Federal List of Endangered and Threatened Wildlife (*i.e.,* ''delisting'' the species) under the Endangered Species Act of 1973, as amended (Act), because of a taxonomic revision. This determination is based on our evaluation of the best available scientific and commercial information, which indicates that the Braken Bat Cave meshweaver is not a discrete taxonomic entity and does not meet the definition of a species as defined under the Act. The reason it does not meet the definition of a species is that the original data for classification of the Braken Bat Cave meshweaver when it was listed was in error. Braken Bat Cave meshweaver has been synonymized with Madla Cave meshweaver (*Cicurina madla*). Therefore, due to a taxonomic revision, Braken Bat Cave meshweaver is no longer a scientifically accepted species and cannot be listed under the Act. However, because individuals previously identified as Braken Bat Cave meshweaver have been synonymized under Madla Cave meshweaver, their status and protections under the Act remain the same because the Madla Cave meshweaver is listed as endangered under the Act.

DATES: This rule is effective September 23, 2022.

ADDRESSES: The proposed rule and this final rule are available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov at* Docket No. FWS–R2–ES–2021–0054.

FOR FURTHER INFORMATION CONTACT: Catherine Yeargan, Acting Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone at 512–490–0057. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On September 30, 2021, we published a proposed rule (86 FR 54145) to remove Braken Bat Cave meshweaver from the Federal List of Endangered and Threatened Wildlife (*i.e.,* to delist the species). Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species. The proposed rule and supplemental documents are provided at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2021–0054.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we sought the expert review of our September 30, 2021, proposed rule to delist the Braken Bat Cave meshweaver (86 FR 54145). We sent the proposed rule to three independent peer reviewers and received two responses. We also sent the rule to one partner reviewer and received a response. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments on our September 30, 2021, proposed rule (86 FR 54145). We did not receive substantial additional information during the comment period, and therefore we did not make any changes from the proposed rule in this final rule.

Background

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. On July 5, 2022, the U.S. District Court for the Northern District of California vacated regulations that the Service (jointly with the National Marine Fisheries Service) had promulgated in 2019 (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (*CBD* v. *Haaland*). As a result of that vacatur, regulations that were in effect before those 2019 regulations now govern listing and critical habitat decisions. Our analysis for this decision applied those pre-2019 regulations. However, given that litigation remains regarding the court's vacatur of those 2019 regulations, we also undertook an analysis of whether the decision would be different if we were to apply the 2019 regulations. We concluded that the decision would have been the same if we had applied the 2019 regulations. The analysis based on the 2019 regulations is included in the decision file for this decision.

Species Information and Biology

The Braken Bat Cave meshweaver is a small, troglobitic (cave-dwelling) spider that inhabits caves and mesocaverns (humanly impassable voids in karst limestone) in Bexar County, Texas. Because the Braken Bat Cave meshweaver is restricted to the subterranean environment, individuals exhibit morphological adaptations to that environment, such as elongated appendages and loss or reduction of eyes and pigment (Service 2011b, p. 2).

Habitat and Distribution

Habitat for the Braken Bat Cave meshweaver includes karst-forming rock containing subterranean spaces (caves and connected mesocaverns) with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks for foraging and sheltering) that are free of contaminants (Service 2011b, p. 2). Although the Braken Bat Cave meshweaver spends its entire life underground, its ecosystem is dependent on the overlying surface habitat (Service 2011b, p. 2). Examples of nutrient sources include leaf litter that has fallen or washed in, animal droppings, and animal carcasses. Individuals require surface and subsurface sources (such as plants and their roots, fruits, and leaves, and animal (*e.g.,* cave cricket) eggs, feces, and carcasses) that provide nutrient input into the karst ecosystem (Service 2011a, p. 6).

The Braken Bat Cave meshweaver is known from only two caves in the Culebra Anticline karst fauna region. One is located on private property, and the other occurs on a highway right-of-way. The species was first collected in 1980 and 1983 in Braken Bat Cave, but the cave itself was not initially described until 1988 (Reddell 1993, p. 38). The cave entrance was filled during construction of a home in 1990. Without excavation, it is difficult to determine what effect this incident had on the Braken Bat Cave meshweaver; however, there may still be some nutrient input, from a reported small side passage. The remaining location was discovered in 2012, during construction of State Highway 151 in San Antonio, Texas. Originally a void with no entrance, that feature was capped with concrete and the soil and vegetation above it was restored to the extent possible.

Threats to the Braken Bat Cave meshweaver and its habitat include destruction and/or deterioration of habitat by construction; filling of caves and karst features; increase of impermeable cover; contamination from septic effluent, sewer leaks, run-off, pesticides, and other sources; predation by and competition with nonnative fire ants; and vandalism (65 FR 81419; December 26, 2000).

Taxonomy

Spider taxonomy generally relies largely on genitalic differences in adult specimens to delimit species (Paquin and Hedin 2004, p. 3240; Paquin *et al.* 2008, p. 139; Paquin and Dupérré 2009, p. 5). Delimiting troglobitic *Cicurina* species in particular is difficult not only because of the inaccessibility of their habitat for gathering adequate samples (Moseley 2009, pp. 47–48), but because most collections return immature specimens (Gertsch 1992, p. 80; Cokendolpher 2004, p. 15; Paquin and Hedin, 2004, p. 3240; Paquin *et al.* 2008, p. 140; Paquin and Dupérré 2009, p. 5). In addition, the few adults that are collected are disproportionately female (Cokendolpher 2004, pp. 14, 15, 17–18; Paquin and Dupérré 2009, p. 5). As females of troglobitic *Cicurina* exhibit variability in genitalic characters within and between caves, this makes it difficult to determine whether an individual represents a distinct species or intraspecific variation based on morphology alone (Cokendolpher 2004, pp. 30–32; Paquin and Duperre 2009, pp. 5–6; Paquin *et al.* 2008, pp. 140, 143, 147; Paquin and Dupérré 2009, pp. 4–6, 63–64).

The Braken Bat Cave meshweaver and Madla Cave meshweaver were originally described in 1992, from single female specimens found in Braken Bat Cave and Madla's Cave, respectively (Gertsch 1992, pp. 109, 111). These species were two of only four cave-dwelling spiders of the genus *Cicurina* described from Bexar County at the time (Gertsch 1992, p. 98) and were differentiated based on their geographic location and specific morphological characters of the females (Gertsch 1992, pp. 84, 109, 111; Cokendolpher 2004, pp. 26, 43, 52).

Various genetic data were combined to address species delimitation questions in troglobitic *Cicurina* species, including the Braken Bat Cave meshweaver (Hedin *et al.* 2018, entire). Analysis of the evolutionary history of the species using genetics (phylogenomics) revealed two lines of ancestry, both of which are eyeless and correspond to groups previously described based on female morphology and troglobitic (cave-dwelling) adaptations, specifically the shape of the female sperm storage organ and the ratio of leg length to body length (Hedin *et al.* 2018, pp. 55, 61, 63–64; Cokendolpher 2004, p. 18; Paquin and Dupérré 2009, p. 9). Although the type specimen for the Braken Bat Cave meshweaver was not included in the genetics portion of the study because DNA could not be collected due to age, newly discovered specimens from the same geographic region with similar morphology to the Braken Bat Cave meshweaver placed it in the Madla Cave meshweaver clade genetically (Hedin *et al.* 2018, pp. 56–57; Hedin *et al.* 2018, p. 67).

Therefore, based on similarity of morphologic characteristics and mitochondrial and nuclear DNA results, Braken Bat Cave meshweaver was synonomized under Madla Cave meshweaver (Hedin *et al.* 2018, p. 68). This synonomy was accepted by the World Spider Catalog (World Spider Catalog 2019). Please refer to the Bexar County Karst Invertebrates Recovery Plan (2011), the Bexar County Karst Invertebrates 5-year Review (2011), and the Madla Cave Meshweaver 5-year Review (2019) for more information.

Summary of Comments and Recommendations

In the September 30, 2021, proposed rule (86 FR 54145), we requested that all interested parties submit written comments on or before November 29, 2021. We also contacted appropriate State agencies and scientific experts and invited them to comment on the

proposed rule. A newspaper notice inviting general public comment was published in the San Antonio Express-News' legal notices section on October 14, 2021. Although we invited requests for a public hearing in the rule, we did not receive any requests for a public hearing.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review actions under the Act, we sought the expert opinions of three specialists with expertise in the biology, habitat, and threats to the Braken Bat Cave meshweaver. We received responses from two experts. Both peer reviewers agreed that the Braken Bat Cave meshweaver should be delisted because it is no longer a taxonomically valid species and should be synonymized with the Madla Cave meshweaver. They did not provide any additional substantial information that would result in a change from the proposed rule.

State Agency Comments

We received one comment from Texas Parks and Wildlife Department that supported our determination to delist the Braken Bat Cave meshweaver. The agency did not provide any further substantive information.

Public Comments

We received four public comments during the comment period in response to the proposed rule. We reviewed all comments we received during the public comment period for substantive issues and new information regarding the proposed rule. None of the comments we received included new information concerning the proposed delisting of the Braken Bat Cave meshweaver. Two commenters supported our proposal to delist the Braken Bat Cave meshweaver, and the other two comments did not address or provide any information concerning the Braken Bat Cave meshweaver's delisting. We did not receive any comments opposing the proposed rule. Because all of the public comments we received did not provide any new or substantial information or pose questions to be addressed, they do not warrant an explicit response in this rule.

Delisting Determination

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species on, reclassifying species on, or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines ''species'' as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Our regulations at 50 CFR 424.11 identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species has recovered; or (3) the original data or interpretations of the data used at the time the species was classified were in error. Here, we have determined that the Braken Bat Cave meshweaver was listed based on data or interpretations of data that were in error; therefore, we are delisting it. Consideration of the Recovery Criteria for the Braken Bat Cave meshweaver is not appropriate because it was delisted based on a previous taxonomic classification error. Both the Braken Bat Cave meshweaver and the Madla Cave meshweaver are covered under the Bexar County Karst Invertebrates Recovery Plan (Service 2011, entire); the Braken Bat Cave meshweaver will now be addressed under that recovery plan as the Madla Cave meshweaver (16 U.S.C. 1533(g)(1)).

Effects of This Rule

This final rule revises 50 CFR 17.11(h) by removing the Braken Bat Cave meshweaver from the Federal List of Endangered and Threatened Wildlife. However, because the Braken Bat Cave meshweaver has been synonymized under the Madla Cave meshweaver, its status, and thus its protections under the Act, remain the same because the Madla Cave meshweaver is listed as endangered, wherever it is found, under the Act. The additional Braken Bat Cave meshweaver localities were included in the Madla Cave meshweaver 5-year review and did not change the endangered status of the Madla Cave meshweaver species (Service 2019, p. 17).

Unit 15, the area surrounding Braken Bat Cave, was designated as critical habitat for Braken Bat Cave meshweaver in 2012 (77 FR 8450; February 14, 2012). Because Braken Bat Cave meshweaver has designated critical habitat, this rule also amends 50 CFR 17.95(g) to remove the Braken Bat Cave meshweaver's designated critical habitat. This area has not yet been evaluated to determine if it is essential to the conservation of the Madla Cave meshweaver. Should we evaluate it in the future and determine that it is essential for the conservation of the Madla Cave meshweaver, proposing this unit as critical habitat for Madla Cave meshweaver would be completed in a subsequent rulemaking. Unit 15, however, is also critical habitat for an endangered beetle with no common name, *Rhadine infernalis.* Therefore, Unit 15 will retain the protections of the Act as designated critical habitat for *R. infernalis.*

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We do not expect any Tribes to be affected by this delisting because there are no Tribal lands in or near the range of the Braken Bat Cave meshweaver. Additionally, we did not receive any comments from any Tribes or Tribal members on the proposed rule (86 FR 54145; September 30, 2021).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Austin

Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 16 U.S.C. 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. In § 17.11, at paragraph (h), amend the List of Endangered and Threatened Wildlife by removing the entry for ''Meshweaver, Braken Bat Cave'' under ARACHNIDS.

§ 17.95 [Amended]

■ 3. In § 17.95, amend paragraph (g) by removing the entry for ''Braken Bat Cave Meshweaver (*Cicurina venii*)''.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–18228 Filed 8–23–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0125; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BE41

Endangered and Threatened Wildlife and Plants; Removing Adiantum vivesii From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the plant *Adiantum vivesii* (no common name) from the Federal List of Endangered and Threatened Plants (List). This determination is based on a thorough review of the best available scientific and commercial data indicating that *Adiantum vivesii* is not a distinct species, but rather a sterile hybrid that does not have the capacity to establish a lineage that could be lost to extinction. Here, we have determined that *Adiantum vivesii* is not a discrete taxonomic entity and does not meet the definition of a species as defined under the Act, and that its original listing was based on data or interpretations of data that were in error; therefore, we are delisting it.

DATES: This rule is effective September 23, 2022.

ADDRESSES: This final rule, supporting documents, and the public comments received on the proposed rule are available on the internet at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0125.

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; *Caribbean_es@fws.gov;* telephone 787–405–3641. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On June 9, 1993, we listed *Adiantum vivesii* as an endangered species (58 FR 32308), due primarily to its limited distribution and low numbers of individuals.

We completed two 5-year reviews for *Adiantum vivesii,* the first on June 10, 2008 (see the announcement initiating the review at 70 FR 53807, September 12, 2005), and the second on September 25, 2018 (see the announcement initiating the review at 82 FR 29916, June 30, 2017). Both 5-year reviews recommended delisting due to the entity not meeting the Act's definition of a species; they found that the original data used at the time the entity was classified was in error. Peer reviewer comments received on the 5-year status review (2008) were part of our thorough review of the best available scientific and commercial data used to make our determination.

On July 30, 2021, we proposed to delist *Adiantum vivesii* because it is not a listable entity under the Act; our proposal further explained that the original data used at the time the species was classified were in error (86 FR 40996). In that document, we requested information and comments from the public and peer reviewers on our proposal to delist *Adiantum vivesii.*

Summary of Changes From the Proposed Rule

There are no changes in this final rule from our proposed rule (86 FR 40996; July 30, 2021) based on the comments we received and that are summarized below under Summary of Comments and Recommendations.

Background

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. On July 5, 2022, the U.S. District Court for the Northern District of California vacated regulations that the Service (jointly with the National Marine Fisheries Service) had promulgated in 2019 (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (*CBD* v. *Haaland*). As a result of that vacatur, regulations that were in effect before those 2019 regulations now govern listing and critical habitat decisions. Our analysis for this decision applied those pre-2019 regulations. However, given that litigation remains regarding the court's vacatur of those 2019 regulations, we also undertook an analysis of whether the decision would be different if we were to apply the 2019 regulations. We concluded that the decision would have been the same if we had applied the 2019 regulations. The analysis based on the 2019 regulations is included in the decision file for this decision.

The following discussion contains information that was presented in the proposed rule to delist *Adiantum vivesii* (86 FR 40996; July 30, 2021). A thorough discussion of the species' description, habitat, and life history is also found in that proposed rule.

Entity Description

Adiantum vivesii was found growing in colonies (clusters) where the rhizome (rootstock or underground stem) spreads horizontally. The fronds (leaves) are distichous (arranged in one plane) and erect-spreading with broad and irregular lance-oblong blades. The blades have

two or three alternate or occasionally subopposite pinnae (segment of leaf), with a larger terminal pinna. The terminal pinnae are stalked often somewhat inequilateral with approximately 10 to 13 pairs of alternate, narrowly oblong-falcate pinnules (smaller segments of a leaf), shaped unequally cuneate at the base. The irregularly branched stalks are lustrous purple-black with hairlike scales. The rachis (axis of a fern leaf) and costae (central vein of a leaf) are more densely covered with hairlike scales than the stipe. The outer sterile margins of the pinna are irregularly serrulate (serrated teeth), and the tissue is dull green on both sides. Five elliptic to linear sori (sacks of spores) are borne along the basal half of the acroscopic (facing the apex) margin. The sori are also close or contiguous, but remain distinct, and the indusium flap (tissue covering the sori) is gray-brown and turgid, with an erose (irregular) margin (Proctor 1989, p. 140; USFWS 1995, pp. 1–2).

Distribution and Habitat

Adiantum vivesii was found in the limestone or karst region of northwestern Puerto Rico. This region is underlain by limestone rocks of the Oligocene or Miocene age. Topography varies throughout the karst region, from extremely rugged to gentle rolling hills. Canyons, sinkholes, and subterranean rivers, as well as these rolling hills, are the most common features of the region. Soils in the limestone hills are shallow, well-drained, alkaline, and interspersed between limestone outcrops (Lugo *et al.* 2001, pp. 13–26; USFWS 1995, pp. 6–7). *Adiantum vivesii* occurs within the semi-evergreen seasonal forests of the subtropical moist forest life zone (Ewel and Whitmore 1973, p. 20). This life zone, which covers 58 percent of the total area of Puerto Rico and the U.S. Virgin Islands, is delineated by a mean annual rainfall of between 1,000 to 1,100 millimeters (mm) (40 to 44 inches (in)) and about 2,000 to 2,200 mm (80 to 88 in) and a mean temperature between about 18 and 24 degrees Centigrade (64.4 and 75.2 degrees Fahrenheit) (Ewel and Whitmore 1973, p. 20). *Adiantum vivesii* occurs in a deeply shaded hollow at the base of a privately owned limestone hill in the municipality of Quebradillas (USFWS 1995, p. 7).

When the species was listed in 1993, it was known from only one population, which was estimated at 1,000 plants or growing apices by Proctor (1991, p. 5). The population was later documented in 2000 at the same location occurring in an area of 21 meters (m) by 10 m (68.9 feet (ft) by 32.8 ft) by Sepúlveda-Orengo (2000, p. 21). In the vicinity of this area, eight other species of the genus *Adiantum* were found (*A. cristatum, A. fragile, A. latifolium, A. melanoleucum, A. pulverulentum, A. tenerum, A. tetraphyllum,* and *A. wilsonii*). The fern *Adiantum tetraphyllum* was growing intermixed within the area occupied by *Adiantum vivesii* (Sepúlveda-Orengo 2000, p. 22). Surveys conducted in 2017 at the type locality (the location where the specimen was first identified) were unable to identify material that morphologically matched the original type specimen (despite similarities), nor any clonal stand of *Adiantum vivesii* material as it had been described there in 1991 and 2000 (Possley et al. 2020, p. 6). These results suggest that *Adiantum vivesii* is extirpated from the only known location.

Taxonomy

Adiantum vivesii was believed to be a fern of the family Pteridaceae. It was described by Dr. George R. Proctor in 1985, from specimens collected by Miguel Vives and William Estremera at San Antonio Ward in the municipality of Quebradillas (Proctor 1989, p. 140). Non-genetic research on *Adiantum vivesii* after it was described as a species suggested this fern is a single sterile hybrid plant, rather than a population of individuals of a species (Sepúlveda-Orengo 2000, entire). Excavations at different points throughout the entire ''population'' of *Adiantum vivesii* found rhizome, or underground stem, connections between most of the apparent individual ferns (Sepúlveda-Orengo 2000, p. 21). Plantings of two 10-centimeter (4-inch) rhizome segments (planted in pots using the same soil from the colony location) of *Adiantum vivesii* grew into healthy plants within about 3 months (Sepúlveda-Orengo 2000, p. 21). Production of sporangia (structures from which the reproductive gametophytes arise) was observed throughout the year, but actual gametophytes (structures containing sperm and eggs, or gametes) were not observed. The lack of gamete production but growth of fronds from rhizome segments suggests that the *Adiantum vivesii* ''population'' consists of only one individual with rhizome proliferations (below-ground stems).

A morphometric analysis of *Adiantum vivesii* and the co-occurring species, *Adiantum tetraphyllum,* was conducted on 21 vegetative characters and one spore character (Sepúlveda-Orengo 2000, p. 22). In conjunction with the morphometric analysis, the following studies of *Adiantum vivesii* and *Adiantum tetraphyllum* were conducted: chromosome counts; light microscopy observations of fresh or dried pinnules, sori, and sporangia; and scanning electron microscopy (SEM) of rhizomes, fertile pinnules, and spores. The morphometric analysis showed significant differences between *Adiantum vivesii* and *Adiantum tetraphyllum* for 16 of the vegetative characters as well as spore size, revealing that *Adiantum vivesii* is morphologically different. Based on the results, the morphological features that best distinguish *Adiantum vivesii* from *Adiantum tetraphyllum* are the number of lateral pinnae and the number of pinnules on each lateral pinna, which are fewer in *Adiantum vivesii.* Although there are morphological differences, chromosome number in each taxon appears to be similar (Sepúlveda-Orengo 2000, p. 23), indicating *Adiantum vivesii* is not a polyploid (possesses more than two sets of chromosomes), a common cause of sterility in plants.

Based on spore observations in the light microscopy and SEM studies, *Adiantum vivesii* appears to be a sterile hybrid (Sepúlveda-Orengo 2000, p. 31). The greater variation in spore size in *Adiantum vivesii* observed in these studies was mainly produced by spore abortion. These observations of sori containing abortive sporangia and spores suggested *Adiantum vivesii* is indeed a hybrid (Sepúlveda-Orengo 2000, p. 29). Further, the forms of the spores of *Adiantum vivesii* are different from *Adiantum tetraphyllum* because of the collapse of the exospore (outer layer of the spore membrane) that is associated with the absence of the protoplast (plant cell with no cell wall). Mature spores of *Adiantum vivesii* are more compactly constructed than those of *Adiantum tetraphyllum,* with the sporangia appearing as more or less globular objects tightly grouped together, which is consistent with the sorus (spore-producing structure) of a hybrid (Sepúlveda-Orengo 2000, p. 28).

Based on the initial taxonomic analysis discussed above, *Adiantum vivesii* does not appear to be a distinct species (Sepúlveda-Orengo 2000, entire). This analysis showed that sporangia and spores were produced throughout the year, but signs of sexual reproduction as gametophytes or small plants were not observed. The plant instead reproduces vegetatively (asexually), and the entire colony seems to be the result of vegetative reproduction via rhizomes from a single, sterile individual (Sepúlveda-Orengo 2000, pp. 26–31).

More recently, the Fairchild Tropical Botanical Garden (Fairchild) has

collaborated with the Service on the assessment of endangered ferns including *Adiantum vivesii* (Possley and Lange, 2016 and 2017, p. 4; Possley et al. 2020, pp. 5–11). In 2017, fieldwork was conducted to assess the colony of *Adiantum vivesii* and collect material for genetic analyses. Fairchild engaged Dr. Emily Sessa from the University of Florida (UF) to assist on a genetic study to validate whether *Adiantum vivesii* is a hybrid as indicated by Sepúlveda-Orengo (2000, p. 29).

Leaf material for DNA extraction was collected in the field in Puerto Rico in February 2017, and from herbarium specimens, including the isotype (duplicate or very similar type specimen) for *Adiantum vivesii.* A total of 27 specimens from the genus *Adiantum* were sampled from the field and herbarium specimens (all material of *Adiantum* vivesii was from herbarium specimens): 5 identified as *A. latifolium,* 2 as *A. obliquum,* 3 as *A. petiolatum,* 4 as *A. pyramidale,* 5 as *A. tetraphyllum,* 4 as *A. vivesii,* and 4 unidentified *Adiantum* individuals (Possley et al. 2020, p. 6).

The analysis found that five samples, including the *Adiantum vivesii* isotype, had sequence variants that fell in different groups, which indicate their hybrid origin (Possley et al. 2020, p. 10). The genetic sequencing further indicates that *Adiantum vivesii* is of hybrid origin with *Adiantum petiolatum* as one parent and the other parent likely being *Adiantum tetraphyllum* (Possley et al. 2020, p. 10).

The Act and supporting regulations define a species as any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature, but do not further define the terms ''species'' or ''subspecies'' used in this definition. Rather, per 50 CFR 424.11(a), the Service shall rely on standard taxonomic distinctions and the biological expertise of the Department of the Interior (Department) and the scientific community in determining whether a particular taxon or population is a species for the purposes of the Act. The standard biological definition of a ''species'' is a group of organisms that are capable of interbreeding when mature. The application of this definition becomes more complicated with plant species, as many can exhibit asexual reproduction (NRC 1995, p. 50). For this reason, we consulted with experts to assist in determining the appropriate treatment for this entity (Riibe 2020, pers. comm.; Sessa 2020, pers. comm).

Based upon expert input, here we are considering a species to be a distinct unit with a natural evolutionary trajectory, meaning that it has the ability to establish a lineage that could be lost to extinction (NRC 1995, p. 54; Riibe 2020, pers. comm.; Sessa 2020, pers. comm.). In the case of *Adiantum vivesii,* it was determined to be a sterile hybrid by Sepúlveda-Orengo (2000, entire), indicating that *Adiantum vivesii* is unable to sexually reproduce and is unlikely to perpetuate into the future. This research also demonstrated that the only known population was comprised of clonal individuals resulting from rhizome proliferations, some of which eventually fragmented.

Despite the extensive botanical research and inventories in Puerto Rico by the late Dr. George Proctor (former authority on ferns across the Caribbean) and other experts, *Adiantum vivesii* remains only known from the type locality. Additionally, during the latest field surveys at the type locality (2017), the Fairchild team was unable to locate material that morphologically matched the type specimen (despite similarities), nor any clonal stand of *Adiantum* material as described by Proctor and Sepúlveda-Orengo (Possley et al. 2020, p. 6). The team collected a variety of morphotypes from the type locality for genetic sequencing at the University of Florida; however, none of the material was a genetic match to *Adiantum vivesii.* These results suggest that *Adiantum vivesii* is extirpated from the only known location. Recent research has confirmed that *Adiantum vivesii* is a sterile hybrid that does not have the capacity to establish a lineage that could be lost to extinction (Possley et al. 2020, pp. 6–10). Consequently, we have determined that *Adiantum vivesii* does not qualify as a listable entity under the Act; the original data used at the time the entity was classified were in error; and thus *Adiantum vivesii* should be delisted.

Summary of Comments and Recommendations

In the proposed rule published in the **Federal Register** on July 30, 2021 (86 FR 40996), we requested that all interested parties submit written comments on our proposal to delist *Adiantum vivesii* by September 28, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices in both Spanish and English inviting general public comment were published in El Nuevo Día on July 31, 2021. We did not receive any requests for a public hearing nor any substantive information during the comment period.

In addition, in accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited expert opinion from eight knowledgeable individuals with scientific expertise that included knowledge of ferns and plant taxonomy. The selected experts were asked to help us identify any oversights, omissions, and inconsistencies; provide advice on reasonableness of judgments made from the scientific evidence; help us ensure that scientific uncertainties are identified and characterized; provide advice on the overall strengths and limitations of the scientific data used in the document; and inform us of any scientific information that we did not use. We received no responses from any of the peer reviewers.

During the comment period, we received four comments from the public on the proposal to delist *Adiantum vivesii.* We did not receive any comments from the Commonwealth of Puerto Rico or Federal agencies. All comments are posted at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0125.

Some public commenters did not state whether or not they support the delisting; others did not support delisting, but did not provide any evidence that *Adiantum vivesii* was actually a listable entity. Commentors mostly supported keeping *Adiantum vivesii* on the List in order to preserve its habitat even though it does not qualify as a listable entity and the original data used at the time the entity was classified were in error. One commentor further stated that the entity's midvein, which makes the leaf asymmetric, and its low number of pinnae give *Adiantum vivesii* unique morphological features. We acknowledge that *Adiantum vivesii* has unique morphological features; however, this fact, in and of itself, does not indicate that the entity is listable under the Act or that the original data used at the time the entity was classified were valid. The Act and supporting regulations define a species as any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Because the Act did not further define ''species,'' in our proposed rule, we considered a species to be a distinct unit with a natural evolutionary trajectory, meaning that it has the ability to establish a lineage that could be lost to extinction (NRC 1995, p. 54; Riibe 2020, pers. comm.; Sessa 2020, pers. comm.). As

Adiantum vivesii is a sterile hybrid that does not have the capacity to establish a lineage that could be lost to extinction, we have determined that the entity does not qualify as a listable entity under the Act and the original data used at the time the entity was classified were in error. None of the commenters provided information to dispute this.

Delisting Determination

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants. Our regulations at 50 CFR 424.11 identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species has recovered, or (3) the original data used at the time the species was classified were in error.

Under section 3 of the Act and our implementing regulations at 50 CFR 424.02, a ''species'' includes any subspecies of fish or wildlife or plant, and any distinct population segment of any species of vertebrate species which interbreeds when mature. As such, a species under the Act may include any taxonomically defined species of fish, wildlife, or plant; any taxonomically defined subspecies of fish, wildlife, or plant; or any distinct population segment of any vertebrate species as determined by us per our Policy Regarding the Recognition of District Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722; February 7, 1996).

Our implementing regulations provide further guidance on determining whether a particular taxon or population is a species or subspecies for the purposes of the Act; under 50 CFR 424.11(a), the Service shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community in determining whether a particular taxon or population is a species for the purposes of the Act. For listing determinations, section 4(b)(1)(A) of the Act mandates that we use the best scientific and commercial data available for each species under consideration. Given the wide range of taxa and the multitude of situations and types of data that apply to species under review, the application of a single set of criteria that would be applicable to all taxa is not practical or useful. In addition, because of the wide variation in the kinds of available data for a given circumstance, we do not assign a priority or weight to any particular type of data, but must consider it in the context of all the available data for a given species.

To determine what constitutes a listable entity under the Act, we evaluate and consider all available types of data, which may or may not include genetic information, to determine whether a taxon is a distinguishable species or subspecies. As a matter of practice, and in accordance with our regulations, in deciding which alternative taxonomic interpretations to recognize, the Service rely on the professional judgment available within the Service and the scientific community to evaluate the most recent taxonomic studies and other relevant information available for the subject species. Therefore, we continue to make listing decisions based solely on the best scientific and commercial data available for each species under consideration on a case-by-case basis.

In making our determination whether *Adiantum vivesii* is a listable entity, we considered all available data that may inform the taxonomy of *Adiantum vivesii,* such as ecology, morphology, and genetics, as well as expert opinion (Riibe 2020, pers. comm.; Sessa 2020, pers. comm). Here, we considered the ability of an entity to establish a lineage that could be lost to extinction in our determination of whether the species constitutes a listable entity.

After a review of all information available, we determined to remove *Adiantum vivesii* from the List of Endangered and Threatened Plants at 50 CFR 17.12. Since the time of listing, additional studies have shown that *Adiantum vivesii* is not a distinct species, but rather a sterile hybrid with rhizome proliferations that lacks the ability to establish a lineage that could be lost to extinction. As a result, we have determined that *Adiantum vivesii* was listed based on data or interpretations of data that were in error and that the entity is not a listable entity under the Act; therefore, we are delisting it.

Determination of Status

Our review of the best available scientific and commercial information available indicates that *Adiantum vivesii* is not a valid taxonomic entity and that original data for classification of *Adiantum vivesii* when it was listed was in error. Therefore, we are removing *Adiantum vivesii* from the List of Endangered and Threatened Plants. *Adiantum vivesii* does not require a post-delisting monitoring plan because the requirements for a monitoring plan do not apply to species that are delisted for not meeting the statutory definition of a species because the original data for classification were in error.

Effects of This Rule

This rule revises 50 CFR 17.12(h) by removing *Adiantum vivesii* from the Federal List of Endangered and Threatened Plants. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, will no longer apply to *Adiantum vivesii.* Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect *Adiantum vivesii.* There is no critical habitat designated for *Adiantum vivesii,* so there will be no effect to 50 CFR 17.96.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands that may be affected by this rulemaking.

References Cited

A complete list of all references cited in this rule is available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0125, or upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361 1407; 1531 1544; and 4201 4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. In § 17.12, paragraph (h), amend the List of Endangered and Threatened Plants by removing the entry for ''*Adiantum vivesii*'' under FERNS AND ALLIES.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–18223 Filed 8–23–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC014]

Fisheries of the Exclusive Economic Zone Off Alaska; Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Kamchatka flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2022 Kamchatka flounder initial total allowable catch (ITAC) in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 20, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2022 Kamchatka flounder ITAC in the BSAI is 9,214 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) and inseason action (87 FR 43220, July 20, 2022). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2022 Kamchatka flounder ITAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,214 mt, and is setting aside the remaining 1,000 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Kamchatka flounder in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Kamchatka flounder in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 18, 2022.

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

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

Dated: August 19, 2022.

Kelly Denit,

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

[FR Doc. 2022–18248 Filed 8–19–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 163
Wednesday, August 24, 2022

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

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404

[Docket No. SSA–2019–0013]

RIN 0960–AI43

Revised Medical Criteria for Evaluating Cardiovascular Disorders

AGENCY: Social Security Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 29, 2022, we published the proposed rule Revised Medical Criteria for Evaluating Cardiovascular Disorders in the **Federal Register**, and solicited public comments. We provided a 60-day comment period ending August 29, 2022. We are now extending the comment period by 32 days.

DATES: The comment period for the proposed rule published June 29, 2022, at 87 FR 38838, is extended. Comments should be received on or before September 30, 2022.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2019–0013 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2019–0013 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, 3rd Floor (East) Altmeyer, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Michael J. Goldstein, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2022–18238 Filed 8–23–22; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0167; FRL–10150–01–R4]

Air Plan Approval; Kentucky; Boyd and Christian County Limited Maintenance Plans for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), on March 29, 2021. The SIP revisions include the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) Limited Maintenance Plans (LMPs) for the Kentucky portion (hereinafter referred to as the Boyd County Area) of the Huntington-Ashland, WV-KY 1997 8-hour ozone maintenance area (hereinafter referred to as the Huntington-Ashland, WV-KY Area) and the Kentucky portion (hereinafter referred to as the Christian County Area) of the Clarksville-Hopkinsville, TN-KY 1997 8-hour ozone maintenance area (hereinafter referred to as the Clarksville-Hopkinsville, TN-KY Area). EPA is proposing to approve Kentucky's LMPs for the Boyd County and Christian County Areas because they provide for the maintenance of the 1997 8-hour ozone NAAQS within the Huntington-Ashland, WV-KY Area and the Clarksville-Hopkinsville, TN-KY Area, respectively. The effect of these actions would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Boyd County and Christian County Areas federally enforceable as part of the Kentucky SIP.

DATES: Comments must be received on or before September 14, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0167 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 *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, 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) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at *ortizborrero.josue@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Boyd County and Christian County Areas' LMPs for the 1997 8-hour ozone NAAQS, adopted by the Cabinet on March 29, 2021, and submitted by the Cabinet as revisions to the Kentucky SIP on March 29, 2021. On April 30, 2004, the Huntington-Ashland, WV-KY Area, which includes the Boyd County Area, was designated as nonattainment for the 1997 8-hour ozone standard. Subsequently, on September 29, 2006, the Cabinet submitted a redesignation request and the first 10-year maintenance plan for the Boyd County Area. In 2007, after having clean data and EPA's approval of a maintenance plan, the Boyd County Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. *See* 72 FR 43172 (August 3, 2007).

Additionally, on April 30, 2004, the Clarksville-Hopkinsville, TN-KY Area, which includes the Christian County Area, was designated as nonattainment for the 1997 8-hour ozone standard. Subsequently, on May 20, 2005, the Cabinet submitted a redesignation request and the first 10-year maintenance plan for the Christian County Area. In 2006, after having clean data and EPA's approval of a maintenance plan, the Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. *See* 71 FR 4047 (January 25, 2006).

The Boyd County and Christian County Areas' LMPs for the 1997 8-hour ozone NAAQS, submitted by the Cabinet on March 29, 2021, are designed to maintain the 1997 8-hour ozone NAAQS within the Boyd County and Christian County Areas through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plans because they meet all applicable requirements under CAA sections 110 and 175A. As a general matter, the Boyd County and Christian County Areas' LMPs rely on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance periods as the maintenance plans submitted by the Cabinet for the first 10-year periods.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections; increased medication use, doctor visits, and emergency department visits; and increased hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[1]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[2] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and for individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Huntington-Ashland, WV-KY Area, which consists of Boyd County in Kentucky and Cabell County and Wayne County in West Virginia, and the Clarksville-Hopkinsville, TN-KY Area, which consists of Christian County in Kentucky and Montgomery County in Tennessee, as nonattainment for the 1997 8-hour ozone NAAQS. Those designations became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004).

Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated the Boyd County and Christian County Areas as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. These designations became effective on July 20, 2012. *See* 77 FR 30088. On November 16, 2017, areas were designated for the 2015 8-hour ozone 2015 8-hour ozone NAAQS. The Boyd County and Christian County Areas were again designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date of January 16, 2018, for both areas. *See* 82 FR 54232 (November 16, 2017).

A state may submit a request that EPA redesignate a nonattainment area that is attaining a NAAQS to attainment, and, if the area has met the criteria described in section 107(d)(3)(E) of the CAA, EPA

[1] *See* ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010, and 75 FR 2938 (January 19, 2010).

[2] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed another review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

may approve the redesignation request.[3] One of the criteria for redesignation is for the area to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans. The Calcagni memo[4] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas can meet the CAA section 175A requirement to provide for maintenance by showing that they are unlikely to violate the NAAQS in the future, using information such as the area design values[5] when the design values are well below the standard and have been historically stable.[6] EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[7] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[8]

In this case, EPA is proposing to approve Kentucky's LMPs because the Commonwealth has made a showing, consistent with EPA's prior LMP guidance, that ozone concentrations in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas are well below the 1997 8-hour ozone NAAQS and have been historically stable and that the Commonwealth has met the other maintenance plan requirements. The Cabinet submitted the LMPs for the Boyd County and Christian County Areas to fulfill the CAA's second maintenance plan requirement. EPA's evaluation of the Boyd County and Christian County Areas' LMPs is presented in section IV of this document, below.

On May 20, 2005, and September 29, 2006, the Cabinet submitted requests to EPA to redesignate the Christian County and Boyd County Areas, respectively, to attainment for the 1997 8-hour ozone NAAQS. Those submittals included plans, for inclusion in the Kentucky SIP, to provide for maintenance of the 1997 8-hour ozone NAAQS in the Clarksville-Hopkinsville, TN-KY Area through 2016 and in the Huntington-Ashland, WV-TN Area through 2018. EPA approved the Boyd County and the Christian County Areas' Maintenance Plans and the Commonwealth's requests to redesignate these Areas to attainment for the 1997 8-hour ozone NAAQS, effective September 4, 2007, and February 24, 2006, respectively. *See* 72 FR 43172 (August 3, 2007) and 71 FR 4047 (January 25, 2006), respectively. Kentucky's March 29, 2021, submittal contains the second 10-year maintenance plans for the 20-year maintenance period of the 1997 8-hour ozone NAAQS to ensure continued maintenance for the Clarksville-Hopkinsville, TN-KY and Huntington-Ashland, WV-TN Areas.

Section 175A(b) of the CAA requires states to submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. However, EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b). *See* 80 FR 12264, 12315 (March 6, 2015).

In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on March 29, 2021, Kentucky submitted second maintenance plans for the Boyd County and Christian County Areas that show that the Areas are expected to remain in attainment of the 1997 8-hour ozone

[3] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[4] John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards (OAQPS), ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

[5] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

[6] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas,'' from Sally L. Shaver, OAQPS, November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,'' from Joseph Paisie, OAQPS, October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas,'' from Lydia Wegman, OAQPS, August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[7] The prior memos addressed: unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide (CO) NAAQS.

[8] *See, e.g.,* 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 SO_2 maintenance area).

NAAQS through 2027 and 2026, respectively.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas well below the 1997 8-hour ozone NAAQS, the Cabinet chose the LMP option for the development of second 1997 8-hour ozone NAAQS maintenance plans. On March 29, 2021, the Cabinet adopted the second 10-year 1997 8-hour ozone maintenance plans and also submitted the Boyd County and the Christian County Areas' LMPs to EPA as revisions to the Kentucky SIP.

III. Kentucky's SIP Submittals

As mentioned above, on March 29, 2021, the Cabinet submitted the Boyd County and Christian County Areas' LMPs to EPA as revisions to the Kentucky SIP. The submittals include the LMPs, air quality data, emissions inventory information, and appendices. Appendices to the plans include comments and responses between EPA and the Cabinet; documentation of notice, hearing, and public participation prior to adoption of the plans by the Cabinet on March 29, 2021; and a Cabinet order, which notes that Kentucky's LMP submittals for the remainder of the 20-year maintenance period for the Boyd County and the Christian County Areas are in response to the D.C. Circuit's decision overturning aspects of EPA's implementation rule for the 2008 8-hour ozone NAAQS (*South Coast,* 882 F.3d 1138 (D.C. Cir. 2018)).

The Boyd County and Christian County Areas' LMPs do not include any additional emissions reduction measures but rely on the same emission reduction strategy as the first 10-year maintenance plans that provide for maintenance of the 1997 ozone NAAQS through 2018 and 2016, respectively. Prevention of significant deterioration (PSD) requirements and control measures contained in the SIP will continue to apply, and Federal measures (*e.g.,* Federal motor vehicle control programs) will continue to be implemented in the Boyd County and Christian County Areas.

IV. EPA's Evaluation of Kentucky's SIP Submittals

EPA has reviewed the Boyd County and Christian County Areas' LMPs, which are designed to maintain the 1997 8-hour ozone NAAQS within these Areas through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 175A requirements [9] and EPA's evaluation of how each requirement is met for the Boyd County and Christian County Areas.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO_X, as these pollutants are precursors to ozone formation.

1. Attainment Emissions Inventory—Boyd County Area

The Boyd County Area LMP includes an ozone attainment inventory for Boyd County that reflects typical summer day emissions in 2014. Table 1 presents a summary of the inventory for 2014 contained in the LMP.[10]

TABLE 1—2014 TYPICAL SUMMER DAY [11] VOC AND NO_X EMISSIONS FOR THE BOYD COUNTY AREA

[Tons/day]

Source category	VOC emissions	NO_X emissions
Nonpoint	13.08	1.29
Nonroad	0.24	0.29
Onroad	1.43	2.81
Point	2.32	7.61
Total	17.07	12.00

The LMP guidance indicates that an attainment emissions inventory should be developed in order to identify emission levels in the area and provide the area with a basis to maintain the NAAQS. The inventory should consist of the ozone precursors (NO_X and VOC) and their emissions from a typical summer day measured in tons per day (tpd). The emissions data are based on the 2014v2 National Emissions Inventory (NEI) platform for point sources, nonpoint sources, onroad, and nonroad mobile sources. For Boyd County, point sources make up the majority of contributions of NO_X, at 7.61 tpd. Nonpoint sources make up the majority of VOC contributions at 13.08 tpd. Based on our review of the methods, models, and assumptions used by Kentucky to develop the VOC and NO_X estimates, EPA proposes to find that the Boyd County Area's LMP includes a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014 and proposes to conclude that the plan's inventories are acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

2. Attainment Emissions Inventory—Christian County Area

The Christian County Area LMP includes an ozone attainment inventory for Christian County that reflects typical summer day emissions in 2014. Table 2 presents a summary of the inventory for 2014 contained in the LMP.

[9] *See* Calcagni memo.

[10] In response to a comment from EPA regarding discrepancies between the emissions data in Kentucky's prehearing SIP submittal and the emissions data in version 2 of the 2014 National Emissions Inventory (NEI), Kentucky explained in its March 29, 2021, submittal that it had initially used the NEI 2014 version 1 data but agreed that updating to 2014 version 2 data would be appropriate. However, the final submittal still contains a discrepancy in the onroad VOC emissions data. Therefore, in Table 1 of this document, EPA has presented the value that was calculated using the 2014 NEI version 2 emissions data.

[11] The following formula was used to determine the typical summer day emissions for each sector: *(Annual emissions) × (25 percent annual throughput June–Aug)/92 = typical summer day emissions.* This formula represents the tons per summer day by taking the annual emissions of NO_X and VOC from each source sector, multiplying it by 0.25 (which represents June, July, and August, the summer quarter of the calendar year), and then dividing it by 92 (which accounts for each summer day). Data from the 2014v2 NEI were used for the annual emissions part of the equation.

TABLE 2—2014 TYPICAL SUMMER DAY [12] VOC AND NO_X EMISSIONS FOR THE CHRISTIAN COUNTY AREA

[Tons/day]

Source category	VOC emissions	NO_X emissions
Nonpoint	27.04	2.44
Nonroad	0.38	1.08
Onroad	1.99	5.75
Point	1.07	0.32
Total	30.48	9.59

As with Boyd County, the emissions data are based on the 2014v2 NEI platform for point sources, nonpoint sources, onroad, and nonroad mobile sources. For Christian County, onroad mobile sources make up the majority of contributions of NO_X, at 5.75 tpd. Nonpoint sources make up the majority of contributions of VOC, at 27.04 tpd. Based on our review of the methods, models, and assumptions used by Kentucky to develop the VOC and NO_X estimates, EPA proposes to find that the Christian County Area's LMP includes a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014 and proposes to conclude that the plan's inventories are acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

1. Boyd County Area—Maintenance Demonstration for Huntington-Ashland, WV-KY Area

The maintenance demonstration requirement is considered to be satisfied in an LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[13] These criteria are evaluated below with regard to the Boyd County Area.

a. Evaluation of Ozone Concentrations in Huntington-Ashland, WV-KY Area

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the 1997 8-hour ozone NAAQS is attained if the design value is 0.084 ppm or below.

There are currently two ozone monitors in the Huntington-Ashland, WV-KY Maintenance Area, one in Boyd County, Kentucky, and one in Cabell County, West Virginia (which was relocated to a new location in 2019). Based on quality assured and certified monitoring data for 2019–2021, the current design value for the Huntington-Ashland, WV-KY is 0.059 ppm, or 70 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85 percent of the NAAQS, or in this case, below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing, consistent with CAA section 110(l), that such measures are not necessary to assure maintenance.

Table 3 presents the design values (in ppm) for each monitor in the Huntington-Ashland, WV-KY Maintenance Area over the 2006–2021 period. As shown, the AQS monitors in the area—Ashland Primary-(FIVCO) Monitor (AQS ID 21–019–0017) and Huntington Monitors (AQS ID 54–011–0006 and AQS 54–011–0007) [14]—have been well below the level of the 1997 8-hour ozone NAAQS over the entire first 10-year maintenance period since the Area was redesignated to attainment, and the most recent design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 3—1997 8-HOUR OZONE NAAQS DESIGN VALUES [15] (ppm) FOR MONITORS IN HUNTINGTON ASHLAND, WV-KY AREA FOR THE 2006–2021 TIME PERIOD

County	AQS site ID	2006–2008 DV	2007–2009 DV	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2016 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV	2019–2021 DV
Boyd, KY	21–019–0017	0.074	0.070	0.070	0.069	0.072	0.069	0.068	0.066	0.066	0.065	0.064	0.062	0.061	0.059
Cabell, WV	54–011–0006	0.080	0.073	0.066	0.067	0.072	0.069	0.065	0.062	0.064	0.064	0.064	(*)	(*)	.....
Cabell, WV	54–011–0007	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	(*)	(*)	0.059

*The Cabell County, West Virginia, monitor (AQS Site ID 54–011–0006) was relocated to a new site (AQS ID 54–011–0007) before the ozone monitoring season in 2019. As a result, neither site collected a complete three-year design value during 2017–2019 and 2018–2020.

Therefore, the Boyd County Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Area through the second 10-year maintenance period and beyond.

Additional supporting information that the Area is expected to continue to maintain the NAAQS can be found in

[12] *See* footnote 11.

[13] See footnote 6.

[14] The Huntington, WV monitor in Cabell County was relocated, as explained in the note to Table 3 of this document.

[15] *See* EPA Air Quality Design Values at *https://www.epa.gov/air-trends/air-quality-design-values.*

projections of future year design values that EPA recently completed to assist states with development of interstate transport SIPs for the 2015 ozone NAAQS.[16] Those projections, made for the year 2023, show that the highest design value in the Area is projected to be 0.058 ppm. EPA is not proposing to make any finding in this rulemaking regarding interstate transport obligations for any state.

b. Stability of Ozone Levels in Huntington-Ashland, WV-KY Area

As discussed above, the Huntington-Ashland, WV-KY Area has maintained air quality well below the 1997 8-hour ozone NAAQS over the past fourteen years. Additionally, the design value data shown within Table 3 of this document, illustrates that ozone levels have been relatively stable over this timeframe, with an overall downward trend. For example, the data within Table 3 of this document indicates that the largest year-over-year change in design value at any one monitor during fourteen years was seven parts per billion (ppb), which occurred between the 2006–2008 and between the 2007–2009 and 2008–2010 design values. Furthermore, the overall ozone concentrations for the Area decreased by 15 ppb between the 2007–2009 and 2019–2021 design values at the Ashland Primary-Monitor (AQS ID 21–019–0017). This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that Huntington-Ashland, WV-KY Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

2. Christian County Area—Maintenance Demonstration for Clarksville-Hopkinsville, TN-KY Area

As stated above, the maintenance demonstration requirement is considered to be satisfied in an LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low. These criteria are evaluated below with regard to the Christian County Area.

a. Evaluation of Ozone Air Quality Levels in Clarksville-Hopkinsville, TN-KY Area

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. There is currently one ozone monitor in the Clarksville-Hopkinsville, TN-KY Maintenance Area, in Christian County, Kentucky.

Based on quality assured and certified monitoring data for 2019–2021, the current design value for the Clarksville-Hopkinsville, TN-KY Area is 0.058 ppm, or 69 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85 percent of the NAAQS, or in this case, below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 4 presents the design values (in ppm) for the Christian County, Kentucky, monitor for the three-year periods 2006–2008 through 2019–2021. As shown in Table 4, the Clarksville-Hopkinsville, TN-KY Area has been well below the level of the 1997 8-hour ozone NAAQS over the entire first 10-year maintenance period since the Area was redesignated to attainment, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 4—1997 8-HOUR OZONE NAAQS DESIGN VALUES (ppm) AT THE MONITORING SITE IN THE CLARKSVILLE-HOPKINSVILLE, TN-KY AREA FOR THE 2006–2021 TIME PERIOD

County	AQS site ID	2006–2008 DV	2007–2009 DV	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2016 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV	2019–2021 DV
Christian	21–047–0006	0.078	0.074	0.069	0.070	0.073	0.069	0.067	0.063	0.062	0.061	0.060	0.058	0.058	0.058

Therefore, the Christian County Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Clarksville-Hopkinsville, TN-KY Area through the second 10-year maintenance period and beyond.

Additional supporting information that the Clarksville-Hopkinsville, TN-KY Area is expected to continue to maintain the NAAQS can be found in projections of future year design values that EPA recently completed to assist states with development of interstate transport SIPs for the 2015 ozone NAAQS.[17] Those projections, made for the year 2023, show that the highest design value in the Area is expected to be 0.056 ppm.

b. Stability of Ozone Levels in Clarksville-Hopkinsville Area

As discussed above, the Clarksville-Hopkinsville, TN-KY Area has maintained air quality well below the 1997 8-hour ozone NAAQS over the past fourteen years. Additionally, the design value data shown within Table 4 of this document, illustrates that ozone levels have been relatively stable over this timeframe, with an overall downward trend. For example, the data within Table 4 of this document, indicates that the largest year-over-year change in design value at any one monitor during these fourteen years was five ppb which occurred between the 2007–2009 design value and the 2008–2010 design value, and it represented only a six percent change. Furthermore, the overall ozone concentrations for the

[16] See the spreadsheet titled ''Ozone Monitoring Site Design Values for 2008 through 2017 and for 2023'' at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[17] See the spreadsheet titled ''Ozone Monitoring Site Design Values for 2008 through 2017 and for 2023'' at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

Clarksville-Hopkinsville, TN-KY Area decreased by 20 ppb between the 2007–2009 and 2019–2021 design values at the Hopkinsville, Kentucky, monitor (AQS ID 21–047–0006). This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Clarksville-Hopkinsville, TN-KY Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

C. Monitoring Network and Verification of Continued Attainment

EPA annually reviews the ozone monitoring network that the Cabinet operates and maintains in accordance with 40 CFR part 58. This network is described in the ambient air monitoring network plan that is developed by the Cabinet and submitted to EPA annually, following a public notification and comment process. EPA has reviewed and approved Kentucky's 2021 Ambient Air Monitoring Network Plan (2021 Annual Network Plan).[18]

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, the Cabinet's monitoring networks in the Boyd County and Christian County Areas have been approved by the EPA in accordance with 40 CFR part 58, and the Cabinet has committed to continue to maintain a network in accordance with the EPA requirements. For further details on monitoring, the reader is referred to the 2021 Kentucky Annual Network Plan [19] as well as EPA's approval letter for the 2021 Annual Network Plan, which can be found in the docket for this proposed action. EPA proposes to find that the Cabinet's monitoring network is adequate to verify continued attainment of the 1997 ozone NAAQS in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas.

D. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period. The state should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

For the Boyd County and Christian County Areas, if a monitored violation of the 8-hour ozone design value occurs in any portion the Huntington-Ashland, WV-KY Area or Clarksville-Hopkinsville, TN-KY Area, respectively, or if periodic emission inventory updates reveal excessive or unanticipated growth in ozone precursor emissions, the contingency plans in Kentucky's LMPs require the Commonwealth to evaluate existing control measures to see if any further emission reduction measures should be implemented. In the event of a monitored violation of the 1997 ozone NAAQS in the Huntington-Ashland, WV-KY Area or the Clarksville-Hopkinsville, TN-KY Area, Kentucky commits to adopt, within a period of nine months, one or more of several potential contingency measures listed in the plan to re-attain the standard. After the triggering monitored violation, all of the selected regulatory programs will be implemented within 18 months.

The plans also provide that the Cabinet will complete any necessary analyses to submit to EPA and that contingency measures will be adopted and implemented as quickly as possible but no later than eighteen months after the triggering event. Should the affected area return to attainment prior to the implementation of the contingency measure(s), those measures may not be implemented. In addition, the plans provide that Cabinet reserves the right to implement other contingency measures if new control programs should be developed and deemed more advantageous for the area. Prior to the implementation of any contingency measure(s) not listed, the Cabinet will solicit input from all interested and affected parties in the area. No contingency measure will be implemented without notification to EPA and approval granted by EPA.

EPA proposes to find that the contingency provisions in Kentucky's second maintenance plans for both the Boyd County and Christian County Areas for the 1997 8-hour Ozone NAAQS meet the requirements of the CAA section 175A(d).

E. Conclusion

EPA proposes to find that the Boyd County and Christian County Areas' LMPs for the 1997 8-hour ozone NAAQS include an approvable update of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved Maintenance Plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Boyd County and Christian County Areas qualify for the LMP option and adequately demonstrate maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and historically stable design values.

EPA also believes the Boyd County and Christian County Areas' LMPs, which retain all existing control measures in the SIP, are sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas, respectively, over the second maintenance period (*i.e.,* through 2027 and 2026, respectively) and thereby satisfy the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Kentucky's March 29, 2021, submission of the Boyd County and Christian County Areas' LMPs as revisions to the Kentucky SIP.

V. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93, subpart A, requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as ''the portion of the total allowable emissions defined in the

[18] *See* Letter from Caroline Y. Freeman, Director, Air and Radiation Division, US EPA Region 4, to Melissa K. Duff, Director, Kentucky Division for Air Quality (October 27, 2021) (approving the 2021 Kentucky Ambient Air Monitoring Network Plan) (included in docket for this proposed rulemaking).

[19] 2021 Kentucky Annual Ambient Air Monitoring Network Plan. Commonwealth of Kentucky Energy and Environment Cabinet, Department for Environmental Protection, Division for Air Quality (June 29, 2021). Available online at: *https://eec.ky.gov/Environmental-Protection/Air/Air-Monitoring/Pages/default.aspx.*

submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). EPA made findings that the MVEBs in the first 10-years of the 1997 8-hour zone maintenance plan for the Boyd County and Christian County Areas were adequate for transportation conformity purposes. In a **Federal Register** notice published on August 3, 2007, EPA notified the public of the adequacy finding for the Boyd County Area through final rulemaking; the adequacy determination for the Boyd County Area became effective on September 4, 2007. *See* 72 FR 43172. In a **Federal Register** notice published on January 25, 2006, EPA notified the public of the adequacy finding for the Christian County Area through a final rule; the adequacy determination for the Christian County Area became effective on February 24, 2006. *See* 71 FR 4047.

After approval of or an adequacy finding for each of these LMPs, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the respective maintenance area. All actions that would require a transportation conformity determination for the Boyd County and Christian County Areas under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for the LMP. *See* 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113) as well as meet the hot-spot requirements for projects (40 CFR 93.116).[20] Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115.

VI. Proposed Actions

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Boyd County and Christian County Areas' LMPs for the 1997 8-hour ozone NAAQS, submitted by the Cabinet on March 29, 2021, as revisions to the Kentucky SIP. EPA is proposing to approve the Boyd County and Christian County Areas' LMPs because they include an acceptable update of the various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and essentially carry forward all of the control measures and contingency provisions relied upon in the earlier plans.

EPA also finds that the Boyd County and Christian County Areas qualify for the LMP option and that, therefore, the Boyd County and Christian County Areas' LMPs adequately demonstrate maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes that the Boyd County and Christian County Areas' 1997 8-Hour ozone LMPs are sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Huntington-Ashland, WV-KY and Clarksville-Hopkinsville, TN-KY Areas, respectively, over the second 10-year maintenance period, through 2027 and 2026, respectively, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

VII. Statutory and Executive Order Reviews

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

- Are not significant regulatory actions 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

[20] A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM_{10}, and fine particulate matter ($PM_{2.5}$) areas.

Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18168 Filed 8–23–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0036; FRL–10151–01–R4]

Air Plan Approval; North Carolina; Source Testing and Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to approve changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina through the North Carolina Department of Environmental Quality, Division of Air Quality (NCDAQ), through a letter dated October 9, 2020. The SIP revisions include changes to NCDAQ's regulations regarding monitoring and performance testing for stationary sources of air pollution. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before September 23, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0036 at *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 *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Andres Febres, 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. Mr. Febres can be reached via electronic mail at *febres-martinez.andres@epa.gov* or via telephone at (404) 562–8966.

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?

EPA is proposing to approve changes to North Carolina's SIP that were provided to EPA via a letter dated October 9, 2020, regarding 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Section .0600, *Air Contaminants; Monitoring; Reporting,* and Section .2600, *Source Testing.*[1] Specifically, EPA is proposing to approve changes to the following: under Section .0600, .Rules .0607, *Large Wood and Wood-Fossil Fuel Combination Fuels;* .0608, *Other Large Coal or Residual Oil Burners;* .0610, *Federal Monitoring Requirements;* .0612, *Alternative Monitoring and Reporting Procedures;* and .0613, *Quality Assurance Program;* and under Section .2600, Rules .2603, *Testing Protocol;* .2604, *Number of Test Points;* .2605, *Velocity and Volume Flow Rate;* .2606, *Molecular Weight;* .2607, *Determination of Moisture Content;* .2608, *Number of Runs and Compliance Determination;* .2610, *Opacity;* .2612, *Nitrogen Oxide Testing Methods;* .2613, *Volatile Organic Compound Testing Methods;* and .2614, *Determination of VOC Emissions Control System Efficiency.* Additional details on these changes, as well as EPA's rational for proposing approval of these changes is found in the next section.

II. EPA's Analysis of the State's Submittal

A. Changes to 02D Section .0600

The October 9, 2020, SIP revision modifies several rules under 02D Section .0600, *Monitoring: Recordkeeping: Reporting.* Rule 02D .0607, *Large Wood and Wood-Fossil Fuel Combination Units,* includes mostly minor language and formatting changes that do not alter the meaning of the provision. The other Section .0600 rules that are proposed for approval are discussed in more detail hereinafter.

Rule 02D .0608, *Other Large Coal or Residual Oil Burners,* is revised at paragraph .0608(e) to change the requirement that the minimum of four data points in a valid hour of monitoring be equally spaced to instead require that each 15-minute quadrant of the given hour contain at least one of the four minimum data points. This change was made to be consistent with similar changes made to EPA's 40 CFR parts 60 and 75 continuous monitoring requirements.[2] The change will better represent emissions across the whole hour in which a unit operates because, otherwise, it is possible for equally spaced data points to be distributed in such a way that a majority of the hour is not accounted for (*e.g.,* if the four minimum data points are equally-spaced five minutes apart at the beginning of the hour, which would leave more than half of the hour without data points). Using the revised scheme, the minimum of four data points will account for operation throughout the hour. Additionally, this paragraph adds language explaining that opacity monitoring is exempted from the requirement to obtain at least one data point in each 15-minute quadrant per hour. The exception for opacity monitoring is simply a clarification of the new requirement because the continuous opacity monitoring for certain units prescribed elsewhere (*e.g.,* 02D .0606, .0607) uses a different scheme for collecting and averaging data, such as a 6-minute averaging time instead of an hour. However, paragraph .0608(e) concerns monitoring for sulfur dioxide (SO_2), so the reference to opacity is not necessary and does not modify any existing requirements for opacity monitoring. Finally, under paragraph .0608(j), the State adds Method 6C from appendix A to 40 CFR part 60 and a reference to North Carolina Rule 15A NCAC 02D .2600, *Source Testing,* for emissions testing conducted for compliance with the SO_2 standard. The inclusion of Method 6C matches SIP-approved Rule 02D .2611, *Sulfur Dioxide Testing Methods,* which requires combustion sources that demonstrate compliance with the SO_2 standard through stack sampling to use the procedures of Method 6 or Method 6C. The October 9, 2020, submittal also

[1] EPA notes that the Agency received several submittals seeking to revise the North Carolina SIP transmitted with the same October 9, 2020, cover letter. EPA will be considering action for these other SIP revisions, including certain 02D Section .0600 and Section .2600 rules not considered in this proposed action, in separate rulemakings.

[2] *See,* for 40 CFR part 75, 60 FR 26510 (May 17, 1995), and for 40 CFR part 60, 72 FR 32710 (June 13, 2007).

includes ministerial and clarifying revisions to Rule 02D .0608.

Rule 02D .0610, *Federal Monitoring Requirements,* is modified by, among other things, adding new cross-references to the applicability section of the rule at paragraph (a). The changes add paragraph .0610(a)(5) which cross-references the Cross-State Air Pollution Rule at 40 CFR part 97 and adds Generally Available Control Technology (GACT) to the existing cross-reference of 40 CFR part 63 in paragraph .0610(a)(3). The purpose of Rule .0610 is not to incorporate the Federal requirements by reference, but rather to require sources with air pollutants that do not have applicable monitoring, recordkeeping, and reporting requirements under the Federal rules listed, or sources which are not subject to monitoring, recordkeeping, or reporting requirements set forth in the rules identified in paragraph .0610(a), to comply with the requirements of Rule 02D .0611, *Monitoring Emissions from Other Sources.* The October 9, 2020, submittal also includes ministerial and clarifying revisions to Rule 02D .0610.

Rule 02D .0612, *Alternative Monitoring and Reporting Procedures,* includes mostly ministerial and formatting changes. The SIP revision also modifies paragraph (b) by adding 40 CFR parts 62 and 97 to the list of Federal rules with monitoring requirements to which this rule and its procedures for alternatives do not apply. Additionally, in paragraph .0612(c), specifically under subparagraphs .0612(c)(7)(B) and (D), North Carolina removes the terms ''significantly'' and ''significant,'' respectively, from the list of conditions an owner or operator must show to qualify for alternative recordkeeping or monitoring. As explained by NCDAQ, the revised provisions retain the same broad authority as currently in the SIP for the determination on whether alternative monitoring or data reporting is appropriate for different designs and operating characteristics. NCDAQ also explained that these changes do not adversely affect its enforcement authority.[3]

Paragraph .0612(e) establishes the minimum criteria for approval of a petition for alternative monitoring or reporting, and the SIP revision includes mostly ministerial and formatting changes. Under paragraph (e)(3), North Carolina removes the qualifying phrase ''with reasonable certainty'' from the requirement that alternative monitoring and reporting must provide information of sufficient quality to determine ''with reasonable certainty'' the amount of emissions or the adequacy of a control device or practice in order to be approvable by the Director. Removing this phrase does not negatively impact the quality of information that would be collected with alternative monitoring or reporting procedures. In addition, under paragraph .0612(e) the Director can only approve petitions for alternatives that include the information required under paragraph .0612(c), which requires the petition to include ''a demonstration that the alternative procedure is at least as accurate as that prescribed by the rule'' at (c)(6), and satisfy the showing required in .0612(c)(7).

Finally, Rule 02D .0613, *Quality Assurance Program,* includes mostly ministerial, formatting, and clarifying changes. Paragraph .0613(c) is also revised to add a reference to 40 CFR part 60, appendix F, Procedure 3, *Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources.* The SIP-approved paragraph .0613(c) states that continuous opacity monitoring systems (COMS) may satisfy the requirements of paragraph .0613(a) by complying with Method 203 to Appendix M of Part 51 as proposed in 57 FR 46114 (October 7, 1992). However, the procedures proposed for Method 203 were never finalized in 40 CFR part 51 and have since been rewritten as Procedure 3 of Appendix F to Part 60.[4] *See* 79 FR 28493 (May 16, 2014). Updating Rule 02D .0613(c) to allow COMS to comply with Method 203 or 40 CFR part 60, appendix F, Procedure 3 to satisfy paragraph .0613(a) is appropriate because Procedure 3 contains the current Federal quality assurance procedures for continuous opacity monitoring.

SIP-approved paragraph .0613(b) states that the Director may require the owner or operator of a facility required to operate a monitoring device under Subchapters 02D or 02Q to submit a quality assurance program if the criteria in .0613(b)(1) through (3) are met. The SIP revision changes the phrase ''the Director may'' to ''the Director shall'' and changes the phrase ''quality assurance program'' to ''a description of the quality assurance program.'' SIP-approved paragraph .0613(g) states that a quality assurance program shall be available on-site for inspection within 30 days of monitor certification. The SIP revision also changes the phrase ''quality assurance program'' to ''a description of the quality assurance program'' in this paragraph.

Although the change to ''a description of the quality assurance program'' may alter the name of the required document, NCDAQ explained that the materials that this document must contain remain the same, as detailed in paragraph .0613(c) and more specifically in .0613(c)(1) through (7).[5] Therefore, there is no substantive change to paragraph (g), and the overall change to paragraph .0613(c) is strengthening because the Director must now require owners and operators of subject facilities to submit the material in paragraph .0613(c).

B. Changes to 02D Section .2600

The October 9, 2020, SIP revision modifies the rules under 02D Section .2600, *Source Testing* identified in section I of this document. The following rules include only minor language and formatting changes that do not alter the meaning of the provisions: Rule 02D .2604, *Number of Test Points;*[6] Rule 02D .2605, *Velocity and Volume Flow Rate;* Rule 02D .2607, *Determination of Moisture Content;* Rule 02D .2612, *Nitrogen Oxide Testing Methods;* and Rule 02D .2614, *Determination of VOC Emission Control System Efficiency.* The other .2600 rules that are proposed for approval are discussed in more detail hereinafter.

The October 9, 2020, submittal transmits changes to Rule 02D .2603, *Testing Protocol,* at paragraph .2603(a) by adding the following to the information that must be included in test protocols: .2603(a)(1)—facility and testing company contact information; .2603(a)(2)—the permit number and permitted source's name and identification number; .2603(a)(6)—test audit requirements applicable to the proposed test method; .2603(a)(8)—the maximum process rate, maximum normal operation process rate, and the proposed target process rate for the test; and .2603(a)(10)—a proposed test schedule. The October 9, 2020, submittal also includes ministerial

[3] Email correspondence from NCDAQ to EPA dated August 1, 2022, explaining these changes can be found in the docket for this proposed action.

[4] Method 203 was originally Methods 203A, 203B, and 203C, found at 40 CFR part 51, appendix M, Section 9.0. These paragraphs have since been ''reserved'' and rewritten under Procedure 3.

[5] Email correspondence from NCDAQ to EPA dated August 1, 2022, explaining this change can be found in the docket for this proposed action.

[6] Rule 02D .2604, under paragraph (b)(1), provides procedures for testing using Method 1 of Appendix A of 40 CFR part 60, when multiple exhaust pipes or ducts are present. This rule previously described the multiple pipes or ducts as ''breechings'' but are now being referred to as ''ducts.'' Approval of this change into the SIP would not substantively alter the testing requirements of this rule because the terms ''ducts'' and ''breechings'' describe the same components in testing installations.

revisions such as renumbering the existing requirements.

Next, Rule 02D .2606, *Molecular Weight,* requires the application of Method 3 of Appendix A, 40 CFR part 60 to determine molecular weight of gases, with certain exceptions under paragraph .2606(b). The revised rule includes minor edits and rewording, as well changes to the exceptions in .2606(b). The current SIP-approved subparagraph .2606(b)(2) requires that ''[a]t least four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.'' The phrase ''but as many as necessary shall be taken to produce a reliable average'' from the end of this provision would be removed under the proposed revision. This change does not negatively impact the reliability of molecular weight determinations.

As provided in paragraph .2606(a), Method 3 of Appendix A to 40 CFR part 60 is still used to determine molecular weight of the gas being sampled, with the exceptions presented in paragraph .2606(b). Method 3 requires sampling and analysis of the sample for percent carbon dioxide (CO_2) and oxygen (O_2) to determine molecular weight, and this process of sampling and analysis must be repeated until the molecular weight calculated from three samples achieves a specified variance from the mean.[7] The final molecular weight reported is the average of those three molecular weights. However, Method 3 only requires obtaining the concentration of CO_2 and O_2 needed to calculate molecular weight once per cycle of analysis and molecular weight calculation. North Carolina's Rule 02D .2606 requires that when an instrument, such as the Bacharach Fyrite, is used instead of the grab sample technique to calculate CO_2 concentration, at least four samples must be taken to account for variations in the CO_2 concentrations and those four samples must be taken during a one-hour test. This means that, if using an instrument, at least four samples are needed per cycle of analysis and molecular weight calculation. Additionally, Rule .2606(a) still requires sampling, analysis, and calculation procedures to be repeated until the variance specified in Method 3 is achieved to ensure reliability. Thus, North Carolina's revised rule continues to ensure that molecular weight testing will produce reliable determinations and remains at least as stringent as the Federal method.

Rule 02D .2608, *Number of Runs and Compliance Determination,* is changed to require that the three test runs required must be consecutive and completed at the same operating condition. It is also changed to provide that if other operating conditions or scenarios are to be tested, three consecutive test runs are required for each of those conditions or scenarios. The October 9, 2020, submittal also includes formatting and minor clarifying revisions to Rule 02D .2608.

Rule 02D .2610, *Opacity,* establishes methods to determine compliance with opacity standards and is modified to clarify that Method 22 in Appendix A to 40 CFR part 60 is based upon the frequency of fugitive emissions that are ''visible during the observation period.'' The rule is also revised to eliminate the phrase ''from stationary sources'' in subparagraph .2610(b), which currently requires the use of Method 22 for compliance with opacity standards based on the frequency of fugitive emissions ''from stationary sources.'' This deletion does not change the meaning of the rule because Method 22 is applicable to stationary sources at part 60. The October 9, 2020, submittal also includes minor edits to the language in 02D .2610 which do not alter the meaning of the rule.

Finally, Rule 02D .2613, *Volatile Organic Compound Testing Methods,* includes clarifying edits at (c) and (d) to cross-reference the Rule 02D .0930, *Solvent Metal Cleaning,* definition of ''solvent metal cleaning equipment'' and the Rule 02D .0927, *Bulk Gasoline Terminals,* definition of ''bulk gasoline terminals,'' both of which are terms used in Rule .2613. The October 9, 2020, also transmits minor language and formatting changes that do not otherwise alter the meaning of the rule.

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 requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following North Carolina rules, with a state effective date of November 1, 2019: Rule 02D .0607, *Large Wood and Wood-Fossil Fuel Combination Units;* Rule 02D .0608, *Other Large Coal or Residual Oil Burners;* Rule 02D .0610, *Federal Monitoring Requirements;* Rule 02D .0612, *Alternative Monitoring and Reporting Procedures;* Rule 02D .0613, *Quality Assurance Program;* Rule 02D .2603, *Testing Protocol;* Rule 02D .2604, *Number of Test Points;* Rule 02D .2605, *Velocity and Volume Flow Rate;* Rule 02D .2606, *Molecular Weight;* Rule 02D .2607, *Determination of Moisture Content;* Rule 02D .2608, *Number of Runs and Compliance Determination;* Rule 02D .2610, *Opacity;* Rule 02D .2612, *Nitrogen Oxide Testing Methods;* Rule 02D .2613, *Volatile Organic Compound Testing Methods;* and Rule 02D .2614, *Determination of VOC Emission Control System Efficiency.* 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 portions of the October 9, 2020, SIP revisions to incorporate various changes to North Carolina's source monitoring and testing provisions into the SIP. Specifically, EPA is proposing to approve various changes as described above in 02D Section .0600, *Monitoring: Recordkeeping: Reporting,* and .2600, *Source Testing.* EPA is proposing to approve these changes because they meet CAA requirements and would not interfere with any applicable requirement concerning attainment or reasonable further progress.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and would 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.*);

[7] As noted in Method 3, molecular weight is calculated by determining the concentration of CO_2, O_2 N_2, and CO in the sample but the sample is only analyzed for CO_2 and O_2. The amount of N_2 and CO is determined by subtracting the sum of the percent CO_2 and percent O_2 from 100 percent to determine the percentage.

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18171 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0569; FRL–10136–01–R4]

Air Plan Approval; TN; Updates to References to Appendix W Modeling Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by Tennessee, on April 9, 2021. Specifically, EPA is proposing to approve updates to the incorporation by reference of federal guidelines on air quality modeling in the Tennessee SIP. Based on its proposal to approve this revision, EPA is also proposing to convert the previous conditional approval regarding infrastructure SIP prevention of significant deterioration (PSD) elements for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) for Tennessee to a full approval. EPA is proposing to approve this revision pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before September 23, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0569 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 *www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, 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) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at staff email *ortizborrero.josue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP'' or ''iSIP.'' States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

On September 13, 2018, Tennessee met the requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. Through previous rulemakings, EPA approved most of the infrastructure SIP elements for the 2015 Ozone NAAQS for Tennessee.[2] [3] However, regarding the PSD elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), and (J) (herein referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved [4] these portions

[1] In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

[2] EPA approved most elements for Tennessee, except for the Interstate Transport provisions (Prongs 1 & 2), and the PSD provisions (element C, Prong 3, and J), on December 26, 2019. *See* 84 FR 70895.

[3] The Interstate Transport provisions (Prongs 1 & 2) for Tennessee have been proposed for disapproval but that action has not been finalized at this time. *See* 87 FR 9545 (February 22, 2022).

[4] Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a

of Tennessee's iSIP submission because of outdated references to the federal guideline on air quality modeling found in Appendix W of 40 CFR part 51.[5] As previously mentioned, all other applicable iSIP requirements for Tennessee for the 2015 8-hour ozone NAAQS were addressed or will be addressed in separate rulemakings.

For elements C and J to be approved for PSD, a state needs to demonstrate that its SIP meets the PSD-related infrastructure requirements of these sections. These requirements are met if the state's implementation plan includes a PSD program that meets current federal requirements. Prong 3 is also approvable when a state's implementation plan contains a fully approved, up-to-date PSD program. EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W, *Guideline on Air Quality Models.* EPA promulgated the most current version of Appendix W on January 17, 2017 (82 FR 5182). Therefore, in order to approve the iSIP PSD elements for the 2015 8-hour ozone NAAQS, PSD regulations in SIPs are required to reference the most current version of Appendix W.

As discussed in the conditional approval for the 2015 ozone iSIP PSD elements, Tennessee's SIP contained outdated references to Appendix W and the State committed to update the outdated references and submit a SIP revision within one year of EPA's final rule conditionally approving these PSD elements. Accordingly, Tennessee was required to submit a SIP revision by April 9, 2021. Tennessee met its commitment by submitting a SIP revision to correct the deficiencies on or before the deadline. Through this Notice of Proposed Rulemaking (NPRM), EPA is now proposing to approve changes to the Tennessee SIP and to convert the conditional approval to a full approval for Tennessee regarding element C, Prong 3, and element J, for the 2015 8-hour ozone NAAQS infrastructure SIP.

II. What is EPA's approach to the review of infrastructure SIP submissions?

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[6] Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[7] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. EPA's Analysis of Tennessee's April 9, 2021, Submittal

On April 9, 2021, Tennessee submitted a SIP revision to address outdated references to EPA's modeling guidelines in order to meet the PSD iSIP requirements for the 2015 8-hour ozone NAAQS. The SIP revision includes changes to two SIP-approved rules to update the incorporation by reference date for Appendix W and a request to convert the April 9, 2020, Conditional Approval of element C, Prong 3, and element J of Tennessee's 2015 8-hour ozone NAAQS infrastructure SIP to a full approval. Specifically, the April 9, 2021, SIP revision makes changes to Tennessee Rules 1200–03–09–.01, *Construction Permits,* and 1200–03–21–.01, *General Alternate Emission Standard.*

Paragraph 1200–03–09–.01(1) is a set of general construction permitting requirements that apply to new or modified sources, including sources subject to PSD, and subparagraph (f) requires estimates of ambient concentration to be based on air quality models. Previously, this provision referenced EPA publication No. 450/2–78–027R, ''Guidelines on Air Quality Models (revised)'' (1986), and certain specified supplements for modeling. However, the April 9, 2021, SIP revision deletes this reference to EPA publication No. 450/2–78–027R and replaces it with a specific incorporation by reference of 40 CFR part 51 Appendix W, as published in the July 1, 2019, edition of the Code of Federal Regulations (CFR). This provision currently allows the Technical Secretary to approve the use of a modified or substitute model on a case-by-case basis after consultation with and written approval by EPA, and is revised to limit the use of a modified or substitute model to incidences where the air quality model in Appendix W is inappropriate, which is consistent with 40 CFR 51.166(l)(2) for PSD. Tennessee also changed the word ''another'' to ''substituted'' in the model substitution provision. The changes to Paragraph 1200–03–09–.01(1)(f) align with federal requirements to make use of the most current version of Appendix W.

In addition, modeling requirements under the State's PSD rule at Paragraph 1200–03–09–.01(4)(k) are revised to similarly include an incorporation by reference date for Appendix W of the July 1, 2019, CFR publication edition, and includes the same minor edit to change ''another'' to ''substituted''.

Lastly, Paragraph 1200–03–21–.01(2)(c), which provides procedures for alternative emission standards, is also revised to delete a reference to EPA publication No. 450/2–78–027R and replace it with a specific incorporation by reference of 40 CFR part 51 Appendix W, as published in the July 1, 2019, edition of the CFR, as in Rule 1200–03–09–.01 described above.

As explained in the April 9, 2020, conditional approval, Tennessee committed to update its PSD regulations to reference the most current version of Appendix W. EPA approved the most current version of Appendix W on January 17, 2017 (82 FR 5182), so by incorporating by reference the July 1, 2019, version of Appendix W into the SIP, Tennessee is meeting the commitment of the conditional approval, as well as the requirements of the PSD elements for the 2015 8-hour ozone infrastructure SIP.

For the reasons stated above, EPA is proposing to approve the changes into the Tennessee SIP and convert the April 9, 2020, conditional approval of element C, Prong 3, and element J, of Tennessee's 2015 8-hour ozone NAAQS infrastructure SIP to a full approval.

commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

[5] For the state of Tennessee, EPA conditionally approved the PSD provisions of element C, Prong 3, and element J, on April 9, 2020. *See* 85 FR 19888.

[6] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on the Tennessee infrastructure SIP to address the 2010 Sulfur Dioxide NAAQS. *See* 81 FR 8540 (November 28, 2016).

[7] *See Mont. Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Tennessee Rules 1200–03–09–.01, *Construction Permits,*[8] and 1200–03–21–.01, *General Alternate Emission Standard,* state effective on April 22, 2021. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve changes to the Tennessee SIP, and convert the conditional approval for element C, Prong 3, and element J, for the 2015 8-hour ozone Infrastructure SIP to a full approval. Specifically, EPA is proposing to approve changes to Tennessee Rules 1200–03–09–.01, *Construction and Operating Permits,* and 1200–03–21–.01, *General Alternate Emission Standard.*

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18199 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

[8] EPA is not proposing to incorporate the April 22, 2021, state effective version of: 1200–03–09–.01(1)(a); 1200–03–09–.01(1)(d); 1200–03–09–.01(1)(h); 1200–03–09–.01(1)(j); 1200–03–09–.01(4)(a)7(vi); 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)(l)2(iii); 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(viii)(III); 1200–03–09–.01(5)2(iii)(II); and 1200–03–09–.01(5)(b)3(i)(III). These provisions are either not approved into the SIP or the April 22, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0867; FRL–9377–01–R4]

Air Plan Approval; North Carolina; Prevention of Significant Deterioration for Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg County Local Implementation Plan (LIP). The revision was submitted through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Pollution Control (MCAQ), via a letter dated April 24, 2020, which was received by EPA on June 19, 2020. This SIP revision includes changes to Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP regarding Prevention of Significant Deterioration (PSD) permitting to address changes to the Federal new source review (NSR) regulations in recent years. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before September 23, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0867 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 *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, 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. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

I. Background and Overview of Mecklenburg LIP

The Mecklenburg LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve changes to the LIP for, among other things, general consistency with the North Carolina SIP.[1] Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP since EPA's 1991 LIP approval.[2] The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and submitted the January 21, 2016, and January 14, 2019, updates. Each of these submittals were properly noticed to the public in compliance with 40 CFR 51.102.

This proposed rulemaking would modify the LIP by updating the PSD program rules incorporated into the LIP in Rule 2.0530, *Prevention of Significant Deterioration,* and by adding into the LIP rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases.*

II. Background on PSD Updates

The PSD program is a preconstruction permitting program that requires ''major'' stationary sources of air pollution to obtain a PSD permit prior to beginning construction in areas classified as either in attainment with the National Ambient Air Quality Standards (NAAQS) or unclassifiable.[3] *See* CAA section 165. EPA requires PSD SIPs to meet the standards codified at 40 CFR 51.166.[4] Over the years, EPA has updated these rules, and as a result of these amendments, states and localities similarly are required to update their SIP-approved rules to ensure compliance with the PSD standards set forth at 40 CFR 51.166.

In this Notice of Proposed Rulemaking (NPRM), EPA is proposing to approve Mecklenburg's PSD rule revisions as meeting the requirements of the CAA and 40 CFR 51.166. EPA most recently approved Mecklenburg's PSD rules on May 2, 1991, with a local effective date of June 14, 1990. *See* 56 FR 20140. Since then, EPA's PSD permitting rules have undergone a number of changes. For historical context, this NPRM first provides a summary of significant amendments to EPA's PSD permitting rules made after the date of approval of Mecklenburg's LIP-approved PSD permitting rules. The NPRM then discusses the PSD rules contained in the proposed SIP revision.

A. 2002 NSR Reform Rules

On December 31, 2002, EPA published final rule revisions to 40 CFR parts 51 and 52, regarding the CAA's PSD and Nonattainment New Source Review (NNSR) programs. *See* 67 FR 80186 (hereinafter referred to as the 2002 NSR Rule). The revisions included five changes to the major NSR program that would reduce regulatory burdens, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency. Initially, these updates to the Federal NSR program included the revision of baseline actual emissions and adoption of actual-to-projected-actual emissions methodology, plant-wide applicability limits (PALs), Clean Units, and pollution control projects (PCPs). The final rule also codified a longstanding policy regarding the calculation of baseline emissions for electric utility steam generating units and the definition of ''regulated NSR pollutant'' that clarifies which pollutants are regulated under the Act for purposes of major NSR.

Following publication of the 2002 NSR Rule, EPA received numerous petitions requesting reconsideration of several aspects of the final rule, along with portions of EPA's 1980 NSR Rules.[5] On July 30, 2003, EPA granted petitions for reconsideration of six issues presented by the petitioners and opened a new comment period for the public.[6] As a result of the reconsideration, on November 7, 2003 (68 FR 63021), EPA published the NSR Reform Reconsideration Rule, which made two clarifications to EPA's underlying NSR rules. These two clarifications included: (1) adding the definition of ''replacement unit'' to indicate that it is considered an existing unit in terms of major NSR applicability, and (2) specifying that the PAL baseline calculation procedures for newly constructed units do not apply to modified units. The 2002 NSR Rule and the NSR Reform Reconsideration Rule are hereinafter collectively referred to as the ''2002 NSR Reform Rules.''

The 2002 NSR Reform Rules were challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), and the court issued a decision on the challenges on June 24, 2005. *See New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). In summary, the D.C. Circuit vacated portions of EPA's NSR Reform Rules pertaining to Clean Units and PCPs, remanded a portion of the rules regarding recordkeeping and the term ''reasonable possibility'' found in 40 CFR 52.21(r)(6), 40 CFR 51.166(r)(6), and 40 CFR 51.165(a)(6) to EPA, and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform

[1] Hereinafter, the terms ''North Carolina SIP'' and ''SIP'' refer to the North Carolina regulatory portion of the North Carolina SIP (*i.e.,* the portion that contains SIP-approved North Carolina regulations).

[2] The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals—one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

[3] A separate NSR preconstruction permitting program applies to nonattainment areas pursuant to CAA section 173. NSR permits in nonattainment areas are referred to as nonattainment NSR (NNSR) permits.

[4] Related rules setting forth the Federal PSD program for areas without an approved PSD permitting program are codified at 40 CFR 52.21.

[5] *See* 45 FR 52676 (August 7, 1980) for EPA's 1980 NSR Rules.

[6] For full details on the six issues reconsidered by EPA, refer to the July 30, 2003, publication. *See* 68 FR 44624.

Rules to exclude the portions that were vacated by the D.C. Circuit.

Meanwhile, EPA continued to move forward with its evaluation of the portion of its NSR Reform Rules that were remanded by the D.C. Circuit. On March 8, 2007 (72 FR 10445), EPA responded to the Court's remand regarding the recordkeeping provisions by proposing two alternative options to clarify what constitutes ''reasonable possibility'' and when the ''reasonable possibility'' recordkeeping requirements apply. The ''reasonable possibility'' standard identifies the circumstances under which a major stationary source must keep records for modifications that do not trigger major NSR. EPA later finalized these changes on December 21, 2007 (72 FR 72607).

Separately from the petitions received that led to the 2002 NSR Reconsideration Rule, EPA received another petition for reconsideration on July 11, 2003. Specifically, the petitioner requested EPA to reconsider the inclusion of ''fugitive emissions'' when assessing whether a proposed physical or operational change qualified as a ''major modification.'' On November 13, 2007, EPA granted the petition for reconsideration, and on December 19, 2008, finalized the revision of the language to clarify which types of sources were required to include ''fugitive emissions'' in their calculations. *See* 73 FR 77882 (hereinafter referred to as the Fugitive Emissions Rule).

Finally, on February 17, 2009, EPA received a petition for reconsideration of the Fugitive Emissions Rule. Due to this petition, and after several stays,[7] EPA established an indefinite stay of the Fugitive Emissions Rule language on March 30, 2011 (76 FR 17548). This indefinite stay also clarified EPA's intent to ''correct ambiguity'' in the March 31, 2010 stay. With the March 30, 2011, stay, EPA specified which portions of 40 CFR 51.165, 40 CFR 51.166, and 40 CFR 52.21 were stayed indefinitely, which were reinstated, and which were revised, in order to revert the Federal rules to the regulatory language that existed prior to the Fugitive Emissions Rule.[8]

In summary, after several court decisions and public petitions, the Federal major NSR program (found in 40 CFR 51.165, 51.166, and 52.21) no longer includes the provisions related to Clean Units or PCPs that were part of the 2002 NSR reform rules. Additionally, an indefinite stay has been placed on the Fugitive Emissions Rule. Mecklenburg County is adopting most of the surviving provisions from the 2002 NSR Reform Rules, with changes. More details on Mecklenburg County's adoption of the 2002 NSR Reform Rules and EPA's analysis of its submittal can be found in section III.A of this NPRM.

B. Fine Particulate Matter ($PM_{2.5}$) NAAQS

1. Implementation of NSR for the $PM_{2.5}$ NAAQS and Grandfathering Provisions

On May 16, 2008 (73 FR 28321), EPA published the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' Final Rule (hereinafter referred to as the NSR $PM_{2.5}$ Rule). The NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. As indicated in the NSR $PM_{2.5}$ Rule, major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception was a ''grandfathering'' provision in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement a policy in which PM_{10} served as a surrogate for $PM_{2.5}$ for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever came first.[9]

On February 11, 2010 (75 FR 6827), EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM_{10} Surrogate Policy applicable in states that have a SIP-approved PSD program. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 had been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit related $PM_{2.5}$ analyses. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the Federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)[10] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 p.m.$_{10}$ Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration.

The NSR $PM_{2.5}$ Rule also established the following NSR requirements for PSD to implement the $PM_{2.5}$ NAAQS: (1) required NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)); and (3) required states to account for gases that condense to form particles (''condensables'') in $PM_{2.5}$ and PM_{10} emission limits in PSD or NNSR permits.

2. $PM_{2.5}$ Condensables Correction

Among the changes included in the NSR $PM_{2.5}$ Rule mentioned above, EPA also revised the definition of ''regulated NSR pollutant'' for PSD to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures'' and that on or after January 1, 2011, ''such condensable particulate matter shall be accounted for in applicability determinations and in

[7] EPA originally established a three-month stay that became effective September 30, 2009 (74 FR 50115), which was later extended for an additional three months, effective December 31, 2009. *See* 74 FR 65692. In order to allow for more time for reconsideration and for public comment on any potential revisions to the Fugitive Emissions Rule, EPA established a longer 18-month stay that became effective on March 31, 2010. *See* 75 FR 16012.

[8] In this NPRM, EPA is not proposing to act on certain provisions addressing the treatment of fugitive emissions, as provided in EPA's December 19, 2008, rule. *See* 73 FR 77882. Specifically, EPA is not acting on the incorporation by reference of 40 CFR 51.166(b)(2)(v), nor 51.166(b)(3)(iii)(*d*), which were subsequently stayed indefinitely in a March 30, 2011, final rule. *See* 76 FR 17548.

[9] After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$,'' which allowed for the regulation of PM_{10} as a surrogate for $PM_{2.5}$ until significant technical issues were resolved (the ''PM_{10} Surrogate Policy''). John S. Seitz, EPA, October 23, 1997.

[10] Sources that applied for a PSD permit under the Federal PSD program on or after July 15, 2008, are already excluded from using the 1997 p.m.$_{10}$ Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 73 FR 28321.

establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits.'' *See* 73 FR 28321 at 28348 (May 16, 2008). A similar paragraph added to the NNSR rule did not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012 (77 FR 65107), EPA took final action to amend the definition, promulgated in the 2008 NSR $PM_{2.5}$ Rule, of ''regulated NSR pollutant'' contained in the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and appendix S to 40 CFR part 51 (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule). The $PM_{2.5}$ Condensables Correction Rule removed the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable particulate matter be included as part of the measurement and regulation of ''particulate matter emissions'' under the PSD program. The term ''particulate matter emissions'' includes only filterable particles that are larger than PM_{10}.

3. $PM_{2.5}$ PSD Increments, Significant Impact Levels (SILs), and Significant Monitoring Concentration (SMC) Rule

On October 20, 2010 (75 FR 64863), EPA published a final rule entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$),'' amending the requirements for $PM_{2.5}$ under the Federal PSD program (also referred to as the $PM_{2.5}$ PSD-Increments-SILs-SMC Rule). The final rule established the following: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas attaining the NAAQS; (2) $PM_{2.5}$ Significant Impact Levels (SILs) for PSD and NNSR; and (3) Significant Monitoring Concentration (SMC) for PSD purposes.

Subsequently, in response to a challenge to the $PM_{2.5}$ SILs and SMC provisions of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule, the D.C. Circuit vacated and remanded to EPA the portions of the rule addressing $PM_{2.5}$ SILs, except for the $PM_{2.5}$ SILs promulgated in EPA's NNSR rules at 40 CFR 51.165(b)(2). *See Sierra Club* v. *EPA,* 705 F.3d 458, 469 (D.C. Cir. 2013). The D.C. Circuit also vacated the parts of the rule establishing a $PM_{2.5}$ SMC for PSD purposes. *Id.* EPA removed these vacated provisions in a December 9, 2013 (78 FR 73698), final rule.

The $PM_{2.5}$ SILs promulgated in EPA's NNSR regulations at 40 CFR 51.165(b)(2) were not vacated by the D.C. Circuit because, unlike the SILs promulgated in the PSD regulations (40 CFR 51.166, 52.21), the SILs promulgated in the NNSR regulations at 40 CFR 51.165(b)(2) do not serve to exempt a source from conducting a cumulative air quality analysis. Rather, the SILs promulgated at 40 CFR 51.165(b)(2) establish levels at which a proposed new major source or major modification located in an area designated as attainment or unclassifiable for any NAAQS would be considered to cause or contribute to a violation of a NAAQS in any area. For this reason, the D.C. Circuit left the $PM_{2.5}$ SILs at 40 CFR 51.165(b)(2) in place.

Mecklenburg County is adopting the Federal provisions relevant to PSD permitting for $PM_{2.5}$ in the April 24, 2020, submittal. This update to Mecklenburg's PSD regulations is necessary and is consistent with North Carolina's rules and the Federal rules. See section III.B of this NPRM for more details on the adoption of provisions to implement $PM_{2.5}$ for PSD permitting.

C. 1997 8-Hour Ozone NAAQS Phase 2 Rule

On November 29, 2005 (70 FR 71612), EPA published a final rule entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (hereinafter referred to as the Phase 2 Rule). The Phase 2 Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS [11] such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gasoline for the 1997 8-hour ozone NAAQS transition. Additionally, regarding the NSR permitting requirements which are relevant to this proposed action, the Phase 2 Rule included the following provisions: (1) recognized NO_X as an ozone precursor for PSD purposes; and (2) established significant emission rates for the ozone precursors volatile organic compounds (VOCs) and NO_X in the PSD regulations.[12]

The April 24, 2020, LIP revision adopts the relevant PSD provisions of 40 CFR 51.166, thus recognizing NO_X as a precursor to ozone alongside VOCs. The adoption of these provisions is consistent with the Federal PSD provisions as well as North Carolina's rules. More details on Mecklenburg County's adoption of the Ozone Phase 2 Rule provisions for PSD and EPA's analysis of its submittal can be found in section III.C of this NPRM.

D. Greenhouse Gas Tailoring Rule and Biomass Deferral Rule

On January 2, 2011, emissions of greenhouse gases (GHGs) were, for the first time, covered by the PSD and title V operating permit programs.[13] To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA's PSD and title V programs, on June 3, 2010, EPA published a final rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereinafter referred to as the ''GHG Tailoring Rule''). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which took effect on January 2, 2011, EPA limited application of PSD and title V requirements to sources and modifications of GHG emissions, but only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources and modifications covered under Step 1 are commonly referred to as ''anyway sources'' and ''anyway modifications,'' respectively.

In Step 2 of the GHG Tailoring Rule, which took effect on July 1, 2011, the PSD and title V permitting requirements extended beyond the sources and modifications covered under Step 1 to apply to sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the threshold in the Federal PSD regulations. EPA generally described the

[11] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm)—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment, and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004 (69 FR 23951), as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phases I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA.

[12] This action also established significant emission rates for PM_{10} and carbon monoxide in EPA's Federal NNSR regulations. MCAQ has not transmitted any changes to its LIP-approved NNSR program at Rule 2.0531, *Sources in Nonattainment Areas,* in the April 24, 2020, LIP revision. There are no designated nonattainment areas in Mecklenburg County at this time.

[13] *See* 75 FR 17004 (April 2, 2010).

sources and modifications covered by PSD under Step 2 of the Tailoring Rule as ''Step 2 sources and modifications'' or ''GHG-only sources and modifications.''

Subsequently, EPA published Step 3 of the GHG Tailoring Rule on July 12, 2012. *See* 77 FR 41051. In the rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD and title V applicability based on emissions of GHGs remained the same as established in Steps 1 and 2 of the Tailoring Rule.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group* v. *EPA,* 573 U.S. 302 (2014) (*UARG*). The Supreme Court upheld EPA's regulation of GHG Step 1—or ''anyway'' sources—but held that EPA may not treat GHGs as air pollutants for the purpose of determining whether a source is a major source (or is undergoing a major modification) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated the PSD and title V permitting requirements for GHG Step 2 sources and modifications.

In accordance with the Supreme Court's decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *See Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). The Amended Judgment specifically vacated the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.'' *Id.* at 7–8.

In response, EPA promulgated a good cause final rule on August 19, 2015, entitled ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements.'' *See* 80 FR 50199 (August 19, 2015) (hereinafter referred to as the ''Good Cause GHG Rule''). The rule removed from the Federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (*i.e.,* 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). Therefore, EPA no longer has the authority to conduct PSD permitting for Step 2 sources, nor can the Agency approve provisions submitted by a state for inclusion in its SIP providing this authority. On October 3, 2016, EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to address the GHG applicability threshold for PSD in order to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized. *See* 81 FR 68110.

On July 20, 2011, EPA finalized the Biomass Deferral Rule, which deferred for a period of three years, the application of PSD and Title V permitting requirements to carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources (also known as biogenic CO_2 emissions). *See* 76 FR 43490. During this three-year period, stationary sources that combust biomass and constructed or modified a facility would have avoided the application of PSD to biogenic CO_2 emissions resulting from construction or modification. The deferral applied only to biogenic CO_2 emissions and did not affect other GHGs emitted from the combustion of biomass fuel and decomposition of biogenic material or non-GHG pollutants. Additionally, the deferral only applied to biogenic CO_2 emissions in the PSD and Title V programs; it did not apply to any other EPA programs, such as the GHG Reporting Program.[14]

On July 12, 2013, the D.C. Circuit vacated the Biomass Deferral Rule, but on November 14, 2013, issued an order delaying the vacatur of the Biomass Deferral Rule until the U.S. Supreme Court made a final decision in the *UARG* case related to the GHG Tailoring Rule. *See Center for Biological Diversity* v. *EPA,* 722 F.3d 401. After a final decision was made by the Supreme Court on June 23, 2014, in *UARG,* EPA did not immediately take formal action to remove the Biomass Deferral Rule from the CFR. On July 19, 2021, EPA removed the vacated text of the Biomass Deferral Rule from 40 CFR 51.166(b)(48)(ii)(a), 52.21(b)(49)(ii)(a), 70.2(2), and 71.2(2). *See* 86 FR 37918.

The April 24, 2020, LIP revision adopts the PSD plan requirements of 40 CFR 51.166, and adopts other relevant provisions directly to implement PSD for greenhouse gases, consistent with the Federal PSD provisions as well as North Carolina's rules. See section III.D of this NPRM for more details.

[14] See *https://www.epa.gov/ghgreporting* for information on the GHG Reporting Program.

E. Equipment Replacement Provision

Under Federal regulations, certain activities are not considered to be a physical change or a change in the method of operation at a source, and thus do not trigger NSR review. One category of such activities is routine maintenance, repair and replacement (RMRR). On October 27, 2003 (68 FR 61248), EPA published a rule entitled ''Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion'' (hereinafter referred to as the ''ERP Rule''). The ERP Rule provided criteria for determining whether an activity falls within the RMRR exemption. The ERP Rule also provided a list of equipment replacement activities that are exempt from NSR permitting requirements, while ensuring that industries maintain safe, reliable, and efficient operations that will have little or no impact on emissions. Under the ERP Rule, a facility undergoing equipment replacement would not be required to undergo NSR review if the facility replaced any component of a process unit with an identical or functionally equivalent component. The rule included several modifications to the NSR rules to explain what would qualify as an identical or functionally equivalent component.

Shortly after the October 27, 2003, rule, several parties filed petitions for review of the ERP Rule in the D.C. Circuit. The court stayed the effective date of the rule pending resolution of the petitions. A collection of environmental groups, public interest groups, and states, subsequently filed a petition for reconsideration with EPA, requesting that the Agency reconsider certain aspects of the ERP Rule. EPA granted the petition for reconsideration on July 1, 2004 (69 FR 40278).[15] After reconsideration, EPA published its final response on June 10, 2005 (70 FR 33838), which stated that the Agency would not change any aspects of the ERP. On March 17, 2006, the D.C. Circuit acted on the petitions for review and vacated the ERP Rule.[16] EPA removed the vacated language from the

[15] The reconsideration granted by EPA opened a new 60-day public comment period, including a new public hearing, on three issues of the ERP: (1) the basis for determining that the ERP was allowable under the CAA; (2) the basis for selecting the cost threshold (20 percent of the replacement cost of the process unit) that was used in the final rule to determine if a replacement was routine; and (3) a simplified procedure for incorporating a Federal Implementation Plan into state plans to accommodate changes to the NSR rules.

[16] *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006).

Federal rules in a final rule published on July 19, 2021 (86 FR 37918).

Rule 2.0530 in the April 24, 2020, Mecklenburg submittal adopts the requirements of 40 CFR 51.166 as amended July 1, 2014, with exceptions. Likewise, Rule 2.0544 of the April 24, 2020, Mecklenburg submittal adopts the requirements of 40 CFR 51.166 as amended July 20, 2011, with exceptions. In this NPRM, EPA is not proposing to act on the incorporation by reference of language to implement the ERP, as provided in EPA's October 27, 2003, rule. *See* 68 FR 61248. Specifically, EPA is not acting on the incorporation by reference of the 2003 changes to 40 CFR 51.166(b)(2)(iii)(*a*), the incorporation by reference of 40 CFR 51.166(b)(53) through (56), nor the incorporation by reference of 40 CFR 51.166(y). These provisions were in the Federal rule as of July 1, 2014; but, previously vacated by the D.C. Circuit.[17] EPA subsequently removed the vacated provisions from the CFR. *See* 86 FR 37918 (July 19, 2021).

F. Ethanol Rule

Under the CAA, there are two possible thresholds for determining whether a source is a major emitting facility that is potentially subject to the construction permitting requirements under the PSD program; one threshold is 100 tons per year (tpy) per pollutant, and the other is 250 tpy per pollutant. Section 169(1) of the CAA lists twenty-eight source categories that qualify as major emitting facilities if their emissions equal or exceed the 100 tpy threshold. If the source does not fall within one of twenty-eight source categories listed in section 169, then the 250 tpy threshold is applicable.

One of the source categories in the list of twenty-eight source categories, to which the 100 tpy threshold applies, is chemical process plants. Since the Standard Industrial Classification (SIC) code for chemical process plants includes facilities primarily engaged in manufacturing ethanol fuel, EPA and states had previously considered such facilities to be subject to the 100 tpy thresholds.

As a result of this classification, pursuant to EPA's major NSR regulations, chemical process plants were also required to include fugitive emissions for determining the potential emissions of such sources. Thus, prior to promulgation of the 2007 Ethanol Rule, the classification of fuel and industrial ethanol facilities as chemical process plants had the effect of requiring these plants to include fugitive emissions when determining whether their emissions exceed the applicability thresholds for the PSD and NNSR permit programs.

On May 1, 2007, EPA published the 2007 Ethanol Rule (72 FR 24060), which amended EPA's PSD and NNSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the ''chemical process plants'' category under the regulatory definition of ''major stationary source.'' This change to EPA's NSR regulations affected the threshold used to determine PSD applicability for these ethanol production facilities, clarifying that such facilities were subject to the 250 tpy major source threshold. The 2007 Ethanol Rule also included changes to other provisions which established that ethanol facilities need not count fugitive emissions when determining whether such a source is ''major'' under the Federal PSD, NNSR, and Title V permitting programs.

On July 2, 2007, the National Resources Defense Council (NRDC) petitioned the D.C. Circuit to review the 2007 Ethanol Rule. On that same day, EPA received a petition for administrative reconsideration and request for stay of the 2007 Ethanol Rule from NRDC. On March 27, 2008, EPA denied NRDC's 2007 administrative petition for reconsideration.

On March 2, 2009, EPA received a second petition for reconsideration and request for stay from NRDC. In 2009, NRDC also filed a petition for judicial review challenging EPA's March 27, 2008, denial of NRDC's 2007 administrative petition in the D.C. Circuit. This challenge was consolidated with NRDC's challenge to the 2007 Ethanol Rule. In August of 2009, the D.C. Circuit granted a joint motion to hold the case in abeyance, and the case has remained in abeyance.

On October 21, 2019, EPA partially granted and partially denied NRDC's 2009 administrative petition for reconsideration. *See* 84 FR 59743 (November 6, 2019). Specifically, EPA granted the request for reconsideration with regard to NRDC's claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 anti-backsliding requirements for nonattainment areas. EPA denied the remainder of the requests for reconsideration on the grounds that NRDC failed to establish that reconsideration was warranted under CAA section 307(d)(7)(B).

Mecklenburg County's incorporation by reference of Federal PSD provisions as of July 1, 2014, includes the 2007 Ethanol Rule's changes to the treatment of ethanol production facilities. See section III.F of this NPRM and EPA's technical support document in the docket for this proposed action for more details.

III. Analysis of Mecklenburg's April 24, 2020 Submittal

MCAQ adopts the Federal PSD requirements of 40 CFR 51.166 with several changes, consistent with the State of North Carolina's PSD provisions.[18] MCAPCO Rule 2.0530 adopts certain provisions of the version of 40 CFR 51.166 effective on July 1, 2014, with certain revisions described in this document, and Rule 2.0544 adopts certain provisions of the version of the Federal rule effective on July 20, 2011, with certain revisions described in this document. EPA's analysis of several features of the April 24, 2020, LIP revision related to Mecklenburg County's PSD program at Rules 2.0530 and 2.0544 is included in the following subsections.

A. 2002 NSR Reform Rules

This SIP revision addresses baseline actual emissions, actual-to-projected actual applicability tests, PALs, recordkeeping requirements, and reporting requirements.[19] Rule 2.0530 adopts the Federal PSD requirements at 40 CFR 51.166, as amended July 1, 2014, with certain revisions described in this document. These revisions include a non-substantive update to the definition of ''baseline actual emissions;'' an amendment pursuant to the PAL adjustment provision at 51.166(w)(10)(iv)(*a*); and streamlined language to adopt the recordkeeping and reporting requirements at 51.166(r)(6).

As a general matter, state and local agencies may meet the requirements of 40 CFR part 51 with different but equivalent (or more stringent) regulations. As mentioned above, MCAQ chose to adopt the Federal rules with several changes, consistent with North Carolina's SIP-approved PSD provisions. The definition of ''baseline actual emissions'' at Rule 2.0530(b)(1) was changed from the Federal provisions to remove the provision allowing emissions units that are not electric utility steam generating units (EUSGUs) to look back 10 years to select the baseline period. Mecklenburg

[17] *See* footnote 16.

[18] *See, e.g.,* 76 FR 49313 (August 10, 2011); 76 FR 64240 (October 18, 2011); 81 FR 63107 (September 14, 2016); 83 FR 45827 (September 11, 2018); 84 FR 38876 (August 8, 2019); and 85 FR 57707 (September 16, 2020).

[19] As noted in section II.A, EPA is not proposing to act on the incorporation by reference of EPA's indefinitely stayed fugitive emissions provisions at 40 CFR 51.166(b)(2)(v) and 51.166(b)(3)(iii)(*d*).

County rules treat EUSGUs and non-EUSGUs the same by allowing a look-back of only five years. However, Mecklenburg County rules provide the option of allowing a different time period, not to exceed 10 years, if the owner or operator demonstrates that it is more representative of normal source operation as required by 40 CFR 51.166(b)(47)(i). In addition, Mecklenburg County rules require EUSGUs to adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestacks Act, which is a North Carolina law that became effective in 2007 and set caps on NO_X and SO_2 emissions from public utilities operating coal-fired power plants in the State that cannot be met by purchasing emissions credits. *See* N.C. Gen. Stat. section 143–215.107D; N.C. Gen. Stat. section 62–133.6.

With regard to the PAL adjustment provision at 51.166(w)(10)(iv)(*a*), the Federal regulations provide the option that if the emissions level is equal to or greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level or it may set the PAL at a different level considering other factors per 40 CFR 51.166(w)(10)(iv)(*b*). Rule 2.0530(i) instead requires that the PAL be renewed at the same level if emissions are equal to or greater than 80 percent of the PAL.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping and EPA's December 21, 2007, clarifications of the term ''reasonable possibility'' (72 FR 72607), Mecklenburg County did not adopt all the provisions at 40 CFR 51.166(r)(6) or adopt the Federal ''reasonable possibility'' standard. Instead, Mecklenburg County adopted recordkeeping and reporting requirements at paragraph 2.0530(u) that apply to all modifications that use the actual-to-projected-actual applicability test. Therefore, the Mecklenburg County provisions meet the minimum recordkeeping and reporting requirements of the Federal rule.

In addition to incorporating the Federal rules by reference with several changes, Mecklenburg County's rule revisions include two additional provisions that do not directly relate to the 2002 NSR Reform rules, including: (1) incorporating by reference 40 CFR 52.21(r)(2) to clarify the period of validity of approval to construct; and (2) requiring that all new natural gas-fired EUSGUs install best available control technology or lowest achievable emission rate, as appropriate. This second requirement was included in the North Carolina rules originally for clarity and consistency with restrictions on use of allowances imposed by an agreement resulting from provisions of the North Carolina Clean Smokestacks Act, and Mecklenburg County adopted the same provision to be consistent with the State.[20]

EPA believes that approval of these changes would not have a negative impact on air quality in the Mecklenburg County area. With these proposed changes, the local regulations will now be consistent with the State's current SIP-approved PSD program, which already underwent updates concerning the 2002 NSR Reform Rules on August 10, 2011. *See* 76 FR 49313.

B. Fine Particulate Matter ($PM_{2.5}$) NAAQS

The April 24, 2020, submittal adopts the $PM_{2.5}$ provisions necessary to implement PSD for the $PM_{2.5}$ NAAQS. First, regarding the 2008 NSR $PM_{2.5}$ Rule, the incorporation by reference date of July 1, 2014, captures the requirement for PSD permits to address directly emitted $PM_{2.5}$ and precursor pollutants as codified at 40 CFR 51.166(b)(49). This incorporation by reference date also includes the PSD requirement that condensable PM_{10} and $PM_{2.5}$ emissions be accounted for in PSD applicability determinations and in establishing emissions limitations for permitting, as codified at section 51.166(b)(49) and corrected in EPA's October 25, 2012 $PM_{2.5}$ Condensable Correction Rule (77 FR 65107). The significant emission rates for direct $PM_{2.5}$ and its precursors of SO_2 and NO_X are adopted at Rule 2.0530(b)(4), which references 40 CFR 51.166(b)(23)(i), and which also notes that VOCs and ammonia are not significant precursors to $PM_{2.5}$ in attainment and unclassifiable areas where Rule 2.0530 would apply. This is consistent with Federal language on $PM_{2.5}$ precursor pollutants at 40 CFR 51.166(b)(23)(i) and 51.166(b)(49)(i)(*b*)(*4*).

Next, Rule 2.0530(e)'s adoption of the July 1, 2014, requirements of 40 CFR 51.166(c) include required elements of EPA's $PM_{2.5}$ PSD-Increments-SILs-SMC Rule. Specifically, adopting the Federal rule as of July 1, 2014, includes the $PM_{2.5}$ increments at 40 CFR 51.166(c)(1). Additionally, by adopting the definitions contained in 40 CFR 51.166(b) as of July 1, 2014, Rule 2.0530(b) has the effect of adding to the Mecklenburg County LIP the required definitions of ''major source baseline date,'' ''minor source baseline date,'' and ''baseline area.''

Finally, Rule 2.0530 does not include (1) the grandfathering provisions from the $PM_{2.5}$ NSR Rule, or (2) the $PM_{2.5}$ SILs and SMC provisions from the $PM_{2.5}$ Increments-SILs-SMC Rule, as the July 1, 2014, date captures EPA's May 18, 2011, and December 9, 2013, actions to remove these provisions, respectively. *See* 76 FR 28646 and 78 FR 73698. Therefore, EPA has preliminarily determined that Mecklenburg County's incorporation by reference of EPA's PSD regulations as of July 1, 2014, is consistent with current Federal provisions to implement $PM_{2.5}$ for PSD.

C. 1997 8-Hour Ozone NAAQS Phase 2 Rule

Mecklenburg County adopts the PSD provisions from the Ozone Phase 2 Rule, as noted in section II.C of this NPRM. Consistent with North Carolina's rules and the Federal rules, Rule 2.0530(b) adopts the same language regarding the Phase 2 Rule via the incorporation by reference of 40 CFR 51.166(b)(1)(ii), 51.166(b)(2)(ii), 51.166(b)(23)(i), and 51.166(b)(49)(i), which effectively recognizes VOCs and NOx as precursors to ozone for purposes of PSD. Therefore, EPA has preliminarily determined that MCAQ's proposed LIP revision is consistent with the Ozone Phase 2 Rule.

D. Greenhouse Gas Tailoring Rule and Biomass Deferral Rule

The April 24, 2020, SIP revision establishes thresholds for determining which new stationary sources and modification projects become subject to permitting requirements for GHG emissions under Mecklenburg County's PSD program. This SIP revision updates MCAQ's existing PSD program to include a new rule applicable to GHGs only. Specifically, the revision incorporates a new PSD rule into Mecklenburg County's LIP, at MCAPCO Rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases,* to address the thresholds for GHG permitting applicability. This new regulation adopts the provisions of 40 CFR 51.166 as effective on July 26, 2011, to specifically include the Federal Tailoring Rule requirements still in place and defined at 40 CFR 51.166. For all other regulated NSR pollutants, the provisions of Rule 2.0530 apply.

[20] Any allowances for emissions reductions achieved under the North Carolina Clean Smokestacks Act are not available to the subject facilities for Federal Clean Air Act programs because they are ''state only'' reductions, and such reductions may not be used to offset emissions and avoid installation of BACT or LAER on new natural gas-fired units. *See generally https://deq.nc.gov/about/divisions/air-quality/air-quality-outreach/news/clean-air-legislation/clean-smokestacks-act* (last accessed March 23, 2022).

Additionally, Rule 2.0544(a) reflects the effects of the 2014 *UARG* decision on PSD permitting requirements for GHG-only, or Step 2, sources, by including the following language: ''A major stationary source or major modification shall not be required to obtain a prevention of significant deterioration (PSD) permit on the sole basis of its greenhouse gas emissions. For all other regulated NSR pollutants, the provisions of MCAPCO Regulation 2.0530 of this [sic] apply.''

The Rule also includes a mechanism at Rule 2.0554(d) to automatically incorporate any changes to the Federal GHG global warming potentials into the definition of ''subject to regulation'' incorporated by reference from 40 CFR 51.166(b)(48) that may occur after the incorporation by reference (''IBR'') date. In order to determine if a source is subject to regulation for GHGs, a source's total GHG emissions are calculated using the global warming potentials published in Table A–1 of Subpart A of 40 CFR part 98.[21] MCAQ's submittal ensures that any future changes EPA makes to Table A–1 are concurrently incorporated into the Mecklenburg County LIP-approved PSD program for greenhouse gases without the need for further LIP revisions.

The July 20, 2011, version of the definition of ''subject to regulation'' at 40 CFR 51.166(b)(48) includes the text of the Biomass Deferral Rule, discussed in section II.D of this NPRM, at 51.166(b)(48)(ii)(*a*). However, MCAQ submitted a letter on February 4, 2022, through NCDAQ, clarifying its intent for EPA not to adopt the since-vacated text of the Biomass Deferral Rule into the federally-approved LIP. The letter withdraws this portion of the adoption of PSD provisions in its submittal from EPA consideration.

In the February 4, 2022, supplemental letter, Mecklenburg County also clarifies that while Rule 2.0544's definition of ''baseline actual emissions'' does not include the term ''immediately'' at subparagraph 2.0544(b)(1), MCAQ will enforce the provision as if the term were present based on MCAQ's interpretation and North Carolina's interpretation that this word is extraneous. This rule previously included the term ''immediately'' in its locally effective version, as follows:

> For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Department for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Department, if the owner or operator demonstrates that it is more representative of normal source operation. . . .

Without the term ''immediately,'' this provision reads as follows:

> For an existing emissions unit, baseline actual emissions mean the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period preceding the date that a complete permit application is received by the Department for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years preceding the date that a complete permit application is received by the Department, if the owner or operator demonstrates that it is more representative of normal source operation. . . .

The term ''immediately'' was eliminated from the State's analogous rule at 15A North Carolina Administrative Code Rule 02D .0544 subparagraph (b)(1) as the result of a technical correction from the North Carolina Rules Review Commission to remove this word as extraneous text. North Carolina previously submitted a letter clarifying that the State intends to enforce its provision at 15A North Carolina Administrative Code Rule 02D .0544 subparagraph (b)(1) as if the term ''immediately'' were present in the rule. MCAQ's February 4, 2022, letter notes that MCAQ intends to be consistent with the State and therefore also intends to enforce subparagraph 2.0544(b)(1) as if the term ''immediately'' were present. EPA also notes that the definition of ''baseline actual emissions,'' as included in Rule 2.0530(b)(1) for other regulated NSR pollutants, includes the term ''immediately.'' Therefore, MCAQ would be enforcing 2.0544(b)(1) consistent with how the term is defined at 2.0530(b)(1). EPA's proposed action to incorporate the definition of ''baseline actual emissions'' is based on Mecklenburg County's interpretation of this subparagraph as explained in the February 4, 2022, letter.[22]

EPA has preliminarily determined that MCAQ's proposed LIP revision is consistent with the Tailoring Rule. Furthermore, EPA has preliminarily determined that this revision to Mecklenburg County's LIP is consistent with section 110 of the CAA. Therefore, EPA is proposing to incorporate Rule 2.0544 into the Mecklenburg County LIP, excluding the language of the Biomass Deferral Rule from the incorporation by reference of 40 CFR 51.166.[23]

E. Equipment Replacement Provision

As noted in section II.E of this NPRM, the April 24, 2020, submittal adopts the Federal PSD plan requirements contained within 40 CFR 51.166 as amended July 1, 2014, with certain revisions, into Rule 2.0530, *Prevention of Significant Deterioration.* The language of the ERP was vacated by court order before July 1, 2014, and therefore, as noted in section II.E of this NPRM, EPA is not proposing to act on the incorporation by reference of the 2003 changes to 40 CFR 51.166(b)(2)(iii)(*a*), the incorporation by reference of paragraphs 40 CFR 51.166(b)(53) through (56), nor the incorporation by reference of 40 CFR 51.166(y) in Rule 2.0530 or Rule 2.0544.

F. Ethanol Rule

MCAPCO Rule 2.0530 is consistent with EPA's PSD program requirements in 40 CFR 51.166, as amended in the 2007 Ethanol Rule.[24] EPA prepared a Technical Support Document (TSD) related to the 2007 Ethanol Rule adoption that is available as part of the docket to this proposed rulemaking that contains an analysis of the potential impact of the SIP revision on air quality and whether approval of the SIP revision will interfere with attainment

[21] GHGs, as defined in the definition of ''subject to regulation'' at 40 CFR 51.166(b)(48), is the aggregate of six different gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To calculate the total GHG emissions for a source: (1) the mass amount of emissions, in tpy, of each individual GHG is multiplied by its global warming potential found in Table A–1 of Subpart A of 40 CFR part 98, and (2) the resulting values for each individual GHG are added. This results in the total GHG emissions for the source expressed in tpy of CO_2 equivalent (tpy CO_2e).

[22] EPA incorporated this language into the SIP on August 8, 2019 (84 FR 38876).

[23] If EPA finalizes this proposed action, it will include a note in the table in paragraph (c)(3) of 40 CFR 52.1770 identifying the exclusion of the Biomass Deferral Rule language from the LIP-approved version of Rule 2.0544.

[24] The term ''major stationary source'' is defined in 40 CFR 51.166(b)(1)(i)(a) as ''[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: . . . Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).'' Additionally, 40 CFR 51.166(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the ''chemical process plants'' category such that fugitive emissions are not considered in determining whether the facility is subject to PSD. Because Mecklenburg County's incorporation by reference of 40 CFR 51.166 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

or maintenance of the national ambient air quality standards (or standards) or any other CAA requirement. As discussed therein, there are no existing ethanol plants in Mecklenburg County. The one existing ethanol plant in the State is mapped in the TSD along with the ambient air monitors to demonstrate the relationship between ethanol production and air quality.

Emissions for four criteria pollutants are analyzed in the TSD. EPA also graphed air quality trends in the TSD in Mecklenburg County, since the date of promulgation of the 2007 Ethanol Rule, until 2021, for all criteria pollutants associated with ethanol production. The air quality trends reveal air quality improved for generally every pollutant monitored. Additionally, there has been no ethanol production in or near Mecklenburg County, North Carolina.

EPA also describes requirements for MCAQ's minor source NSR program in the TSD because the facilities that would be below the 250 tpy PSD major source threshold under this rulemaking will still need to obtain minor source construction permits. EPA further analyzes the impact of increasing the threshold to 250 tpy on ozone and PM precursors. As the analysis for ozone and secondary PM in the TSD demonstrates that sources below the 250 tpy threshold will not cause any interference with attainment or maintenance of the standard in Mecklenburg County.

Based on EPA's analysis in the TSD, EPA's exclusion of these facilities from MCAQ's PSD program, as proposed herein, would not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. Therefore, this proposed action is consistent with CAA section 110(l).

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following Mecklenburg County Rules: 2.0530, *Prevention of Significant Deterioration,* effective October 17, 2017;[25] and 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases,* effective December 15, 2015.[26] 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 in the preamble of this document for more information).

V. Proposed Action

EPA is proposing to approve the aforementioned changes to the Mecklenburg County LIP. Specifically, EPA is proposing to incorporate updates to PSD permitting provisions in Rule 2.0530, *Prevention of Significant Deterioration,* and incorporate new Rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases,* with the exception of those provisions described in footnotes 25 and 26 of this document. EPA believes that approval of these changes and additions, including all amendments mentioned in the preceding sections, would not have a negative impact on air quality in the Mecklenburg County area. With these proposed changes and additions, the local regulations will now be consistent with the State's current SIP-approved PSD program and Federal PSD rules. Additionally, these updates include important provisions such as recognizing NO_X as a precursor to ozone, incorporating provisions to regulate $PM_{2.5}$, and incorporating provisions to regulate GHGs for the purposes of PSD. Therefore, EPA is proposing to approve the April 24, 2020, LIP revision changes to Mecklenburg County's PSD permitting program, pursuant to the Act and EPA's implementing regulations.

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

[25] EPA is not proposing to incorporate by reference the provisions of the Equipment Replacement Rule and Fugitive Emissions Rule contained in 40 CFR 51.166(b)(2)(iii)(a), 40 CFR 51.166(b)(2)(v), 51.166(b)(3)(iii)(d), 40 CFR 51.166(b)(53) through (56), and 40 CFR 51.166(y) as those CFR provisions existed on July 1, 2014.

[26] EPA is not proposing to incorporate by reference the provisions of the Biomass Deferral Rule contained in 40 CFR 51.166.(b)(48)(ii)(a) as that CFR provision existed on July 20, 2011.

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18172 Filed 8–23–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220818–0171]

RIN 0648–BI18

Fisheries of the Northeastern United States; Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. The Mid-Atlantic Fishery Management Council developed this action to limit the amount of surfclam or ocean quahog individual transferable quota share or annual allocation in the form of cage tags that an individual or their family members could hold. These changes are intended to ensure the management plan is consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act, and to improve the management of these fisheries.

DATES: Comments must be received by September 23, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0112, 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–2020–0112 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Surfclam/Ocean Quahog Excessive Shares Amendment.''

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 contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and 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.

Copies of Amendment 20, including the draft Environmental Assessment (EA), are available on request from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION:

Background

This action proposes regulations to implement Amendment 20, also known as the Excessive Shares Amendment, to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council developed this amendment to establish limits to the amount of individual transferable quota (ITQ) quota share or cage tags such that any particular individual, corporation, or other entity can not acquire an excessive share of such privileges, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP.

The Magnuson-Stevens Act requires that any FMP or implementing regulation be consistent with ten national standards for fishery conservation and management. National Standard 4 stipulates that, ''If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be . . . carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.'' When the Council adopted Amendment 8 to the Atlantic Surfclam and Ocean Quahog FMP, which created the individual transferable quota (ITQ) system for managing the fishery, it relied on Federal antitrust laws to prevent entities from acquiring excessive shares. In 2002, the Government Accountability Office (GAO) released a report titled, *Better Information Could Improve Program Management* (GAO–03–159, December 11, 2002). One of the recommendations from that report was for the Council to define what constitutes an excessive share for this fishery. By 2007, the Council had begun development of an FMP amendment to address this recommendation as well as implement a cost recovery program and accountability measure requirements that were introduced by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479). The accountability measure provisions were subsequently removed and were implemented as part of the Council's Annual Catch Limit and Accountability Measure Omnibus Amendment (76 FR 60605, September 29, 2011).

As part of the development of this action, an economic consulting company, Compass Lexecon, was contracted to evaluate the fishery and to provide advice on how to set an excessive share limit on ITQ systems that could protect against market power without constraining the workings of competition. The 2011 Compass Lexecon report and associated Center for Independent Experts review indicated that, in order to implement an excessive shares definition, managers would need more reliable information regarding quota share ownership, and would need to better monitor control of the quota by tracking transfers and long-term leases of cage tags in the surfclam and ocean quahog fisheries.

In 2012, the Council voted to split the FMP amendment that was under development. The cost recovery provisions became Amendment 17 (81 FR 38969, June 15, 2016). The Council requested that NMFS create a data collection program as authorized under Section 402A of the Magnuson-Stevens Act, and the Council subsequently established a new fishery management action team (FMAT) to develop recommendations for the program. The new program became effective on January 1, 2016 (80 FR 42747, July 20, 2015), and collected more detailed

information about the individual owners of companies holding quota share and annual cage tags than was previously available.

In 2017, the Council reformed the FMAT to continue development of the Excessive Shares Amendment. The FMAT developed a wide range of options for defining an excessive share in this fishery and for potential management measures to prevent anyone from acquiring an excessive share. The full range of alternatives considered by the Council is described in the amendment document and not repeated here.

In December 2019, the Council selected preferred alternatives, and approved the Excessive Shares Amendment for submission to NMFS. However, additional work was needed to prepare the environmental analysis of the action and for NMFS to develop the systems and protocols that would be needed to effectively monitor and enforce the excessive share caps approved by the Council.

Excessive Share Caps

Under the Council's preferred alternative, separate caps would be established for quota share and for annual cage tags for both the surfclam and ocean quahog ITQ programs. The amount of quota share that an individual or entity could have ownership in would be capped at 35 percent of the surfclam quota and 40 percent of the ocean quahog quota. A higher cap would be established for cage tags in recognition that additional temporary consolidation through leasing or other transactions may be warranted within a fishing year to meet market demand because of the limited number of processors available. There is a limited market for fresh surfclams or ocean quahogs. The fisheries largely rely on a small number of processing plants to convert these species into final products or ingredients for other food companies. These plants operate by leasing cage tags from multiple quota shareholders and then providing those tags to harvesting vessels that deliver clams, as needed by the plants. The amount of annual cage tags that an individual or entity could have in a given year would be capped at 65 percent for surfclam and 70 percent for ocean quahog.

No person or entity currently exceeds the proposed quota share cap, nor has any entity exceeded the proposed cap on annual cage tags in recent years. The analysis conducted by Compass Lexecon did not support a conclusion that market power was being exercised through withholding of quota in this fishery. The Council's preferred cap limits were chosen to ensure that potential future consolidation does not reach the level of an excessive share of this fishery, and were not intended to restrict current quota share holdings.

Once implemented, NMFS would determine where each individual or entity that holds quota share is relative to the cap. This determination is based on the allocation held in whole or in part by that individual and the allocation held in whole or in part by their immediate family members. When an ITQ permit holder submits an application to transfer quota share and/or cage tags, NMFS would review the total allocation held by the ITQ permit holder and their immediate family members to determine whether the transfer would exceed the quota share cap or cage tag cap. If the ITQ permit is held by a business or partnership, the allocation held by the owners of that business (and their family members, if applicable) would be used in that determination.

An individual's immediate family members, for the purposes of monitoring these caps would consist of the individual's: Spouse and the spouse's parents; children and their spouses; parents and their spouses; siblings and their spouses; and grandparents and grandchildren and their spouses.

The excessive share caps would be monitored using a calculation of potential control. A person or entity would be considered to have potential control of any allocation held by themselves, their family members, or any business they have an ownership interest in. Here is a set of example calculations of potential control.

Example 1, Potential control of allocation by an individual or a company: Sue holds 2 percent of the Atlantic surfclam quota in her own name. She is also a part owner, along with Mary, of ABC Clams, a business that holds 5 percent of the quota. Mary's brother has 4 percent of the quota in his own name. For the purpose of monitoring the quota share cap:

- Sue has potential control of 7 percent (the 2 percent of the quota in her name plus the 5 percent of the quota held by the company she part owns);
- Mary has potential control of 9 percent (the 5 percent of the quota held by the company she part owns plus the 4 percent of the quota held by her brother); and
- ABC Clams, Inc., has potential control of 11 percent of the quota (the 5 percent of the quota it holds directly plus the quota controlled by its owners, which in this case is the 2 percent of the quota Sue holds separately and the 4 percent of the quota Mary's brother holds).

Example 2, Potential control of allocation by an individual or a company and transfers of quota allocation: Sue's son, John, wishes to get into the business. He submits an application to transfer 3 percent of the quota from another quota shareholder. When we process his transfer application, we see that, as a result of the transfer, John would have potential control of 10 percent (his new 3 percent plus his mother's 7 percent of the quota allocation, which includes her own quota and her ownership in ABC Clams); Sue would also have potential control of 10 percent; ABC Clams, Inc., would have potential control of 14 percent, and Mary would still be connected to the same 9 percent. The transfer would be approved because no entity would be over the proposed 35-percent cap.

Example 3, Potential control of allocation by an individual or a company and the total, cumulative cap on transfers of quota allocation: Before the start of each fishing year, the total quota is converted from bushels into tags for the industry-standard 32-bushel (1,700 L) cages. Each quota shareholder is allocated cage tags based on the amount of quota share they hold. For simplicity, this example will assume the total quota equates to 1,000 tags, so shareholders receive 10 tags for each 1 percent of the quota they hold. As a result, and continuing with the examples described above, Sue receives 20 tags, John gets 30 tags, and ABC Clams gets 50 tags. In addition, based on the proposed surfclam cage tag cap of 65 percent, no entity could hold or potentially control more than 650 tags over the course of the fishing year. The rules of potential control are the same for tags as they are for quota share. Therefore, while Sue received 20 tags to her personal allocation, she is still considered to have potential control of the 30 tags that John received and the 50 tags that ABC Clams received, for a total of 100 tags toward the 650-tag cap. Likewise, John will start off the year at 100 tags, ABC Clams at 140 tags, and Mary at 90 tags. If John and Sue both transfer their tags to ABC Clams, the transfer would make no change to the cap total for John, Sue, or ABC Clams (each of those entities were considered to have potential control of those tags through ownership and family connections). However, the additional tags would now count toward Mary's potential control, bringing her total to 140 (50 tags initially held by ABC Clams, 50 tags transferred in from Sue

and John, plus the 40 tags initially allocated to her brother).

Using tags to land surfclams does not reduce the calculation of potential control of cage tags, nor does transferring tags to another allocation holder. Continuing this example, ABC Clams uses all 100 tags it physically holds to land surfclams for a processor. The company agrees to acquire, through a temporary transfer, an additional 200 tags from another source in order to continue fishing. Because the potential control of allocation is considered cumulative in any given fishing year, this results in ABC Clams having potential control of 340 tags, even though it only has 200 tags physically in its possession. The tag transfer would also result in a corresponding increase to the potential control calculations for Sue (300 tags), John (300 tags), and Mary (340 tags). If ABC Clams decides to transfer 50 tags to another company, the transfer would not reduce ABC Clams calculation of potential control because ABC Clams controlled those tags at some point during the fishing year. If, later in the year, ABC Clams acquires another 50 tags to replace those it transferred earlier, its potential control would increase to 390 tags. In this way, acquiring tags during the fishing year would increase the calculated potential control, but using tags to land clams or transferring tags to others would not reduce the level of potential control.

If an entity inadvertently exceeds a cap, they would be required to take action to correct the situation. Such an overage could occur because of a change in company ownership that does not require a transfer application, for example. There may be a number of ways an entity could address such an overage and NMFS would not specify how the overage is to be corrected.

The Magnuson-Stevens Act specifies that any information submitted to the Secretary by any person in compliance with the requirements of the Act is confidential unless it falls under one of the listed exceptions. One of these exceptions is for information that is required to be submitted to the Secretary for any determination under a limited access program. If these regulations are finalized as proposed, the ownership information used by NMFS to monitor and enforce these caps would likely meet this exception and would no longer be subject to the Act's confidentiality requirements. This would include the identities of individuals who own businesses that hold quota share and annual cage tags as well as the family relationships that are used to link those individuals.

The information collection program implemented in 2016 included a wide range of information to ensure the Council had the data it needed to design and analyze a range of alternative management measures. The monitoring and enforcement of the caps being proposed do not require continued collection of some data elements, which would no longer be collected. The ITQ Ownership form would be modified to remove the collection of the names of corporate officers. The ITQ transfer form would be modified to remove most of the questions under ''additional transaction details'' except for total price. The questions being removed include broker fees and whether the transfer is part of a long-term contract.

Multi-Year Specifications

The FMP currently limits multi-year specifications to a maximum duration of three years. The proposed change would allow the Council to develop specifications for the number of years needed to align with the stock assessment schedule approved by the Northeast Region Coordinating Council (NRCC). The NRCC is comprised of representatives from the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, the Atlantic States Marine Fisheries Commission, the NMFS Greater Atlantic Regional Fisheries Office, and the Northeast Fishery Science Center. One of its roles is to develop a schedule for fishery stock assessments that balances the needs of the numerous fisheries in the region with the available resources. The current schedule calls for an updated stock assessment every four years for surfclam and every six years for ocean quahog. These assessment intervals are the result of recent improvements to the methods used to survey these wild populations. Changing the duration of specifications to match the assessments will allow the Council, Council staff, and NMFS staff to avoid spending time developing new specifications packages when no new information on the health of the stocks are available. The Council and its Scientific and Statistical Committee will continue the current practice of reviewing the specifications each year, and making mid-cycle adjustments if conditions warrant.

Pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed that this proposed rule is necessary and appropriate for the purpose of implementing Amendment 20.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendment 20, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

A complete description of the measures, why they are being considered, and the legal basis for proposing and implementing these measures for the surfclam and ocean quahog fisheries are contained above in the preamble to this proposed rule.

The measures proposed by this action apply to surfclam and ocean quahog allocation owners. These are the individuals or entities that received initial individual transferable quota (ITQ) allocations (*i.e.,* owners of record) at the beginning of each fishing year. There were 64 allocation owners of record for surfclam and 33 for ocean quahog in 2019.

For Regulatory Flexibility Act purposes, NMFS has established a size standard for small businesses, including their affiliated operations, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as small if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11.0 million for all its affiliated operations worldwide. For other types of businesses, the SBA size standards for the relevant NAICS codes were used to categorize businesses by industry description. Of the 64 initial surfclam allocation owners of record for 2019, 19 were categorized as ''Commercial Fishing,'' with 100 percent of them classified as small entities (under $11 million in revenues). Of the nine allocation owners that were categorized as ''Fish and Seafood Merchant Wholesalers,'' one was classified as a small entity (under 100 employees) (11

percent) and eight were classified as large entities (89 percent). Eight allocation owners were categorized as ''Commercial Banking,'' one of which was classified as a small entity (under $550 million in assets) (12 percent), and seven of which were classified as large entities (88 percent). Six allocations were categorized as ''Credit Unions,'' with 100 percent of them classified as large entities (over $550 million in assets). There were also five allocations categorized as ''Sector 92'' (Public Administration sector); therefore, small business size standards are not applicable for these five allocation owners. Lastly, the SBA classification for the remaining 17 surfclam allocation owners was unknown due to lack of information.

Of the 33 initial ocean quahog allocation owners of record for 2019, 14 were categorized as ''Commercial Fishing,'' with 100 percent of them classified as small entities. Of the six allocation owners that were categorized as ''Fish and Seafood Merchant Wholesalers,'' two were classified as small entities (33 percent) and four were classified as large entities (67 percent). One allocation owner was categorized as ''Commercial Banking'' and one was categorized as ''Credit Unions'' with 100 percent of them classified as large entities. The SBA classification for the remaining allocations owners is unknown.

The proposed measures are administrative in nature and are not expected to have impacts on the prosecution of the surfclam and ocean quahog fisheries, including landings levels (no changes in surfclam or ocean quahog ex-vessel revenues are expected), fishery distribution, or fishing methods and practices. The proposed action is not expected to result in changes to the manner in which the surfclam and ocean quahog fisheries are prosecuted, or the manner in which the industry operates. An analysis of the operation of the fishery in 2017 shows that if the proposed caps had been in place, all entities would have fallen below the proposed cap levels. As such, no entity would have been constrained by those cap levels, and the caps would help prevent future excessive consolidation of the fishery. The proposed change to the maximum duration of multi-year specifications is administrative and would not affect how the fishery currently operates.

The proposed actions would have no impact on the way the fishery operates, and, therefore, is not expected to disproportionately affect small entities. Nor are the proposed actions expected to have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information 0648–0240 by removing the section of the ITQ Ownership form that requires identification of corporate officers and removing some of the ''additional transaction details'' questions from the ITQ transfer form. The Council chose not to use this information to define or monitor the excessive share caps and collecting the information would no longer be necessary. Removing these questions is not anticipated to change to the number of respondents or responses and would not have a measurable reduction in burden hours or costs. An extension of the collection is also requested through this action. Public reporting burden for the ITQ ownership form is estimated to be one hour to complete for new entrants and five minutes to review a pre-filled form for renewing entities. The ITQ transfer form is estimated to take five minutes to complete. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at *www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person by 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 18, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, add paragraph (j)(3)(viii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(j) * * *

(3) * * *

(viii) Take action to circumvent an ITQ quota share cap or cage tag cap specified in 648.74(a)(2) or fail to take corrective action if such cap is exceeded inadvertently.

* * * * *

■ 3. In § 648.72;

■ a. Revise paragraph (a) introductory text,

■ b. Revise paragraph (a)(1) introductory text, and;

■ c. Revise paragraph (b).

The revisions to read as follows:

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified by the Regional Administrator for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for

public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

* * * * *

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a multi-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current multi-year period. Such modification shall be in effect for a period up to the maximum number of years needed to align with the Northeast Region Coordinating Council-approved stock assessment schedule, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a multi-year period.

* * * * *

■ 4. In § 648.74, revise paragraphs (a)(2) and (b)(3) to read as follows:

§ 648.74 Individual Transferable Quota (ITQ) Program.

(a) * * *

(2) *ITQ ownership caps.* (i) *Quota share.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional quota share, if, as a result of the issuance of the permit or quota share transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or collectively have an ownership interest in more than 35 percent of the total surfclam quota or 40 percent of the total ocean quahog quota.

(ii) *Cage tags.* A business or individual is not eligible to be issued an ITQ permit and is not eligible to acquire additional cage tags, if, as a result of the issuance of the permit or cage tag transfer, the business or individual, or any other person who is a shareholder or partner, or their immediate family member, would individually or collectively have an ownership interest in more than 65 percent of the total surfclam cage tags issued that year or 70 percent of the total ocean quahog cage tags issued that year.

(iii) *Enforcement.* The following conditions apply for the purposes of monitoring and enforcing these caps.

(A) Any partial or shared ownership is counted as full ownership by each party for the purpose of monitoring these caps. For example, if two people share ownership of a business with quota share, the full amount of quota share held by the business counts toward the cap for both owners.

(B) Having an ownership interest includes, but is not limited to, persons who are shareholders in a corporation that holds an ITQ permit, who are partners (general or limited) to an ITQ permit holder, who are immediate family members of an ITQ permit holder, or who, in any way, partly own an entity that holds an ITQ permit.

(C) Immediate family members include individuals connected by the following relationships:

(*1*) Spouse, and parents thereof;

(*2*) Children, and spouses thereof;

(*3*) Parents, and spouses thereof;

(*4*) Siblings, and spouses thereof; and

(*5*) Grandparents and grandchildren, and spouses thereof.

(D) The quota share and cage tag caps do not apply to a bank or other lender that holds ITQ quota share as collateral on a loan as described in paragraph (a)(1)(i)(C) of this section. The quota share held as collateral and the associated cage tags will be treated as if it is held by the borrower.

(E) Compliance with these ownership caps is based on the total amount of quota share or cage tags controlled throughout a fishing year. In this instance, control means the cumulative total amount of quota share or cage tags, including the amount held by the ITQ permit at the start of the fishing year plus any quota share or cage tags acquired by the ITQ permit throughout the fishing year. This measure of control during the fishing year is increased by acquiring quota share or cage tags from other ITQ permits, but is not reduced by any quota share or cage tags that are transferred to another ITQ permit.

(iv) *Review.* The MAFMC shall review these ITQ ownership cap measures at least every 10 years, or sooner as needed. Such a review should include an evaluation of the effects and effectiveness of the caps in the fishery and whether the cap levels remain appropriate or should be adjusted.

(b) * * *

(3) *Denial of ITQ transfer application.* The Regional Administrator may reject an application to transfer surfclam or ocean quahog ITQ quota share or cage tags for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid surfclam or ocean quahog ITQ permit for the appropriate species; the transfer is not allowed under paragraph (a)(1)(ii)(C)(*3*) of this section; the transferor's or transferee's surfclam or ocean quahog ITQ permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in exceeding an ownership cap under paragraph (a)(2) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer ITQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

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Notices

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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

Federal Crop Insurance Corporation

Risk Management Agency

[Docket No. FCIC–22–0003]

Notice of Funding Availability; Transitional and Organic Grower Assistance

AGENCY: Federal Crop Insurance Corporation and Risk Management Agency, U.S. Department of Agriculture (USDA).

ACTION: Notification of funding availability.

SUMMARY: The Risk Management Agency (RMA), on behalf of the Federal Crop Insurance Corporation (FCIC), announces the availability of funding under the Transitional and Organic Grower Assistance (TOGA) Program. The TOGA Program aims to assist producers that transition to and continue using organic agricultural systems. To address the economic challenges that arose due to the COVID–19 pandemic, this crop insurance support to growers is a part of building more and better markets for American growers and consumers and increasing the resilience of the food supply chain. TOGA premium assistance will be applied to the premium billing statements for the 2023 reinsurance year, which covers applicable policies with sales closing dates from July 1, 2022, to June 30, 2023. For most eligible crops, the 2023 reinsurance year is also the 2023 crop year. However, a few crops are in the 2023 reinsurance year but cover a different crop year. Some examples include raisins, California avocados, macadamia nuts, and several citrus crops.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone: (816) 926–7829; email: *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

This document specifies the terms and conditions of the TOGA Program. RMA, on behalf of FCIC, will administer the TOGA Program. The TOGA program aims to assist producers that transition to and continue using organic agricultural systems. To address the economic challenges that arose due to the COVID–19 pandemic, this crop insurance support to growers is a part of building more and better markets for American growers and consumers and increasing the resilience of the food supply chain. The TOGA Program provides the following benefits:

- For crops in transition to certified organic, premium assistance of an additional 10 percentage points of premium subsidy; and
- For organic grain and feed crops, an additional premium subsidy of up to $5 per insured acre.

Funding is for crop policies for the 2023 reinsurance year. Funds from Division N of the Consolidated Appropriations Act, 2021, (Pub. L. 116–260) will be used for the TOGA Program.

These crop insurance incentives amplify and assist producers transitioning to organic agricultural systems as part of the Administration's commitment to climate-smart agriculture. The premium assistance will make crop insurance more affordable for growers as they transition to organic agricultural systems and continue to produce certified organic feed and grain crops. Participation in crop insurance provides assurance to banks for loans to help producers secure the funds they need to help pay operating costs.

For crops in transition, the premium assistance of an additional 10 percentage points of premium subsidy is similar to Beginning Farmer and Rancher and Veteran Farmer and Rancher benefits. Targeting crops in transition will help provide economic stability for producers as they transition to certified organic. The 3-year transition period requires producers to farm organically, while receiving a conventional price for their crop despite employing organic practices.

For certified organic grain and feed crops, the premium assistance subsidy of up to $5 per insured acre is consistent with the Pandemic Cover Crop Program. Growing demand for organic products is outpacing domestic supply. The United States is becoming reliant on imports, particularly for grain and feed. Targeting organic grain and feed crops offers an opportunity for increased production to meet growing demand. Increasing local supply for these products allows for a shift in demand for domestic products and away from imports.

Due to the complexity of Whole Farm Revenue Protection (WFRP) policies covering more than one crop and some crops being reported in different quantity measures, such as trees rather than acres, there is a separate benefit for WFRP of an additional 10 percentage points of premium subsidy.

Definitions

Approved Insurance Provider (AIP) means a legal entity that has entered into a reinsurance agreement with FCIC for the applicable reinsurance year and is authorized to sell and service policies or plans of insurance under the Federal Crop Insurance Act.

Crop insurance policy means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

Crops in transition means crops eligible for the Federal crop insurance program and insured and reported under the organic transitional cropping practice.

Crop year means the period within which the insured crop is normally grown and is designated by the calendar year in which the insured crop is normally harvested.

Eligible insured certified organic acres means insured acres on which the producer reported a qualifying organic grain or feed crop for coverage during the 2023 reinsurance year.

Eligible producer means a producer meeting all the eligibility requirements for the TOGA Program.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA that administers the Federal crop insurance program.

Insured acre(s) means the participant's share of insurable acreage that is insured in accordance with a

crop insurance policy purchased from an AIP.

Organic grain and feed crops means crops eligible for the Federal crop insurance program, insured and reported under the organic certified cropping practice including alfalfa seed, barley, buckwheat, canola, corn, cultivated wild rice, dry beans, dry peas, flax, forage production, forage seeding, fresh market sweet corn, grain sorghum, hybrid corn seed, hybrid popcorn seed, hybrid sorghum seed, hybrid sweet corn seed, millet, oats, crops insured under the Pasture, Rangeland, and Forage policy, peanuts, popcorn, rice, rye, safflower, sesame, silage sorghum, soybeans, sunflowers, sweet corn, triticale, wheat, and any other crop as determined by the RMA Administrator.

Person means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include any government agency or the U.S. Government.

Reinsurance year means the year beginning July 1 and ending on June 30 of the following year, identified by the year containing June.

RMA means the Risk Management Agency, USDA.

TOGA means Transitional and Organic Grower Assistance.

USDA means United States Department of Agriculture.

WFRP means Whole Farm Revenue Protection including the Micro Farm policy.

Eligibility for TOGA

To be eligible for premium assistance under the TOGA Program, the participant must be a person who is eligible to receive Federal benefits and who has purchased a 2023 reinsurance year additional coverage crop insurance policy for crops in transition or a certified organic grain or feed crop.

The added premium assistance for the TOGA Program can be in addition to premium assistance received from any other premium subsidy assistance sources.

WFRP policies with crops in transition or certified organic practice crops are eligible for premium assistance of an additional 10 percentage points of premium subsidy. Eligible producers who have individual crop insurance policies for crops in transition or organic grain and feed crops in addition to their WFRP policy will receive the premium assistance on both the individual crop insurance policies and WFRP policy, as applicable.

Stacked Income Protection Plan (STAX) and Margin Protection (MP) policies are only eligible for TOGA when insured as a standalone crop insurance policy.

Ineligibility

Participants who are in violation of Highly Erodible Land or Wetlands Conservation (16 U.S.C. 3811, 3812, and 3821) are not eligible for premium support under the TOGA Program.

Supplemental Coverage Option, Enhanced Coverage Option, Post-Application Coverage Endorsement, and Hurricane Insurance Protection—Wind Index options or endorsements are not eligible for TOGA.

STAX and MP endorsements to underlying policies are not eligible for TOGA.

Funding Available

The total funding available for the TOGA Program is $25 million. When the total premium support sum of $25 million for the TOGA Program are reached or may be reached, the RMA Administrator may suspend the program at their sole discretion.

Calculating and Accounting TOGA Program Amounts

For eligible 2023 reinsurance year crop insurance policies, for crops in transition, the TOGA Program will provide an additional 10 percentage points of premium subsidy, calculated on a total premium basis for the crops in transition, with a maximum equal to the amount of premium owed by the eligible producer. If the full amount under the TOGA Program would result in a negative premium balance for the producer, the TOGA Program amount will be limited to the full amount of premium owed.

For eligible 2023 reinsurance year crop insurance policies, for eligible insured certified organic acres, the TOGA Program will provide an additional premium subsidy of $5 per insured acre, with a maximum equal to the amount of premium owed by the producer. Amounts under the TOGA Program are limited to the full amount of premium owed by the producer for the eligible insured certified organic acres. If the full amount under the TOGA Program would result in a negative premium balance for the producer on a per insured acre basis, the TOGA Program amounts will be limited to the full amount of premium owed on a per insured acre basis.

For eligible 2023 reinsurance year WFRP policies with crops in transition or certified organic practice, the TOGA Program will provide an additional 10 percentage points of premium subsidy, calculated on a total premium basis, with a maximum equal to the amount of premium owed by the eligible producer. If the full amount under the TOGA Program would result in a negative premium balance for the producer, the TOGA Program amounts will be limited to the full amount of premium owed.

All other Federal premium assistance will be applied before TOGA premium assistance. If the crop insurance policy is amended for any reason, such as overreporting, the amount under the TOGA Program will be based on the crop insurance policy after any such amendment.

The amount under the TOGA Program will not be paid directly to participants but will be accounted for in calculating total producer premium due from producers for the crop and reflected in their premium bills, and as subject to the applicable premium billing date. All bills still follow the same terms and conditions specified in the crop insurance policy, regardless of the TOGA Program amounts.

The payment limitations in 7 CFR 760.1507 are not applicable to the TOGA Program.

TOGA premium support will be provided via premium billing adjustments on the applicable billing statements for crops in transition and organic grain or feed crops. RMA will use all necessary records provided by AIPs, including producer crop insurance forms to determine eligibility. The eligible producers do not need to provide any additional information to their crop insurance agent to enroll in the TOGA Program.

If any TOGA Program amount is determined to be incorrect, the amount will be recalculated until the applicable reinsurance year annual settlement date, unless otherwise specified by the RMA Administrator. After that date, the amount will be final except in cases of misrepresentation, fraud, scheme, or device.

Paperwork Reduction Act Requirements

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the notice does not change the information collection approved by OMB under control numbers 0563–0053.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy

Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b). As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this notice will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action, and this notice serves as documentation of the programmatic environmental compliance decision.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing,[1] to which this document applies is 10.450—Crop Insurance.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Marcia Bunger,

Manager, Federal Crop Insurance Corporation; and Administrator, Risk Management Agency.

[FR Doc. 2022–18200 Filed 8–23–22; 8:45 am]

BILLING CODE 3410–08–P

[1] See *https://sam.gov/content/assistance-listings.*

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Review of Major Changes in the Supplemental Nutrition Assistance Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection. This information collection consists of State agency notification and data collection activities associated with a major change in Supplemental Nutrition Assistance Program (SNAP) operations at the State level.

DATES: Written comments must be received on or before October 24, 2022.

ADDRESSES: Comments may be sent to: Jessica Luna, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via email to *SM.FNS.SNAPPDBRules@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jess Luna at 703–305–4391.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Review of Major Changes in the Supplemental Nutrition Assistance Program (SNAP).

Form Number: N/A.

OMB Control Number: 0584–0579.

Expiration Date: 4/30/2023.

Type of Request: Revision of currently approved collection.

Abstract: Section 11 of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2020), as amended, requires the Department to develop standards for identifying major changes in the operations of State agencies that administer SNAP. Regulations at 7 CFR 272.15 require State agencies to notify the Department when planning to implement a major change in operations and to collect any information required by the Department to identify and correct any adverse effects on program integrity or access, including access by vulnerable households. 7 CFR 272.15(a)(2) outlines the categories of major changes to include: the closure of a local office, substantial increased reliance on automated systems, changes in operations that potentially increase difficulty for household reporting, the reduction or change of functions or responsibilities assigned to merit system personnel, a decrease in the number of merit system personnel involved in the SNAP certification process, or other major changes identified by FNS. States make such changes in operations based upon a variety of interrelated factors.

As decisions to make major changes to program operations rest with each individual State agency, the frequency and timing of the changes can only be estimated. Prior to any major change to

State operations, regulations at 7 CFR 272.15(a)(3) require State agencies to provide descriptive information to FNS via email regarding the major change together with an analysis of its projected impacts on program operations. The regulations also set out requirements for the State to collect and report monthly State-level data on application processing metrics, beginning with the quarter prior to implementation of the major change. This data must be reported separately for elderly and/or disabled households. This data is submitted on a quarterly basis to FNS via email. Reporting continues for at least one year after the change is completely implemented. Regulations at 272.15(b)(4) give FNS the authority to request additional data beyond the mandatory data reporting elements outlined at 272.15(a)(3). For example, depending upon the nature of the major change, States may be required to report more specific or timely information concerning the impact of the major change on payment accuracy, which could involve additional caseload data focused on households with specific characteristics. FNS will work with States to determine what additional information is practicable and require only the data that is necessary to evaluate the impact of the major change. FNS National Office and Regional Offices use data from States that are currently subject to Major Change Reporting to provide additional technical assistance to those States when needed. This information enables FNS to monitor the impact of States' changes and identify compliance and/or performance issues early.

Reporting Burden Estimates FNS estimates out of 53 States, 13 States submit major changes annually. We estimate a total of 65 annual responses and 6,704 total annual burden hours in the breakout below:

(A) 7 CFR 272.15(a)(3) Initial Analysis of Major Change: Based upon FNS' experience over the last six years, out of the 53 State agencies this data collection impacts, FNS estimates that on average 13 States will submit major changes annually. FNS estimates that the overall annual total of the collection of information for the State agencies is 65 total annual responses and 6,704 burden hours. With an estimated 13 States reporting 1 major change per year, the initial reporting and analysis aspect of the rulemaking would be 13 annual responses × 40 hours per initial response per State = an estimated 520 burden hours per year.

(B) 7 CFR 272.15(b)(1)–(3) Reports Required without Additional Data Collection: After notifying FNS of a major change, States must report to FNS on a quarterly basis the mandatory reporting requirements outlined in 7 CFR 272.15(b)(1)–(3) and may be subject to additional reporting requirements depending on the major change. Therefore, FNS projects that for 8 of the 13 major changes expected each year there would be no additional reporting burden beyond the mandatory reporting. All 13 of the major changes (8 States report without additional data collection and 5 State reports required with additional data collection) estimated each year are expected to require some automated system reprogramming to generate the required mandatory data reporting. Therefore, FNS estimates 8 States will submit this report on a quarterly basis for a total of 4 responses/reports annually for a total of 32 annual responses. We estimate it will take approximately 42 hours per report, per State for a total of 1,344 annual burden hours. [In consultation with States, we determined it will take 96 hours per State agency to program its system to provide the data for the report which would be 1,248 hours per year (13 × 96). Preparing the 52 quarterly reports are estimated to require 18 hours per State agency. The total for the 13 States would be 1,248 + 936 hours = 2,184 total hours for reporting (divided by the 13 States = 168 hours per State per year).]

(C) 7 CFR 272.15(b)(4) Reports Required with Additional Data Collection: Furthermore, FNS estimates it will require 5 States to report additional data on a quarterly basis for a year (a total of 4 responses/reports annually for a total of 20 annual responses). We estimate it will take each State agency 242 hours per response for a total of 4,840 burden hours. [Such data will generally be collected through a sample of case reviews. While the required sample sizes may vary based on the type of major change and the proportion of the State's SNAP caseload it may affect, 200 cases per quarter would likely be an upper limit on what FNS would ask of a State. At an estimated one hour to review and report on a case, this would require 800 hours per year for one State each year.]

When the 520 hours for major change notifications, the 1,344 hours for reports required without additional data and 4,480 hours for reports required with additional data are added the total for the 13 States is 6,704 total annual burden hours. There are 13 total annual responses for major change notifications, 32 total annual responses for reports required without additional data and 20 total annual responses for reports required with additional data for a total of 65 total annual responses.

(D) *Additional Information:* The current request is 3,504 reporting burden hours and 65 total annual responses. The revision to this information collection results in no change in the 13 total number of respondents and we are requesting 6,704 reporting burden hours which is an increase of 3,200 reporting burden hours from the previously approved request. The 65 total annual responses remain unchanged. Based on recent trends, FNS is increasing its burden estimates to account for anticipated increases in States implementing major changes in non-merit personnel and increased reliance on automated systems, such as robotic processing automation (RPA) or bots. Additional data collection on advanced technologies is necessary to identify and correct any adverse effect on program integrity, or access including access by vulnerable households.

This information collection does not contain burden associated with recordkeeping and/or third party or public disclosures.

Affected Public: State, Local and Tribal Government.

Estimated Number of Respondents: 13.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Responses: 65.

Estimated Time per Response: 103.14.

Estimated Total Annual Burden on Respondents: 6,704 hours.

Section	Requirement	States responding per year	Responses per respondent	Number of responses	Hours per response	Total burden hours
272.15(a)(3)	Initial analysis of Major Change	13	1	13	40	520
272.15(b)(1)–(3) ...	Reports required without additional data collection.	8	4	32	42	1,344

Section	Requirement	States responding per year	Responses per respondent	Number of responses	Hours per response	Total burden hours
272.15(b)(4)	Reports required with additional data collection.	5	4	20	242	4,840
Totals	.....	13	5	65	103.14	6,704

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2022–18205 Filed 8–23–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Comment Request—Supplemental Nutrition Assistance Program—Trafficking Controls and Fraud Investigations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection codified in Food and Nutrition Service (FNS) regulations.

DATES: Written comments must be received on or before October 24, 2022.

ADDRESSES: Comments may be sent to: Maribelle Balbes, Chief, State Administration Branch, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place Alexandria, VA 22314, 5th Floor. Comments may also be submitted via email to *SNAPSAB@fns.usda.gov,* or through the federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 1320 Braddock Place, Alexandria, Virginia 22314. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Evan Sieradzki 703–605–3212.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations.

OMB Number: 0584–0587.

Expiration Date: 02/28/2023.

Type of Request: Revision of a currently approved collection.

Abstract: FNS regulations at 7 CFR 274.6(b)(5) and (b)(6) requires State Agencies to issue warning notices to withhold replacement cards or a notice for excessive replacement cards.

Withhold Replacement Card Warning Notice.

FNS regulations at 7 CFR 274.6(b)(5) and (b)(5)(i) *State option to withhold replacement card* requires a State agency to require an individual member of a household to contact the State agency to provide an explanation in cases where the number of requests for card replacements is deemed excessive. The State agency is required to notify the household in writing when it has reached the threshold, indicated that the next request for card replacement will require contact with the State agency to provide an explanation for the requests, before the replacement card will be issued. The State agency is also required to notify the household in writing once the threshold has been exceeded that the State agency is withholding the card until contact is made.

Excessive Replacement Card Notice

FNS regulations at 7 CFR 274.6(b)(6) and (b)(6)(i) *Excessive Replacement Card Notice* requires the State agency to monitor all client requests for EBT card replacements and send a notice, upon the fourth request in a 12-month period, alerting the household that their account is being monitored for potential, suspicious activity. The State agency is exempt from sending the excessive replacement card notice if they have chosen to service the option to withhold the replacement card until contact is made with the State agency per 7 CFR 274.6(b)(5).

FNS is currently aware out of the 53 State agencies, six State agencies have opted to follow our regulations at 7 CFR 274.6(b)(5) to withhold replacement cards. The remaining 47 State agencies follow our regulations at 7 CFR 274.6(b)(6) for the Excessive Replacement Card Notice.

Affected Public: Individuals/Households participating in SNAP and State Government Agencies that administer SNAP.

Estimated Number of Respondents: 372,338 (372,285 individuals/households + 53 State agencies). Card replacement data, adjusted for changes in SNAP caseload, suggest that approximately 372,285 households request four replacement EBT cards within a 12-month period annually. These households, plus the 53 State agencies that must send the notices required by 7 CFR 274.6(b) make up the respondents.

Estimated Number of Responses per Respondent: There is an average estimated 2.11 responses (7,413.13 per State agency + 1.06 per individual/household) for each respondent. See the table below for estimated responses for each type of respondent.

Estimated Total Annual Responses: 785,791 (392,896 individuals/households total annual response + 392,896 States agencies total annual response). See the table below for estimated responses for each type of respondent. Of the 372,285 households requesting four replacement EBT cards, approximately 41,222 are estimated to be in the six States where the agencies have opted to follow our regulations at 7 CFR 274.6(b)(5) to withhold replacement cards. FNS estimates that half of all recipients who receive a notice upon issuance of their fourth

card will request a fifth card for approximately 20,611 households receiving the replacement card withheld notice.

Estimated Time per Response: FNS estimates that it will take State personnel approximately 2 minutes (.0334 hours) to generate and mail each required notice to the client, to comply with 7 CFR 274.6; and that it will take SNAP recipients approximately 2 minutes (.0334 hours) to read each notice they receive and 28 minutes (.4676 hours) to make contact with the State agency when required for a total of 30 minutes (.5 hours) for this activity. There is an average estimated time of 2.74 minutes (0.0456 hours) for each response (0.0334 for State agencies + 0.058 for individuals/households).

Estimated Total Annual Burden on Respondents: 35,863 hours (22,739.75 burden hours for individuals/households and 13,122.72 for State agencies). The currently approved annual burden is 22,989 hours. The revision reflects the increase in the number of households participating in SNAP therefore, we have more excessive replacement EBT card requests and notices than previously reported.

There is no third party reporting associated with this information collection request.

See the table below for estimated total reporting annual burden for each type of respondent.

CFR	Title	Number of respondents	Annual reports	Total annual responses	Burden hours per response	Total burden hours
State Agencies						
274.6(b)(5)	Withhold Replacement Card Warning Notice.	6	6,870.29	41,221.76	0.0334	1,376.81
274.6(b)(5)	Replacement Card Withheld Notice ..	6	3,435.15	20,610.88	0.0334	688.40
274.6(b)(6)	Excessive Replacement Card Notice	47	7,043.90	331,063.09	0.0334	11,057.51
Subtotal	.....	53	7413.13	392,895.73	0.0334	13,122.72
Participating Households						
274.6(b)(5)	Reading Withhold Replacement Card Warning Notice.	41,221.76	1	41,221.76	0.0334	1,376.81
274.6(b)(5)	Reading Replacement Card Withheld Notice and making contact with State agency.	20,610.88	1	20,610.88	0.50	10,305.44
274.6(b)(6)	Reading Excessive Replacement Card Notice.	331,063.09	1	331,063.09	0.0334	11,057.51
Subtotal	.....	372,284.85	1.06	392,895.73	0.058	22,739.75
Grand Total ...	.....	372,337.85	2.11	785,791.46	0.0456	35,862.47

* Note: The 20,610.88 Individuals/Households SNAP participants are the same I/H accounted for in the 41,221.76 and therefore not double counted.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2022–18212 Filed 8–23–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on September 8, 2022, 10:00 a.m., Eastern Daylight Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Presentation by Dr. Elizabeth Vitalis, Inscripta 'Genome Engineering and Biosecurity'.
3. Questions and Answers Session.
4. Presentation by Dr. Betty Lee, BIS, 'Analyzing Networks Using an Open Source Analysis Tool'.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than September 1, 2022.

To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 14, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Yvette Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–18204 Filed 8–23–22; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–119]

Antidumping Duty Order on Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Final Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) continues to determine that Honda Power Products (China) Co., Ltd. (Honda) is the successor-in-interest to Jialing-Honda Motors Co., Ltd. (Jialing) and is entitled to the same cash deposit rate as Jialing under the antidumping duty (AD) order on certain vertical shaft engines between 225cc and 999cc and parts thereof (vertical shaft engines) from the People's Republic of China (China).

DATES: Applicable August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Leo Ayala or Jacob Saude AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945 or (202) 482–0981, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2022, Commerce published the *Preliminary Results* [1] of the changed circumstances review (CCR) of the AD order on vertical shaft engines from China.[2] In the *Preliminary Results,* we provided interested parties with an opportunity to comment regarding our *Preliminary Results*.[3] On July 25, 2022, Honda timely submitted a letter in lieu of a case brief supporting the *Preliminary Results*.[4]

Scope of the Order

The merchandise covered by the *Order* consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of the *Order*. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of the *Order*.

For purposes of the *Order,* an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this *Order*. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to the *Order* are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to the *Order* enter under HTSUS subheading 8409.91.9990. Engines subject to the *Order* may also enter under HTSUS subheadings 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise subject to the *Order* is dispositive.

Final Results of Changed Circumstances Review

Having received no comments or information that calls into question the *Preliminary Results,* we continue to find that Honda is the successor-in-interest to Jialing and, accordingly, Honda is entitled to the AD cash deposit rate previously assigned to Jialing.

Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise exported by Honda and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the AD cash deposit rate in effect for Jialing. This cash deposit requirement shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final reminder to parties subject to an 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 terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e).

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[1] *See Preliminary Results of Changed Circumstances Review: Antidumping Duty Order on Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China,* 87 FR 35163 (June 9, 2022 (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 12623 (March 4, 2021); *see also Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China: Notice of Correction to the Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 13694 (March 10, 2021) (*Order*).

[3] *See Preliminary Results,* 87 FR at 35164.

[4] *See* Honda Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China, Changed Circumstances Review: Letter in Lieu of Case Brief,'' dated July 25, 2022.

Dated: August 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–18210 Filed 8–23–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–107]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to the producers and exporters subject to the administrative review of wooden cabinets and vanities and components thereof (cabinets) from the People's Republic of China (China) during the period of review (POR) August 12, 2019, through December 31, 2020. Commerce is also rescinding the review with respect to four companies that had no reviewable entries during the POR.

DATES: Applicable August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on May 6, 2022, and invited interested parties to comment.[1] On June 6, 2022, we received timely case briefs from the American Kitchen Cabinet Alliance (the petitioner) and Dalian Hualing Wood Co., Ltd. (Hualing). On June 13, 2022, we received timely rebuttal briefs from the petitioner and from Hualing. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The product covered by the *Order* is cabinets from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties and to which Commerce responded in the Issues and Decision Memorandum is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on comments in case and rebuttal briefs and record evidence, Commerce made certain changes from the *Preliminary Results* with regard to the calculation of Hualing's program rates. As a result of the changes to Hualing's program rates, the final rate for Jiangsu Xiangsheng Bedtime Furniture Co., Ltd., and Senke Manufacturing Company (*i.e.,* the non-selected respondents) and the final total adverse facts available (AFA) rates for Nantong Aershin Cabinet Co., Ltd. (*i.e.,* the non-cooperative mandatory respondent) also changed. These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found to be countervailable, Commerce finds that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying all of Commerce's conclusions, including any determination that relied upon the use of AFA pursuant to section 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Rescission of Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a CVD order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[5] Normally, upon completion of an administrative review, the suspended entries are liquidated at the CVD assessment rate calculated for the review period.[6] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the CVD assessment rate calculated for the review period.[7]

As noted in the *Preliminary Results,* according to the CBP import data, the following four companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended: (1) Guangzhou Nuolande Import and Export Co., Ltd.; (2) Linyi Kaipu Furniture Co., Ltd.; (3) Shandong Longsen Woods Co., Ltd.; and (4) Zhoushan For-strong Wood Co., Ltd. Accordingly, in the *Preliminary Results,* Commerce stated its intention to rescind the review with respect to these companies in the final results. We continue to find these companies had no reviewable entries of subject merchandise during the POR for which liquidation is suspended. Because there is no evidence on the record of this segment of the proceeding to indicate that these companies had entries, exports, or sales of subject merchandise to the United States during the POR, we are rescinding this review with respect to these companies, consistent with 19 CFR 351.213(d)(3).

[1] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission and Intent To Rescind Administrative Review, in Part; 2019–2020,* 87 FR 27099 (May 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order,* 85 FR 22134 (April 21, 2020) (*Order*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *Id.*

[6] *See* 19 CFR 351.212(b)(2).

[7] *See* 19 CFR 351.213(d)(3).

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely {on the basis of facts available}.''

There are two companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross owned with a mandatory respondent: (1) Jiangsu Xiangsheng Bedtime Furniture Co., Ltd., and (2) Senke Manufacturing Company. For these non-selected companies, we are basing the subsidy rate on the subsidy rate calculated for Hualing, the only mandatory respondent with a final subsidy rate that is not zero, *de minimis,* or based entirely on facts available.[8] This methodology to establish the non-selected subsidy rate is consistent with our practice with regard to the all-others rate, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), Commerce calculated the following net countervailable subsidy rates for the period August 12, 2019, through December 31, 2020:

Company	Subsidy Rate—2019 (percent ad valorem)	Subsidy Rate—2020 (percent ad valorem)
Dalian Hualing Wood Co., Ltd	8.44	2.78
Nantong Aershin Cabinet Co., Ltd[9]	144.63	144.63
Review-Specific Average Rate Applicable to the Following Companies		
Jiangsu Xiangsheng Bedtime Furniture Co., Ltd	8.44	2.78
Senke Manufacturing Company	8.44	2.78

Disclosure

We intend to disclose the calculations performed in connection with these final results to parties in this proceeding within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce will determine, CBP shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this review. We intend to issue assessment instructions to CBP 35 days after the date of publication of these final results of review. 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).

For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR in accordance with 19 CFR 351.212(c)(l)(i).

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the order, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction 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 terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: August 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[8] *See* Issues and Decision Memorandum at 5.

[9] This company was selected as a mandatory respondent but did not respond to Commerce's initial questionnaire. Accordingly, the rate for this company was based on facts available with an adverse inference pursuant to sections 776(a) and (b) of the Act. For a detailed discussion, *see Preliminary Results* PDM.

[FR Doc. 2022–18250 Filed 8–23–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–825]

White Grape Juice Concentrate From Argentina: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Jacob Saude or Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0981 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2022, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of white grape juice concentrate (WGJC) from Argentina.[1] Currently, the preliminary determination is due no later than September 7, 2022.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On August 5, 2022, the petitioner[2] submitted a timely request that Commerce postpone the preliminary determination in this LTFV investigation.[3] The petitioner stated that it requests postponement to ensure that Commerce is able to sufficiently review all questionnaire responses, issue supplemental questionnaires, and prepare an accurate preliminary determination.[4]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), is postponing the deadline for the preliminary determination by 50 days (*i.e.,* 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than October 27, 2022. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–18209 Filed 8–23–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See White Grape Juice Concentrate from Argentina: Initiation of Less-Than-Fair Value Investigation,* 87 FR 24934 (April 27, 2022).

[2] The petitioner is Delano Growers Grape Products, LLC.

[3] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping: White Grape Juice Concentrate from Argentina Petitioner's Request for Postponement of Preliminary Determination,'' dated August 5, 2022.

[4] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC295]

Marine Mammals; File No. 26596

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Robin Baird, Ph.D., Cascadia Research Collective, 218½ West Fourth Avenue, Olympia, WA 98501, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before September 23, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26596 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26596 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. or Courtney Smith, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a 5-year permit to take marine mammals in the Pacific Ocean to study population structure, size, and range, movements, habitat use,

social organization, diving behavior, diet, disease monitoring, behavior, and reactions to anthropogenic activity. Up to 43 species of cetaceans may be targeted for research including the following ESA-listed species: blue (*Balaenoptera musculus*), bowhead (*Balaena mysticetus*), fin (*Balaenoptera physalus*), false killer (*Pseudorca crassidens;* Main Hawaiian insular distinct population segment [DPS]), gray (*Eschrichtius robustus;* Western North Pacific DPS), humpback (*Megaptera novaeangliae;* Western North Pacific, Mexico, and Central America DPSs), killer (*Orcinus orca;* Southern Resident DPS), North Pacific right (*Eubalaena japonica*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales. Researchers would conduct vessel surveys, including unmanned aircraft systems, for counts, passive acoustic recording, observations, photo-identification, photogrammetry, thermal imaging, video recording, biological sampling (sloughed skin, exhaled air, feces, prey remains, skin and blubber biopsy), and tagging (suction-cup, dart, and bolt/pin). Biological samples, including prey remains of ESA-listed marine mammal or fish species, may be imported and exported for analysis. Seven pinniped species including ESA-listed Hawaiian monk seals (*Neomonachus schauinslandi*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*) may be harassed during research. See the application for numbers of animals requested by species and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 19, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–18246 Filed 8–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Notice of Meeting of the National Assessment Governing Board's Executive Committee

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Notice of closed teleconference meeting.

SUMMARY: This notice sets forth the agenda and instructions to submit written comment for an August 29, 2022 closed teleconference meeting of the National Assessment Governing Board's (Governing Board) Executive Committee. This notice provides information to members of the public who may be interested in providing written comments related to the work of the Governing Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA). This notice is being published less than 15 days prior to the meeting due to changes in committee leadership necessitating changes in responsibilities with respect to agenda items. The Chair of the Assessment Development committee resigned from the Board on August 9, 2022, and there were subsequent delays in rescheduling the meeting date with updated agenda topics.

DATES: August 29, 2022.

ADDRESSES: The meeting will be conducted via teleconference.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279 (20 U.S.C. 9621). Information on the Governing Board and its work can be found at *www.nagb.gov.* The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include:

(1) selecting the subject areas to be assessed; (2) developing appropriate student achievement levels; (3) developing assessment objectives and testing specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards; (4) developing a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public; (5) designing the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys; (6) measuring student academic achievement in grades 4, 8, and 12 in the authorized academic subjects; (7) developing guidelines for reporting and disseminating results; (8) developing standards and procedures for regional and national comparisons; (9) taking appropriate actions needed to improve the form, content use, and reporting of results of an assessment; and (10) planning and executing the initial public release of NAEP reports.

According to the Assessment Framework Development policy approved at the March 2022 quarterly Board meeting, the Governing Board delegated authority to the Executive Committee to review and approve a final list of science experts to serve on a review panel that will provide feedback on content areas for the National Assessment of Educational Progress (NAEP) Science Framework.

NAEP frameworks provide the blueprint for the content and design of each NAEP assessment. For each framework, the Governing Board works with a committee of subject matter experts, practitioners, and members of the public—including researchers, educators, business leaders, and policymakers—to develop a rich and rigorous set of standards that define what students should know and be able to do in a particular subject. Additional information on how NAEP Frameworks are developed can be found at *https://www.nagb.gov/naep/frameworks-overview.html.*

Meeting Agenda: On August 29, 2022, the Executive Committee will meet in closed session from 3:30 p.m. to 4:30 p.m. Eastern Time to review and discuss the applicant pool for nominees to serve as members of the Science Panel.

The Science Panel is established to provide content expertise in science by identifying what students should know and be able to do in science. This information will be used to inform the development of the 2028 NAEP Science Assessment at Grade 8. These discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c).

Public Comment: Written comments may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above) no later than 5:00 p.m. Eastern Time on August 24, 2022. Written comments should be directed to the DFO as it relates to Executive Committee and the Board meeting work referencing the relevant agenda item in this notice. Information on the Governing Board, its membership, and its work can be found at *www.nagb.gov.*

Access to Records of the Meeting: Pursuant to the FACA requirements, the public may inspect the meeting minutes for the Executive Committee meeting at *www.nagb.gov, which will be available no later than* five business days after the meeting.

Electronic Access to this Document: The official version of this document is published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Public Law 107–279, Title III, § 301—National Assessment of Educational Progress Authorization Act (20 U.S.C 9621).

Lisa Hill,

Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2022–17951 Filed 8–23–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0082]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FAFSA Form Demographic Survey

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new collection.

DATES: Interested persons are invited to submit comments on or before September 23, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: FAFSA Form Demographic Survey.

OMB Control Number: 1845–NEW.

Type of Review: New collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 19,727,003.

Total Estimated Number of Annual Burden Hours: 650,991.

Abstract: The U.S. Department of Education (the Department) is requesting a new information collection to gather demographic information in conjunction with the Free Application for Federal Student Aid (FAFSA) form. The FAFSA Simplification Act (FSAct) passed as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) amends the Higher Education Act of 1965, Title IV, Sec 483 (B)(ii)(VII) to add sex and race or ethnicity as information required to be provided by the applicant on the Free Application for Federal Student Aid (FAFSA) form. For the launch of the 2023–24 FAFSA on October 1, 2022, FSA will ask the demographic questions in a pilot, voluntary survey format in order to collect specific feedback on the new questions. This feedback will inform the development of the questions for full implementation within the FAFSA form for the 2024–2025 award year.

Dated: August 18, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–18165 Filed 8–23–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3211–000]

Power Authority of the State of New York; Notice of Authorization for Continued Project Operation

The license for the Hinckley (Gregory B. Jarvis) Hydroelectric Project No. 3211 was issued for a period ending July 31, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3211 is issued to the Power Authority of the State of New York for a period effective August 1, 2022 through July 31, 2023, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Power Authority of the State of New York is authorized to continue operation of the Hinckley (Gregory B. Jarvis) Hydroelectric Project under the terms and conditions of the prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: August 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18229 Filed 8–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2420–059]

PacifiCorp; Notice of Intent To Prepare an Environmental Assessment

On March 28, 2022, PacifiCorp filed an application for a major, new license for the 30-megawatt Cutler Hydroelectric Project (Cutler Project; FERC No. 2420). The Cutler Project is located on the Bear River in Box Elder and Cache Counties, Utah. No federal or tribal lands occur within the project boundary or along the Bear River downstream of the project. There are three parcels of land located in Cutler Canyon adjacent to the project boundary that are administered by the Bureau of Land Management.

In accordance with the Commission's regulations, on July 6, 2022, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare a draft and final Environmental Assessment (EA) on the application to relicense the Cutler Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues draft EA.	February 2023.
Comments on draft EA.	April 2023.
Commission issues final EA.	August 2023.[1]

Any questions regarding this notice may be directed to Khatoon Melick at (202) 502–8433 or *khatoon.melick@ferc.gov.*

Dated: August 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18230 Filed 8–23–22; 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 in Existing Proceedings

Docket Numbers: RP21–1187–007.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: Compliance filing: EGTS—Rate Case Compliance Filing—Show Cause to be effective 10/1/2022.

Filed Date: 8/18/22.

Accession Number: 20220818–5030.

Comment Date: 5 p.m. ET 8/30/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP22–1133–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Fuel Retention Rates—Winter 2022 to be effective 10/1/2022.

Filed Date: 8/17/22.

Accession Number: 20220817–5008.

Comment Date: 5 p.m. ET 8/29/22.

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/*

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare a draft and final EA for the Cutler Project. Therefore, in accordance with CEQ's regulations, the final EA must be issued within 1 year of the issuance date of this notice.

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: August 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18267 Filed 8–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1894–226]

Dominion Energy South Carolina, Inc.; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary variance of seasonal turbine venting period.

b. *Project No.:* 1894–226.

c. *Date Filed:* August 1, 2022 and supplemented on August 15, 2022.

d. *Applicant:* Dominion Energy South Carolina, Inc. (licensee).

e. *Name of Project:* Parr Project.

f. *Location:* The project is located on the Broad River in Newberry and Fairfield counties, South Carolina, and occupies federal lands within the Sumter National Forest, administered by the U.S. Department of Agriculture, Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Amy Bresnahan, Dominion Energy South Carolina, Inc., 220 Operation Way, Mail Code B223, Cayce, South Carolina 29033; (803) 217–9965; *amy.bresnahan@dominionenergy.com.*

i. *FERC Contact:* Joy Kurtz, (202) 502–6760, *joy.kurtz@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is September 7, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–1894–226. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests Commission approval to extend the seasonal turbine venting window requirements specified in the project's Turbine Venting Plan (Plan) through October 31, 2022. The Plan requires the licensee to provide turbine venting from June 15 to August 31, annually in order to increase dissolved oxygen levels downstream of Parr Shoals Dam. Article 401(b) of the project license requires the licensee to obtain Commission approval for extensions exceeding 30 days. The licensee is seeking Commission approval to extend the seasonal turbine venting window through October 31, 2022 in light of requests from the South Carolina Department of Natural Resources and South Carolina Department of Health and Environmental Control, who are concerned that low dissolved oxygen levels may persist at the project through fall of 2022.

l. *Locations of the Application:* 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. 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, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 385.2010.

Dated: August 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18231 Filed 8–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–14–000]

Commission Information Collection Activities (FERC–604); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–604 (Cash Management Agreements), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due September 23, 2022.

ADDRESSES: Send written comments on FERC–604 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0267) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–14–000) to the Commission as noted below. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions

OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION: *Title:* Cash Management Agreements.

OMB Control No.: 1902–0267.

Type of Request: Three-year extension of the FERC–604 information collection requirements with no changes to the current reporting requirements.

Abstract: This collection of information is authorized by the following statutory provisions:

- Sections 8 and 10 of the Natural Gas Act (15 U.S.C. 717g and 717i);
- Sections 301 and 304 of the Federal Power Act (16 U.S.C. 835 and 825c); and
- Sections 20(1) and 20(5) of the Interstate Commerce Act (49 App. U.S.C. 20(1) and 20(5)).

Cash management or ''money pool'' programs typically concentrate affiliates' cash assets in joint accounts for the purpose of providing financial flexibility and lowering the cost of borrowing. In a 2001 investigation, FERC staff found that balances in cash management programs affecting FERC-regulated entities totaled approximately $16 billion. Additionally, other investigations revealed large transfers of funds (amounting to more than $1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. The Commission found that these and other fund transfers and the enormous (mostly unregulated) pools of money in cash management programs could detrimentally affect regulated rates.

To protect customers and promote transparency, the Commission issued Order 634–A (2003) requiring entities to formalize in writing and file with the Commission their cash management agreements. At that time, the Commission obtained OMB clearance for this new reporting requirement under the FERC–555 information collection (OMB Control No. 1902–0098). Now, the Commission includes these reporting requirements for cash management agreements under the FERC–604 information collection (OMB Control No. 1902–0267). The Commission implements these reporting requirements in accordance with 18 CFR 141.500, 260.400, and 357.5.

Type of Respondents: Public utilities, natural gas companies, and oil pipeline companies.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden for the information collection as:

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

FERC–604, CASH MANAGEMENT AGREEMENTS

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost [2] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
45	1	45	1.5 hours; $130.50	67.5 hours; $5,872.50	$130.50

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18232 Filed 8–23–22; 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 exempt wholesale generator filings:

Docket Numbers: EG22–206–000.

Applicants: AES Energy Storage, LLC.

Description: AES Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/18/22.

Accession Number: 20220818–5039.

Comment Date: 5 p.m. ET 9/8/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2685–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to WMEC Charter to Modify Voting Structure to be effective 10/18/2022.

Filed Date: 8/18/22.

Accession Number: 20220818–5040.

Comment Date: 5 p.m. ET 9/8/22.

Docket Numbers: ER22–2686–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPAs, Service Agreement Nos. Ranging 6558 to 6569; Queue No. AD2–059 to be effective 7/19/2022.

Filed Date: 8/18/22.

Accession Number: 20220818–5042.

Comment Date: 5 p.m. ET 9/8/22.

Docket Numbers: ER22–2687–000.

Applicants: Wheelabrator Frackville Energy Company Inc.

Description: Tariff Amendment: Notice of Cancellation to be effective 8/19/2022.

Filed Date: 8/18/22.

Accession Number: 20220818–5052.

Comment Date: 5 p.m. ET 9/8/22.

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: August 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18266 Filed 8–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15228–000]

Pond Peak Energy Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 26, 2021, Pond Peak Energy Storage LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Pond Peak Pumped Storage Project (Pond Peak Project or project), a closed-loop pumped storage project to be located in Washoe County, Nevada. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) a 1,250-foot-long, 75-foot-high earthen dam and a 650-foot-long, 35-foot-high earthen dam, collectively creating a 3,400 acre-foot upper reservoir with a maximum surface elevation of 7,530 feet above mean sea level (msl); (2) a 7,830-foot-long, 17-foot-diameter concrete- and steel-lined underground conduit system to connect the upper reservoir to the powerhouse; (3) a 4,000-foot-long, 19-foot-diameter concrete-lined underground tailrace tunnel from the powerhouse to the lower reservoir; (4) an underground powerhouse containing three variable-speed reversible pump-turbine and motor-generator units with a generation and pumping capacity of 200 megawatts each (total capacity of 600 megawatts); (5) a 1,400-foot-long, 185-foot-high dam creating a 3,460 acre-foot lower reservoir with a maximum surface elevation of 5,920 feet above msl; (6) a 230-kilovolt transmission line from the powerhouse to one of two alternative points of interconnection,

[2] The Commission staff estimates that the industry's hourly cost for wages plus benefits is similar to the Commission's $87.00 FY 2021 average hourly cost for wages and benefits.

one resulting in a 10.5-mile-long transmission line and the other resulting in a 4.5-mile-long transmission line; and (7) appurtenant facilities. The estimated average annual generation of the Pond Peak Project would be 1,051,200 megawatt-hours.

Applicant Contact: Matthew Shapiro, Pond Peak Energy Storage, LLC, 424 West Pueblo, Suite A, Boise, Idaho 83702; phone: (208) 246–9925.

FERC Contact: Khatoon Melick, (202) 502–8433, *khatoon.melick@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15228–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15228) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18234 Filed 8–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project/Docket No. CP22–493–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Waiver Period for Water Quality Certification Application

On July 22, 2022, Tennessee Gas Pipeline Company, L.L.C. 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 Tennessee Department of Environment and Conservation, in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 157.22 of the Commission's regulations,[1] we hereby notify the Tennessee Department of Environment and Conservation of the following:

Date of Receipt of the Certification Request: July 22, 2022.

Reasonable Period of Time to Act on the Certification Request: July 22, 2023.

If the Tennessee Department of Environment and Conservation 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: August 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–18233 Filed 8–23–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0706; FRL–10098–01–OAR]

Proposed Information Collection Request; Comment Request; Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances'' (EPA ICR No. 1432.38, OMB Control No. 2060–0170) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2023. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 24, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2022–0706, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Robert Burchard, Stratospheric Protection Division, (6205A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9126; email address: *burchard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA is soliciting comments and information to enable it to: (i) 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; (ii) evaluate the accuracy of the Agency's estimate of the

[1] 18 CFR 157.22.

burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR covers provisions under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and Title VI of the CAA that establish limits on total U.S. production, import, and export of class I and class II ozone-depleting substances (or controlled substances). Production and import of class I controlled substances (chlorofluorocarbons and others) was phased out in the United States. The phaseout includes exceptions for essential uses, critical uses of methyl bromide, quarantine and pre-shipment uses of methyl bromide, previously used material, and material that will be transformed or destroyed. There are also regulations that restrict the use of class II controlled substances and require a gradual reduction in the production and consumption of these chemicals leading to their eventual phaseout. The class II controlled substance phaseout regulations include exceptions for previously used material and material that will be transformed or destroyed.

Form numbers: 5900–137, 5900–136, 5900–149, 5900–150, 5900–153, 5900–151, 5900–199, 5900–202, 5900–200, 5900–201, 5900–205, 5900–155, 5900–140, 5900–144, 5900–142, 5900–141, 5900–148, 5900–147, 5900–473, 5900–138, 5900–139, 5900–152, 5900–472, 5900–154, 5900–146.

Respondents/affected entities: Producers, importers, exporters, and certain users of ozone-depleting substances; methyl bromide applicators, distributors, and end users including commodity storage and quarantine users.

Respondent's obligation to respond: Mandatory (CAA sections 114, 603(b), and 604(d)(6)).

Estimated number of respondents: 1,174 (total).

Frequency of response: Quarterly, annually, and as needed.

Total estimated burden: 3,022 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $375,086 (per year), includes $8,250 annualized capital or operation & maintenance costs.

Changes in estimates: There is an increase of 82 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is a result of updated assumptions associated with recordkeeping requirements that are more consistent with other ICRs that cover similar recordkeeping activities (*e.g.,* the HFC Allowance Allocation Program ICR, OMB Control No. 2060–0734).

Cynthia A. Newberg,

Director, Stratospheric Protection Division.

[FR Doc. 2022–18284 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10085–01–R4]

Public Water System Supervision Program Revision for the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended approval.

SUMMARY: Notice is hereby given that the State of Georgia is revising its approved Public Water System Supervision Program. Georgia has adopted drinking water regulations for the Lead and Copper Rule Minor Revisions, Public Notification Rule, Radionuclides Rule, Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule, Stage 2 Disinfectants and Disinfection Byproducts Rule, Long Term 2 Enhanced Surface Water Treatment Rule, Ground Water Rule, Lead and Copper Rule Short-Term Regulatory Revisions and Clarifications, and Revised Total Coliform Rule. The Environmental Protection Agency (EPA) has determined that Georgia's regulations are no less stringent than these Federal rules and the revisions otherwise meet applicable Safe Drinking Water Act requirements. Therefore, the EPA intends to approve these revisions to the State of Georgia's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by September 23, 2022, to the Regional Administrator at the following address: U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by September 23, 2022, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final on September 23, 2022. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal holidays), at the following location: Macon Conference Room, 3rd Floor Tower Building, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303. Those intending to view documents should contact Dale Froneberger, EPA Region 4, by telephone at (404) 562–9446 at least 24 hours prior to arriving to coordinate viewing.

FOR FURTHER INFORMATION CONTACT: Dale Froneberger, EPA Region 4, Safe Drinking Water Branch, by telephone at (404) 562–9446, or by email at *froneberger.dale@epa.gov.*

SUPPLEMENTARY INFORMATION: The State of Georgia has submitted requests that the EPA approve revisions to the State's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Lead and Copper Rule Minor Revisions, Public Notification Rule, Radionuclides Rule, Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule, Stage 2 Disinfectants and Disinfection Byproducts Rule, Long Term 2 Enhanced Surface Water Treatment Rule, Ground Water Rule, Lead and Copper Rule Short-Term Regulatory Revisions and Clarifications, and

Revised Total Coliform Rule. For the requests to be approved, the EPA must find the state regulations codified at Ga. Comp. R. & Regs. r. 391–3–5 to be no less stringent than the Federal rules codified at 40 CFR part 141. The EPA reviewed Georgia's applications using the Federal statutory provisions (section 1413 of the Safe Drinking Water Act), federal regulations (at 40 CFR parts 141 and 142), state regulations, state policies and procedures for implementing the rules, regulatory crosswalks, and the EPA regulatory guidance to determine whether the requests for revision are approvable. The EPA determined that the Georgia regulations are no less stringent than the corresponding Federal rules and the revisions otherwise meet applicable Safe Drinking Water Act requirements. Therefore, the EPA intends to approve these revisions. If the EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this approval shall become final on September 23, 2022.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator.

[FR Doc. 2022–18251 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0449; FRL–10095–01–OAR]

Proposed Agency Information Collection Request; Comment Request; GreenChill Advanced Refrigeration Partnership (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''GreenChill Advanced Refrigeration Partnership (Renewal)'' (EPA ICR No. 2349.03, OMB Control No. 2060–0702) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2023. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 24, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2022–0449, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kersey Manliclic, Stratospheric Protection Division—Office of Air and Radiation, (3204A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–9981; email address: *Manliclic.Kersey@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: GreenChill is a voluntary partnership program sponsored by the U.S. Environmental Protection Agency (EPA) that encourages food retailers and manufacturers to adopt cost effective technologies and practices that reduce refrigerant emissions and improve operational efficiency. The GreenChill Program works with the food retail industry to lower barriers inhibiting the implementation of technologies and practices that reduce refrigerant emissions. The Program effectively promotes the adoption of emission reduction practices and technologies by engaging GreenChill Partners to set an annual refrigerant emission reduction goal and develop a refrigerant management plan reflecting the company's implementation objectives. Implementation of the Partners' refrigeration management plan to reduce refrigerant emissions enhances the protection of the environment and may save Partners money and improve operational efficiency. The GreenChill Program offers the opportunity for any individual store to earn GreenChill Certification at the silver-, gold-, platinum-, or other level when it demonstrates that the amount of refrigerant used is below a specified limit, based on the store's million British Thermal Units per hour (MBTU/hr) cooling load, and that the refrigerant emitted from the store in the prior 12 months is below a specified percentage depending on each GreenChill Store Certification level. Information submitted for the certification of individual stores is compared to these set criteria for each certification level. The certification of a store provides the opportunity for broad recognition within the food retail industry and with the store's customers.

Form Numbers

- GreenChill Advanced Refrigeration Partnership Agreement for Chemical Manufacturers—EPA Form No.: 5900–214; OMB Control No.: 2060–0702
- GreenChill Advanced Refrigeration Partnership Agreement for Supermarket Partners—EPA Form No.: 5900–214; OMB Control No.: 2060–0702

- GreenChill Advanced Refrigeration Partnership Agreement for Refrigeration Systems Manufacturers—EPA Form No.: 5900–214; OMB Control No.: 2060–0702
- GreenChill Installed Refrigerant and Emissions Corporate Report for Food Retail—EPA Form No.: 5900–213; OMB Control No.: 2060–0702
- Refrigeration System Manufacturers Corporate Reporting Form—EPA Form No.: 5900–591; OMB Control No.: 2060–0702
- Corporate Refrigerant Management Plan Template for GreenChill Partners—EPA Form No.: 5900–592 OMB Control No.: 2060–0702
- GreenChill Advanced Refrigeration Partnership Installation Leak Tightness Testing: Verification Form—EPA Form No.: 5900–589; OMB Control No.: 2060–0702
- GreenChill Advanced Refrigeration Partnership Fully Operational Food Retail Stores—EPA Form No.: 5900–587; OMB Control No.: 2060–0702
- GreenChill Advanced Refrigeration Partnership Recertification of Food Retail Stores—EPA Form No.: 5900–588; OMB Control No.: 2060–0702
- GreenChill Advanced Refrigeration Partnership Newly Constructed Food Retail Stores—EPA Form No.: 5900–586; OMB Control No.: 2060–0702
- GreenChill Advanced Refrigeration Partnership Bulk Application for GreenChill Store Certification—EPA Form No.: 5900–590; OMB Control No.: 2060–0702

Respondents/affected entities: The following list of North American Industry Classification System (NAICS) codes for organizations potentially affected by the information requirements covered under this ICR are:

- 445110 Supermarkets

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 805 (per year).

Frequency of response: Annual, and when desired.

Total estimated burden: 5,863 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $489,711 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is an increase of 3,255 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is primarily due to growth, by a factor of almost four, in the number of stores participating in the Store Certification Program.

Cynthia A. Newberg,

Director, Stratospheric Protection Division.

[FR Doc. 2022–18208 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0163; FRL–9408–07–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses—July 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 23, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the *EPA File Symbol* or the *EPA Registration Number* of interest as shown in the body of this document, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

Each application summary in Unit II specifies a contact division. The appropriate division contacts are identified as follows:

- AD (Antimicrobials Division) (Mail Code 7510M); Anita Pease, main telephone number: (202) 566–0737; email address: *ADFRNotices@epa.gov.*
- RD (Registration Division) (Mail Code 7505T); Marietta Echeverria; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Applications To Register New Uses

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4), 7 U.S.C. 136a(c)(4), and 40 CFR 152.102, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for

registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*https://www.epa.gov/registration/participation-process-registration-actions*).

- *EPA Registration Number(s):*100–791, 100–799, 100–1145, 100–1202, 100–1685. *Docket ID number:* EPA–HQ–OPP–2022–0493. *Applicant:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Mefenoxam. *Product type:* Fungicide. *Proposed Use(s):* Leafy Greens Subgroup, 4–16A (except spinach); Brassica Leafy Greens Subgroup 4–16B; Brassica Head and Stem Vegetable Crop Group 5–16; Stalk and Stem Vegetable Subgroup 22A (except celtuce, Florence fennel and kohlrabi); Celtuce; Florence fennel; Kohlrabi; Leaf Petiole Vegetable Subgroup 22B; Fruiting Vegetables Subgroup 8–10; Succulent Shelled Pea and Bean Crop Subgroup 6B; Cottonseed Crop Subgroup 20C. *Contact:* RD.
- *EPA Registration Number(s):*100–791, 100–1145, 100–1202, 100–1685. *Docket ID number:* EPA–HQ–OPP–2022–0493. *Applicant:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Mefenoxam. *Product type:* Fungicide. *Proposed Use(s):* None. *Contact:* RD.
- *EPA Registration Number(s):* 100–1571, 100–1591, 100–1614. *Docket ID number:* EPA–HQ–OPP–2022–0597. *Applicant:* Syngenta Crop Protection LLC P.O. Box 18300 Greensboro, NC 27419. *Active ingredient:* Oxathiapiprolin. *Product type:* Fungicide. *Proposed Use(s):* [peanut hay.] RD.
- *EPA Registration Number:* 65402–3. *Docket ID number:* EPA–HQ–OPP–2022–0458. *Applicant:* PeroxyChem, LLC 2005 Market Street, Suite 3200, Philadelphia, PA 19103. *Active ingredient:* Hydrogen Peroxide and Peroxyacetic Acid. *Product type:* Antimicrobial Pesticide. Proposed use: Recirculating Aquaculture Systems. *Contact:* AD.
- *EPA File Symbol:* 70927–T. *Docket ID number:* EPA–HQ–OPP–2022–0514. *Applicant:* Noble Fiber Technologies, LLC, 300 Palm Street Scranton, PA 18505. *Active ingredient:* Citric Acid. *Product type:* Material preservative solution. *Proposed Use:* Commercial and industrial use in the manufacture of various intermediate and finished products. In addition, the product will also be used in the formulation of other pesticide products. *Contact:* AD.
- *EPA File Symbol:* 89459–RGI. *Docket ID number:* EPA–HQ–OPP–2022–0610. *Applicant:* Central Garden & Pet, 1501 E. Woodfield Rd. Suite 200W Schaumburg, IL 60173. *Active ingredient:* transfluthrin. *Product type:* Insecticide. *Proposed Use:* Indoor aerosol spray for spot, surface & crack and crevice treatments. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 10, 2022.

Brian Bordelon,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–18264 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2022–2505; FRL–10103–01–R4]

L & R Oil Recovery Superfund Site; Shelby, North Carolina; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into an Administrative Settlement Agreement and Order on Consent with Keystone Powered Metal Company concerning the L & R Oil Recovery Superfund Site located in Shelby, North Carolina. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the proposed settlement until September 23, 2022. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement, if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.

Email: Painter.Paula@epa.gov.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at (404) 562–8887.

Maurice Horsey,

Chief, Enforcement Branch, Superfund & Emergency Management Division.

[FR Doc. 2022–18211 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[DOCKET NO. 22–20]

MSRF, Inc., Complainant v. HMM Company Limited, Respondent; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by MSRF, Inc. (MSRF), hereinafter ''Complainant'', against HMM Company Limited (HMM), hereinafter ''Respondent''. Complainant alleges that Respondent is a vessel-operating common carriers organized under the laws of the Republic of Korea.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), 41104(a)(2), 41104(a)(5), 41104(a)(9), and 41104 (a)(10), regarding its practices and the rates and terms of its service contract. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-20/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by August 19, 2023, and the final decision of the Commission shall be issued by March 4, 2024.

Served: August 19, 2022.

William Cody,

Secretary.

[FR Doc. 2022–18239 Filed 8–23–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited

review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201392.

Agreement Name: Yang Ming Joint Service Agreement.

Parties: Yang Ming Marine Transport Corporation; Yang Ming (Singapore) Pte. Ltd.; and Yang Ming (UK) Ltd.

Filing Party: Josh Stein, Cozen O'Connor.

Synopsis: The Agreement permits the parties to establish a joint service in the trades worldwide to and from the United States.

Proposed Effective Date: 9/30/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/68502.

Dated: August 19, 2022.

William Cody,

Secretary.

[FR Doc. 2022–18237 Filed 8–23–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–21]

MSRF, Inc., Complainant v. Yang Ming Transport Corporation, Respondent; Notice of Filing of Complaint and Assignment

Served: August 19, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by MSRF, Inc. (MSRF), hereinafter ''Complainant'', against Yang Ming Transport Corporation (Yang Ming), hereinafter ''Respondent''. Complainant alleges that Respondent is a vessel-operating common carriers organized under the laws of Taiwan.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), 41104(a)(2), 41104(a)(5), 41104(a)(9), and 41104(a)(10), regarding its practices and the rates and terms of its service contract. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-21/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by August 19, 2023, and the final decision of the Commission shall be issued by March 4, 2024.

William Cody,

Secretary.

[FR Doc. 2022–18240 Filed 8–23–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company; Correction

This notice corrects a notice (FR Doc. 2022–17925) published on page 51099 in the first column of the issue for Friday, August 19, 2022.

Under *A. Federal Reserve Bank of Chicago,* entry 1 is corrected to read as follows:

1. *The Revocable Trust Agreement No. 060134, James O. Beavers, trustee, both of Taylorville, Illinois;* to retain voting shares of First Bancorp of Taylorville, Inc., and thereby indirectly retain voting shares of First National Bank in Taylorville, Taylorville, Illinois, and First Security Bank, Mackinaw, Illinois.

Comments on this application must be received by September 8, 2022.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–18283 Filed 8–23–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 23, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Newtek Business Services Corp., Boca Raton, Florida;* to become a bank holding company by acquiring National Bank of New York City, Flushing, New York, through the merger of Newtek Interim Bank, National Association, Miami, Florida, into National Bank of New York City.

B. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *First Bancorp, Southern Pines, North Carolina;* to acquire GrandSouth Bancorporation, and thereby indirectly acquire GrandSouth Bank, both of Greenville, South Carolina.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–18282 Filed 8–23–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the

standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 8, 2022.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Head of Bank Applications) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Trust u/a 2nd(3) u/w of Hubert B. Phipps for Hubert G. Phipps, Woodbridge, New Jersey; Trust u/a 2nd(4)(a) u/w Hubert B. Phipps for Hubert G. Phipps, Woodbridge, New Jersey; Trust u/a 2nd(3) u/w Hubert B. Phipps for Melissa Phipps, Woodbridge, New Jersey; Trust u/a 2nd(4)(a) u/w Hubert B. Phipps for Melissa Phipps, Woodbridge, New Jersey; Frederick E. Guest II Trust dated 12/10/2014, Wilmington, Delaware; Trust f/b/o Alexander M.D. Guest u/Art. 7(B)(5) u/w Winston F.C. Guest, Deceased, New York, New York; Trust f/b/o Cornelia C. Guest u/Art. 7(B)(5) u/w Winston F.C. Guest, Deceased, New York, New York; Trust f/b/o Winston Guest, Jr. u/Art. 7(B)(5) u/w Winston F.C. Guest, Deceased, New York, New York; and Elizabeth Guest Stevens Revocable Trust dated June 21, 2011, Woodbridge, New Jersey (collectively, the ''EGS Trusts''); Elizabeth Guest Stevens, Washington, District of Columbia, as trustee of the EGS Trusts; the Achille Murat Guest Revocable Trust (''AMG Trust''), Richmond, Virginia; Achille Murat Guest, as trustee of the AMG Trust; Virginia Guest Valentine, Palm Beach, Florida; and Laetitia A. Guest Oppenheim, Palm Beach, Florida;* together as a group acting in concert, to acquire voting shares of The Bessemer Group, Incorporated, Woodbridge, New Jersey, and thereby indirectly acquire voting shares of Bessemer Trust Company, N.A., New York, New York, and Bessemer Trust Company, Woodbridge, New Jersey.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Preston L. Massey, as co-trustee of the Elizabeth Shatto Massey Separate Property Trust (''ESM Trust''); as trustee of the John H. Massey, II 2011 Trust; and as trustee of a 2012 trust for the benefit of John H. Massey, II and 2 minors; all of Dallas, Texas; and John H. Massey, II, as co-trustee of the ESM Trust; as trustee of the Preston L. Massey 2011 Trust; and as trustee of a 2012 trust for the benefit of Preston L. Massey and 2 minors; all of Houston, Texas;* together as a group acting in concert, to retain voting shares of Central Texas Bankshare Holdings, Inc., Columbus, Texas, and thereby indirectly retain voting shares of Colorado County Investment Holdings, Inc., Wilmington, Delaware; Hill Bancshare Holdings, Inc., Weimar, Texas; Hill Bancshares of Delaware, Inc., Wilmington, Delaware; Hill Bank & Trust Co., Weimar, Texas; and Columbus State Bank, Columbus, Texas.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–18285 Filed 8–23–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the FTC's portion of the information collection requirements contained in the Consumer Financial Protection Bureau's Regulation N (the Mortgage Acts and Practices—Advertising Rule). The FTC generally shares enforcement of Regulation N with the Consumer Financial Protection Bureau (CFPB). The current clearance expires on January 31, 2023.

DATES: Comments must be received on or before October 24, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Carole L. Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–3230.

SUPPLEMENTARY INFORMATION:

Title: Mortgage Acts and Practices—Advertising (Regulation N), 12 CFR part 1014.

OMB Control Number: 3084–0156.

Type of Review: Extension of a currently approved collection.

Abstract: The FTC and the CFPB generally share enforcement authority for Regulation N and thus the two agencies share burden estimates for Regulation N.[1] Regulation N's recordkeeping requirements constitute a ''collection of information'' [2] for purposes of the PRA.[3] The Rule does not impose a disclosure requirement.

Regulation N requires covered persons to retain: (1) Copies of materially different commercial communications and related materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period; (2) documents describing or evidencing all mortgage credit products available to consumers during the relevant time period; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the relevant time period.[4] A failure to keep such records would be an independent violation of the Rule.

Commission staff believes the recordkeeping requirements pertain to

[1] As background, the FTC's Mortgage Acts and Practices—Advertising Rule, 16 CFR part 321, was issued by the FTC in July 2011, 76 FR 43826 (July 22, 2011), and became effective on August 19, 2011. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred to the CFPB the Commission's rulemaking authority under section 626 of the 2009 Omnibus Appropriations Act on July 21, 2011. As a result, the CFPB republished the Mortgage Acts and Practices—Advertising Rule, at 12 CFR part 1014, which became effective December 30, 2011. 76 FR 78130. Thereafter, the Commission rescinded its Rule, which was effective on April 13, 2012. 77 FR 22200. Under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation N.

[2] Section 1014.5 of the Rule sets forth the recordkeeping requirements.

[3] *See* 44 U.S.C. 3502(3)(A).

[4] Section 1014.5 of the Rule sets forth the recordkeeping requirements.

records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers; real estate brokers and agents; home builders, and advertising agencies.[5] As to these persons, the retention of these documents does not constitute a ''collection of information,'' as defined by OMB's regulations that implement the PRA.[6] Certain other covered persons such as lead generators and rate aggregators may not currently maintain these records in the ordinary course of business.[7] Thus, the recordkeeping requirements for those persons would constitute a ''collection of information.''

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

Likely Respondents: Lead generators and rate aggregators.

Estimated Annual Hours Burden: 1,500 hours.

- Derived from 1,000 likely respondents × approximately 3 hours for each respondent per year to do these tasks = 3,000 hours.
- Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,500 annual hours.

Estimated Annual Labor Cost Burden: $26,550, which is derived from 1,500 hours × $17.70 per hour.[8]

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in Regulation N.

Burden Statement

Estimated total annual hours burden: 1,500 hours (for the FTC).

Commission staff estimates that the Rule's recordkeeping requirements will affect approximately 1,000 persons [9] who would not otherwise retain such records in the ordinary course of business. As noted, this estimate includes lead generators and rate aggregators that may provide commercial communications regarding mortgage credit product terms.[10] Although the Commission cannot estimate with precision the time required to gather and file the required records, it is reasonable to assume that covered persons will each spend approximately 3 hours per year to do these tasks, for a total of 3,000 hours (1,000 persons × 3 hours). Since the FTC generally shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,500 annual hours.[11]

Estimated labor costs: $26,550.

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. Staff further assumes that office support file clerks will handle the Rule's record retention requirements at an hourly rate of $17.70.[12] Based upon the above estimates and assumptions, the total annual labor cost to retain and file documents, for the FTC's allotted burden, is $26,550 (1,500 hours × $17.70 per hour).

Absent information to the contrary, staff anticipates that existing storage media and equipment that covered persons use in the ordinary course of business will satisfactorily accommodate incremental recordkeeping under the Rule. Accordingly, staff does not anticipate that the Rule will require any new capital or other non-labor expenditures.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before October 24, 2022.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before October 24, 2022. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and

[5] Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. *See, e.g.,* Fla. Stat. 494.00165 (2021); Ind. Code Ann. 23–2.5–8.5 (2021; Kan. Stat. Ann. 9–2208 (2022); Minn. Stat. 58.14 (2021); Wash. Rev. Code 19.146.060 (2021), and WAC 208–660–450 (2022). Many mortgage brokers, lenders (including finance companies), and servicers are subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. *See, e.g.,* Mich. Comp. Laws Serv. 445.1671 (2022); N.Y. Banking Law 597 (Consol. 2021); Tenn. Code Ann. 45–13–206 (2021). Lenders and mortgagees approved by the Federal Housing Administration must retain copies of all print and electronic advertisements and promotional materials for a period of two years from the date the materials are circulated or used to advertise. *See* 24 CFR part 202. Various other entities, such as real estate brokers and agents, home builders, and advertising agencies can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law. *See, e.g.,* 76 Del. Laws, c. 421, § 1.

[6] *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

[7] *See, e.g., United States* v. *Intermundo Media, LLC, dba Delta Prime Refinance,* No. 1:14–cv–2529 (D. Colo. filed Sept. 12, 2014) (D. Colo. Oct. 7, 2014) (stipulated order for permanent injunction and civil penalty judgment), *available at https://www.ftc.gov/system/files/documents/cases/140912deltaprimestiporder.pdf.* The complaint charged this lead generator with numerous violations of Regulation N, including recordkeeping, and of other federal mortgage advertising mandates.

[8] This estimate is based on mean hourly wages for office support file clerks provided by the Bureau of Labor Statistics. See U.S. Bureau of Labor Statistics, Occupational Employment and Wages—May 2021 table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation''), released March 31, 2022, available at *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

[9] No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: 1,000 lead generators and rate aggregators, based on staff's administrative experience.

[10] The Commission does not know what percentage of these persons are, in fact, engaged in covered conduct under the Rule, *i.e.,* providing commercial communications about mortgage credit product terms. For purposes of these estimates, the Commission has assumed all of them are covered by the recordkeeping provisions and are not retaining these records in the ordinary course of business.

[11] This estimate reflects the same burden compared to prior FTC estimates, because many entities can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law, as discussed above. *See supra* note 4. The FTC notes that the CFPB's recent information collection filing with OMB for Regulation N also reflects the view that, in large part, most entities either retain records in the ordinary course of business or to demonstrate compliance with other laws. See generally Bureau of Consumer Financial Protection, Agency Information Collection Activities: Submission for OMB Review; Comment Review, 87 FR 40513 (July 7, 2022), available at *2022–14474.pdf (govinfo.gov).*

[12] This estimate is based on mean hourly wages for office support file clerks provided by the Bureau of Labor Statistics. *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wages—May 2021, table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation''), released March 31, 2022, *available at http://www.bls.gov/news.release/pdf/ocwage.pdf.*

the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 24, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–18281 Filed 8–23–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10065/10066 & CMS–10611]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospital Notices: IM/DND; *Use:* The purpose of the IM is to inform beneficiaries and enrollees of their rights as hospital inpatients and how to request a discharge appeal by a Quality

Improvement Organization (QIO) and how to file a request. For all Medicare beneficiaries, hospitals must deliver valid, written notice of a beneficiary's rights as a hospital inpatient, including discharge appeal rights. The hospital must use a standardized notice, as specified by CMS. This is satisfied by IM delivery.

Consistent with 42 CFR 405.1205 for Original Medicare and 422.620 for Medicare health plans, hospitals must provide the initial IM within 2 calendar days of admission. A follow-up copy of the signed IM is given no more than 2 calendar days before discharge. The follow-up copy is not required if the first IM is provided within 2 calendar days of discharge. In accordance with 42 CFR 405.1206 for Original Medicare and 422.622 for Medicare health plans, if a beneficiary/enrollee appeals the discharge decision, the beneficiary/enrollee and the QIO must receive a detailed explanation of the reasons services should end. This detailed explanation is provided to the beneficiary/enrollee using the DND, the second notice included in this renewal package. *Form Number:* CMS–10065/10066 (OMB control number: 0938–1019); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 14,087,086; *Total Annual Responses:* 14,087,086; *Total Annual Hours:* 2,385,107. (For policy questions regarding this collection contact Janet Miller at *Janet.Miller@cms.hhs.gov*).

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Outpatient Observation Notice (MOON); *Use:* The Medicare Outpatient Observation Notice (MOON) serves as the written notice component of this mandatory notification process. The standardized content of the MOON includes all informational elements required by statute, in language understandable to beneficiaries, and fulfils the regulatory requirements at 42 CFR part 489.20(y).

The MOON is a standardized notice delivered to persons entitled to Medicare benefits under Title XVIII of the Act who receive more than 24 hours of observation services, informing them that their hospital stay is outpatient and not inpatient, and the implications of being an outpatient. This information collection applies to beneficiaries in Original Medicare and enrollees in Medicare health plans. *Form Number:* CMS–10611 (OMB control number: 0938–1308); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 4,312; *Total Annual Responses:* 683,222; *Total Annual Hours:* 170,806. (For policy questions regarding this collection contact Janet Miller at *Janet.Miller@cms.hhs.gov/*).

Dated: August 18, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–18195 Filed 8–23–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10668, CMS–10455 and CMS–10430]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; Quality Measures and Administrative Procedures for the Hospital-Acquired Condition Reduction Program; *Use:* The Centers for Medicare & Medicaid Services (CMS) is committed to promoting higher quality healthcare and improving outcomes for Medicare beneficiaries. The Hospital-Acquired Condition (HAC) Reduction Program is established by section 1886(p) of the Social Security Act, as added by Section 3008 of the Affordable Care Act (Pub. L. 111–148), and requires the Secretary to reduce payments to subsection (d) hospitals in the worst-performing quartile of all subsection (d) hospitals by 1 percent effective beginning on October 1, 2014 and subsequent years. For the FY 2025 program year we are proposing in the Fiscal Year (FY) 2023 Inpatient Prospective Payment System (IPPS)/

Long-Term Care Hospital (LTCH) PPS proposed rule to suppress all six measures in the HAC Reduction Program and not calculate measure scores or Total HAC Scores for any hospital such that no hospital will receive a payment reduction due to the significant impacts of the COVID–19 pandemic on the quality measures. We are not proposing any policies in the FY 2023 IPPS/LTCH PPS proposed rule which result in a change to our estimated burden. To administer its requirements, the HAC Reduction Program relies on data collection established through the Centers for Disease Control and Prevention's (CDC) OMB control number, 0920–0666, and validation processes established through the Hospital Inpatient Quality Reporting (IQR) Program's OMB control number, 0938–1022. However, in the FY 2019 IPPS/LTCH PPS final rule, the Hospital IQR Program finalized the removal of the CDC National Healthcare Safety Network (NHSN) Healthcare-associated Infection (HAI) measures and NHSN HAI validation processes beginning on January 1, 2020. To continue validation of these measures, the HAC Reduction Program adopted validation templates similar to the ones previously used under the Hospital IQR Program. These templates continue the HAC Reduction Program's use and validation of NHSN HAI data.

The HAC Reduction Program identifies the worst-performing quartile of hospitals by calculating a Total HAC Score derived from the CMS Patient Safety and Adverse Events Composite (CMS PSI 90) and NHSN HAI measures, which require that we collect claims-based and chart-abstracted measures data, respectively. The HAC Reduction Program validates NHSN HAI data reported by subsection (d) hospitals to ensure that hospitals report correct NHSH HAI measure data, and the Total HAC Score is calculated using accurate data. The HAC Reduction Program may penalize any hospitals that fail validation by assigning the maximum Winsorized z-score for the set of measures that fail validation, for use in the Total HAC Score calculation. The collection of information for validation is necessary to ensure that the HAC Reduction Program and Total HAC Score are administered fairly.

The HAC Reduction Program will continue to receive NHSN HAI data for hospitals from CDC. Because the burden associated with submitting data for the HAI measures (CDI, CAUTI, CLABSI, MRSA, and SSI) is captured under a separate OMB control number, 0920–0666, we do not provide an independent estimate of the burden associated with collecting data for these measures for the HAC Reduction Program. We also do not provide an estimate of burden for the claims-based PSI 90 measure, because this measure is collected using Medicare FFS claims that hospitals are already submitting to the Medicare program for payment purposes. We also do not provide an estimate of burden for validation of data submitted for the PSI 90 measure, because Medicare claims are audited under the Medicare Fee for Service (FFS) Recovery Audit Program. *Form Number:* CMS–10668 (OMB control number: 0938–1352); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions), Federal Government, and State, Local or Tribal Governments; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours:* 28,800. (For policy questions regarding this collection contact Jennifer Tate at 410–786–0428).

2. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Report of a Hospital Death Associated with Restraint or Seclusion; *Use:* Provisions implementing this statutory reporting requirement for hospitals participating in Medicare are found at 42 CFR 482.13(g), as revised in the final rule that published on May 16, 2012 (77 FR 29034). This regulation also applies to Critical Access Hospitals (CAHs) with distinct part units (DPUs); since CAH DPUs are subject to the Hospital Conditions of Participation. The regulation at 42 CFR 482.13(g) requires that hospitals and CAHs with DPUs report deaths associated with the use of restraint and/or seclusion directly to the CMS locations. This regulation requires that information about patient deaths associated with the use of restraint and/or seclusion must be reported to the CMS Locations using the online CMS–10455 form titled ''*Report Of A Hospital Death Associated With The Use Of Restraint Or Seclusion*.''

When a death occurs in a hospital (including Critical Access Hospital (CAH) with a rehabilitation or psychiatric Distinct Part Unit (DPU)) that is associated with the use of restraints and/or seclusion, the hospital staff must complete the online Form CMS–10455 (42 CFR 482.13(g)(1)). The hospital staff must also document the date and time that CMS was notified of the death in the patient's medical record (42 CFR 482.13(g)(3)(i)).

When a death occurs during the use of 2-point soft cloth wrist restraints with no seclusion, or within 24 hours after the patient was removed from such restraints, the hospital must document the information required by 42 CFR 482.13(g)(4)(ii) into a hospital log or internal system within 7 days from the date of death (42 CFR 482.13(g)(4)(i)). The hospital is not required to submit this log or internal records to the CMS Location, however, they must be made available in either written or electronic form to CMS immediately upon request (42 CFR 482.13(g)(4)(iii)). In addition, the hospital staff must also document the date and time that the required information was entered into the hospital's log or internal system in the patient's medical record (42 CFR 482.13(g)(3)(ii)). *Form Number:* CMS–10455 (OMB control number: 0938–1210); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 3,137; *Number of Responses:* 3,137; *Total Annual Hours:* 1,210. (For policy questions regarding this collection contact Caroline Gallaher at 410–786–8705.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements for Compliance with Individual and Group Market Reforms under Title XXVII of the Public Health Service Act; *Use:* Sections 2723 and 2761 of the Public Health Service Act (PHS Act) direct the Centers for Medicare and Medicaid Services (CMS) to enforce a provision (or provisions) of title XXVII of the PHS Act (including the implementing regulations in parts 144, 146, 147, and 148 of title 45 of the Code of Federal Regulations) with respect to health insurance issuers when a state has notified CMS that it has not enacted legislation to enforce or that it is not otherwise enforcing a provision (or provisions) of the group and individual market reforms with respect to health insurance issuers, or when CMS has determined that a state is not substantially enforcing one or more of those provisions. Section 2723 of the PHS Act directs CMS to enforce an applicable provision (or applicable provisions) of title XXVII of the PHS Act (including the implementing regulations in parts 146 and 147 of title 45 of the Code of Federal Regulations) with respect to group health plans that are non-Federal governmental plans. This collection of information includes requirements that are necessary for CMS to conduct compliance review activities. *Form Number:* CMS–10430 (OMB control number: 0938–0702); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments; *Number of Respondents:* 794; *Total Annual Responses:* 51,385; *Total Annual Hours:* 1,786. (For policy

questions regarding this collection contact Usree Bandyopadhyay at 410–786–6650).

Dated: August 19, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–18243 Filed 8–23–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10379]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 24, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number:____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10379—Rate Increase Disclosure and Review Reporting Requirements

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a previously approved information collection; *Title of Information Collection:* Rate Increase Disclosure and Review Reporting Requirements; *Use:* 45 CFR part 154 implements the annual review of unreasonable increases in premiums for health insurance coverage called for by section 2794. The regulation established a rate review program to ensure that all rate increases that meet or exceed an established threshold are reviewed by a state or the Centers for Medicare and Medicaid Services (CMS) to determine whether the rate increases are unreasonable. Accordingly, issuers offering non-grandfathered health insurance coverage in the individual and/or small group markets are required to submit Rate Filing Justifications to CMS. Section 154.103 exempts grandfathered health plan coverage as defined in 45 CFR 147.140, excepted benefits as described in section 2791(c) of the PHS Act and student health insurance coverage, as defined in § 147.145, from Federal rate review requirements.

The Rate Filing Justification consists of three parts. All issuers must continue to submit a Uniform Rate Review Template (URRT) (Part I of the Rate Filing Justification) for all single risk pool plans. Section 154.200(a)(1) establishes a 15 percent federal default threshold for reasonableness review. Issuers that submit a rate filing that includes a plan that meets or exceeds the threshold must include a written description justifying the rate increase, also known as the consumer justification narrative (Part II of the Rate Filing Justification). We note that the threshold set by CMS constitutes a minimum standard and most states currently employ stricter rate review standards and may continue to do so. Issuers offering a QHP or any single risk pool submission containing a rate increase of any size must continue to submit an actuarial memorandum (Part III of the Rate Filing Justification). *Form Number:* CMS–10379 (OMB control number: 0938–1141); *Frequency:* Annually; *Affected Public:* Private Sector; Businesses or other for-profits, Not-for-profit institutions; *Number of Respondents:* 626; *Total Annual Responses:* 820; *Total Annual Hours:* 17,788. (For policy questions regarding this collection contact Lisa Cuozzo at 410–786–1746.)

Dated: August 19, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–18244 Filed 8–23–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10789]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 24, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10789 Customer Satisfaction Survey for Enterprise Portal Services (EPS) Users

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New Collection (Request for a new OMB control number); *Title of Information Collection:* Customer Satisfaction Survey for Enterprise Portal Services (EPS) Users; *Use:* This EPS customer satisfaction survey will support EADG's goal of promoting improvements in the quality of EPS for all end-users and business owners. The collection of this information is necessary to enable EADG to obtain feedback in an efficient, timely manner, in accordance to our commitment to improving the quality and usability of our system. It will also allow for ongoing, collaborative, and actionable communications between EADG and all customers, stakeholders, and end-users.

The goal of this Generic clearance and its survey is to capture feedback from actual users of the system immediately after they finish using the system, while their user experience, negative or positive, is still fresh in their minds. This user feedback will allow our team to discover areas of improvement within EPS. It will help us improve the user experience, provide better service/support, improve marketing strategies, and identify gaps/issues that require resolution. For example, if we get several responses through the collection instrument stating that users feel that the EPS system is slow, we can use that feedback to invest efforts into increasing the EPS response times. As the feedback is analyzed and implemented over time, the survey questions will evolve to support implemented changes, providing the EPS team with the most up-to-date feedback on system improvement.

By using a Generic Instrument Collection, the survey will evolve over time. Within the CMS EPS, features are frequently added, and sometimes even removed. The team needs to be able to add new survey questions, specific to those new features, in order to capture valuable feedback on the effectiveness, ease-of-use, pain points, and areas of improvement for the 2 feature. When features are removed from the CMS EPS, questions relevant to those features must be modified or removed from the survey as well. In general, given that the CMS EPS is a dynamic system, designed to meet enterprise needs that change over time, a Generic Instrument Collection will allow the survey to evolve as the system evolves, and remain relevant, capturing up-to-date feedback on the system. *Form Number:* CMS–10789 (OMB control number: 0938-New); *Frequency:* Quarter; *Affected Public:* Individuals and Households, Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 300,000; *Total Annual Responses:* 360,000; *Total Annual Hours:* 90,000. (For policy questions regarding this collection contact Corey L. Redden at 410–279–5152.)

Dated: August 18, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–18190 Filed 8–23–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1048]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on medical device labeling regulations.

DATES: Either electronic or written comments on the collection of information must be submitted by October 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 October 24, 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–2014–N–1048 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Labeling Regulations.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

Medical Device Labeling Regulations

OMB Control Number 0910–0485—Revision

This information collection supports implementation of medical device labeling requirements governed by section 502 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 352), codified in Agency regulations, and discussed in associated Agency guidance. In accordance with the Unique Device Identification (UDI) system (see part 801, subpart B (21 CFR part 801, subpart B)), medical device labelers, unless excepted, are required to design and use medical device labels and device packages to bear a UDI, present dates on labels in a particular format, and submit data concerning each version or model of a device to the Global Unique Device Identification Database (GUDID) no later than the date the label of the device must bear a UDI. Once a device becomes subject to UDI requirements, respondents will be required to update the information reported whenever the information changes.

FDA has identified the following requirements as having burdens that must be accounted for under the PRA; the burdens associated with these requirements are summarized in the table that follows.

21 CFR 801.18 requires that whenever a labeler of a medical device includes an expiration date, a date of manufacture, or any other date intended to be brought to the attention of the user of the device, the labeler must present the date on the label in a format that meets the requirements of this section.

Section 801.20 requires every medical device label and package to bear a UDI.

Under § 801.35, any labeler of a device that is not required to bear a UDI on its label may include a UDI on the label of that device and utilize the GUDID.

Under § 801.45, any device that has to be labeled with a UDI also has to bear a permanent marking providing the UDI on the device itself if the device is intended for more than one use and intended to be reprocessed before each use.

Section 801.50 requires stand-alone software to comply with specific labeling requirements that identify the software.

Section 801.55 authorizes additional, case-by-case, labeling exceptions and alternatives to standard UDI labeling requirements.

If a labeler relabels or modifies a label of a device that is required to bear a UDI, under 21 CFR 830.60 it has to keep a record showing the relationship of the original device identifier to the new device identifier.

21 CFR 830.110 requires an applicant seeking initial FDA accreditation as a UDI-issuing agency to furnish FDA an application containing certain information, materials, and supporting documentation.

Under 21 CFR 830.120, an FDA-accredited issuing agency is required to disclose information concerning its system for the assignment of UDIs; maintain a list of labelers that use its system for the assignment of UDIs and provide FDA a copy of such list; and upon request, provide FDA with information concerning a labeler that is employing the issuing agency's system for assignment of UDIs.

21 CFR 830.310 and 830.320 require the labeler to provide certain information to the GUDID concerning the labeler and each version or model of a device required to be labeled with a UDI, unless the labeler obtains a waive.

21 CFR 830.360 requires each labeler to retain records showing all UDIs used to identify devices that must be labeled with a UDI and the particular version or model associated with each device identifier, until 3 years after it ceases to market a version or model of a device.

Respondents who are required to submit data to the Agency under certain other approved information collections are required to include UDI data elements for the device that is the subject of such information collection. Addition of the UDI data elements is included in this burden estimate for the conforming amendments in the following 21 CFR parts: part 803—Medical Device Reporting (OMB control number 0910–0437), part 806—Medical Devices; Reports of Corrections and Removals (OMB control number 0910–0359), part 814—Premarket Approval of Medical Devices (OMB control number 0910–0231), part 820—Quality System Regulation (OMB control number 0910–0073), part 821—Medical Device Tracking Requirements (OMB control number 0910–0442), and part 822—Postmarket Surveillance (OMB control number 0910–0449).

Medical device labeling requirements, among other things, provide for the label or labeling content of a medical device so that it is not misbranded and subject to regulatory action. Certain provisions under section 502 of the FD&C Act require that manufacturers, importers, and distributors of medical devices disclose information about themselves or the devices on the labels or labeling for the devices. Section 502 of the FD&C Act provides, in part, that a device shall be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the device, is false or misleading in any particular way, or fails to contain adequate directions for use. Medical device labeling regulations in parts 800, 801, 809, and associated regulations in parts 660 and 1040 (21 CFR parts 660, 800, 801, 809, and 1040), prescribe the disclosure of specific information by manufacturers, importers, and distributors of medical devices about themselves and/or the devices, on the label or labeling for the devices, to health professionals and consumers.

In conjunction with provisions in part 800, part 801, subpart A sets forth general labeling provisions applicable to all medical devices, including content and format requirements pertaining to intended uses, adequate directions for use, misleading statements, and the prominence of required labeling. Information collection associated with labeling requirements for Over-the-Counter (OTC) Devices are found in part 801, subpart C, and cover principal display panel; statement of identity; declaration of net quantity of contents; and certain warning statement elements. Information collection associated with exemptions from adequate directions for use and other exemptions are found in part 801, subparts D and E, respectively. Information collection associated with special labeling requirements applicable to specific devices are found in part 801, subpart H. We also include information collection associated with labeling for in vitro diagnostic products for human use, as set forth in part 809, subpart B. In addition to the labeling requirements in part 801 and the certification and identification requirements of 21 CFR 1010.2 and 1010.3, sunlamp products and ultraviolet lamps are subject to specific labeling requirements as set forth in part 1040.

The information collection also includes provisions associated with stand-alone symbols (not accompanied by explanatory text adjacent to the symbol), when accompanied by a symbols glossary, as set forth in part 660, additional standards for diagnostic substances for laboratory standards for biological products, subparts A, C, D, E, and F. The requirements are also found in the general medical device labeling regulations part 801, subpart A, and part 809, subpart B.

The information collection also helps to implement section 502(b) of the FD&C Act which requires that, for packaged devices, labeling must bear the name and place of business of the manufacturer, packer, or distributor;

and an accurate statement of the quantity of the contents. Section 502(f) of the FD&C Act requires also that the labeling for a device must contain adequate directions for use unless FDA grants an exemption. Section 502(u) of the FD&C Act requires reprocessed single-use devices (SUDs) to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer. Under this provision, if the original SUD or an attachment to it prominently and conspicuously bears the name of the manufacturer, then the reprocessor of the SUD is required to identify itself by name, abbreviation, or symbol in a prominent and conspicuous manner on the device or attachment to the device. If the original SUD does not prominently and conspicuously bear the name of the manufacturer, the manufacturer who reprocesses the SUD for reuse may identify itself using a detachable label that is intended to be affixed to the patient record. As required by the Medical Device User Fee Stabilization Act of 2005, FDA issued the guidance document, ''Compliance with Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices'' (May 2006), to assist respondents with these requirements. The guidance document was issued consistent with our Good Guidance Practice regulations in 21 CFR 10.115, which provide for public comment at any time. We maintain a searchable guidance database on our website, and this guidance is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

The guidance document is intended to identify circumstances in which the name or symbol of the original SUD manufacturer is not prominent and conspicuous, as used in section 502(u) of the FD&C Act.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR citation	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Part 660, subparts A, C, D, E, and F: Antibody to Hepatitis B Surface Antigen; Blood Grouping Reagent; Reagent Red Blood Cells; Hepatitis B Surface Antigen; Anti-Human Globulin; Part 801 subpart A: General Labeling; Part 809, subpart B: Labeling					
Symbols glossary—660.2; antibody to Hepatitis B surface antigen requirements, 660.28; blood grouping labeling, 660.35; reagent red blood cell labeling, 660.45, hepatitis B surface antigen labeling, 660.55; anti-human globulin labeling, 801.15; medical devices labeling and use of symbols; 809.10, labeling for in vitro diagnostic products.	3,000	1	3,000	1	3,000
UDI; part 801, subpart B	[2] 6,199	51	[3] 316,149	0.0167 (1 minute)	5,280
Total					8,280

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Maximum No. of Respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[3] Maximum Total Annual Responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.

Our figures are based on data from the FDA Unified Registration and Listing System and the Operational and Administration System for Import Support shipment information. FDA regulations allow for the use of stand-alone graphical representations of information, or symbols, in the labeling for the medical devices and diagnostic substances for laboratory standards, if the symbol has been established in a Standards Development Organization developed standard, provided that such symbol is explained in a symbols glossary that is included in the labeling for the medical device and otherwise complies with section 502 (misbranding) of the FD&C Act. These labeling requirements are set forth in part 660, subparts A, C, D, E, and F, in the additional standards for diagnostic substances for laboratory standards for biological products, including: general requirements (§ 660.2), using antibody to Hepatitis B surface antigen (§ 660.28), blood grouping reagent (§ 660.35), reagent red blood cells (§ 660.45), Hepatitis B surface antigen (§ 660.45); and anti-human globulin (§ 660.55). The requirements are also found in the general medical device labeling regulations (part 801, subpart A) and in the in vitro diagnostic product labeling regulations (part 809, subpart B).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1] [2]

21 CFR citation	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Part 801 subpart A: General Labeling Provisions; subpart E: Other Exemptions; subpart H: Special Requirements for Specific Devices					
Processing, labeling, or repacking agreement; 801.150.	7,500	887	6,652,500	0.5 (30 minutes)	3,326,250

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1] [2]—Continued

21 CFR citation	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Impact resistant lenses; invoices, shipping documents, and records of sale or distribution; 801.410(e) and (f).	1,591	47,050	74,856,550	0.0008 (0.048 minutes).	59,885
Hearing aid records; 801.421	10,000	160	1,600,000	0.25 (15 minutes)	400,000
Menstrual tampons, sampling plan for measuring absorbency; 801.430(f).	33	11	363	80	29,040
Latex condoms; justification for the application of testing data to the variation of the tested product; 801.435(g).	51	3.65	186	1	186
UDI; part 801, subpart B	[3] 5,987	51	[4] 305,337	0.9833 (59 minutes)	300,238
Total			83,414,936		4,115,599

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded.
[3] Maximum No. of Respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[4] Maximum Total Annual Responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.

As set forth in § 801.150(a)(2), device manufacturers are required to retain a copy of the agreement containing the specifications for the processing, labeling, or repacking of the device for 2 years after the final shipment or delivery of the device. Section 801.150(a)(2) requires that copies of this agreement be made available for inspection at any reasonable hour upon request by any officer or employee of the Department of Health and Human Services (HHS). In § 801.410(e) copies of invoices, shipping documents, and records of sale or distribution of all impact resistant lenses, including finished eyeglasses and sunglasses, are required to be maintained for 3 years by the retailer and made available upon request by any officer or employee of FDA or by any other officer or employee acting on behalf of the Secretary of HHS. Section 801.410(f) requires that the results of impact tests and description of the test method and apparatus be retained for a period of 3 years.

Specific recordkeeping requirements applicable to hearing aid dispensers, manufacturers of menstrual tampons, and manufacturers of latex condoms are set forth in §§ 801.421(d), 801.430(f), and 801.435(g), respectively.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1] [2]

21 CFR citation	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Part 800 and Part 801, subparts A, C, D, and E: General Labeling; OTC Devices; Exemptions					
Contact lens cleaning solution labeling; 800.10(a)(3) and 800.12(c).	47	8	376	1	376
Liquid ophthalmic preparation labeling; 800.10(b)(2).	25	8	200	1	200
Manufacturer, packer, or distributor information; 801.1.	19,407	7	135,849	1	135,849
Adequate directions for use; 801.5	8,526	6	51,156	22.35	1,143,337
Statement of identity; 801.61	8,526	6	51,156	1	51,156
Declaration of net quantity of contents; 801.62	8,526	6	51,156	1	51,156
Prescription device labeling; 801.109	9,681	6	58,086	17.77	1,032,188
Retail exemption for prescription devices; 801.110	30,000	667	20,010,000	0.25	5,002,500
Processing, labeling, or repacking; non-sterile devices; 801.150(e).	453	34	15,402	4	61,608
Part 801, subpart H: Special Requirements for Specific Devices					
Labeling of articles intended for lay use in the repairing and/or refitting of dentures; 801.405(b)(1).	35	1	35	4	140
Dentures; information regarding temporary and emergency use; 801.405(c).	35	1	35	4	140
Hearing aids professional and patient labeling; 801.420.	136	12	1,632	80	130,560
Hearing aids, availability of User Instructional Brochure; 801.421.	10,000	5	50,000	0.17	8,500
User labeling for menstrual tampons; 801.430	16	8	128	2	256
User labeling for latex condoms; 801.437	52	6	312	100	31,200

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1] [2]—Continued

21 CFR citation	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Part 809 (in vitro diagnostic products for human use) and part 1040 (light-emitting products)					
Format and content of labeling for IVDs; 809.10	1,700	6	10,200	80	816,000
Advertising and promotional materials for ASRs; 809.30(d).	300	25	7,500	1	7,500
Labeling of sunlamp products—1040.20(d)	30	1	30	10	300
FD&C Action Section 502(u)					
Establishments listing <10 SUDs	161	2	322	0.1 (6 minutes)	32
Establishments listing >10 SUDs	14	45	630	0.1 (6 minutes)	63
Part 660, subparts A, C, D, E, and F: Antibody to Hepatitis B Surface Antigen; Blood Grouping Reagent; Reagent Red Blood Cells; Hepatitis B Surface Antigen; Anti-Human Globulin; Part 801 subpart A: General Labeling Provisions; Part 809, subpart B: Labeling					
Symbols glossary—660.2; antibody to Hepatitis B surface antigen requirements, 660.28; blood grouping labeling, 660.35; reagent red blood cell labeling, 660.45, hepatitis B surface antigen labeling, 660.55; anti-human globulin labeling, 801.15; medical devices labeling and use of symbols; 809.10, labeling for in vitro diagnostic products.	3,000	1	3,000	4	12,000
Part 801, subpart B					
UDI	[3] 5,987	51	[4] 305,337	0.8833 (53 minutes) ..	269,704
Total	.....	.....	20,752,542	.....	8,754,765

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded.
[3] Maximum No. of Respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[4] Maximum Total Annual Responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.

Because many labeling provisions correspond to specific recordkeeping requirements, we have accounted for burden attendant to the provisions enumerated in table 3 as third-party disclosures. These figures reflect what we believe to be the average burden incurred by respondents to applicable information collection activities.

We are revising this information collection to include OMB control number 0910–0720. Our estimated burden for the information collection reflects an overall increase of 579,633 hours and a corresponding increase of 926,823 responses/records. We attribute this adjustment to the revision of this information collection to include OMB control number 0910–0720.

Dated: August 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18275 Filed 8–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–4951]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 23, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0332. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Humanitarian Use Devices—21 CFR part 814

OMB Control Number 0910–0332—Revision

This collection of information implements the humanitarian use devices (HUDs) provision of section 520(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(m)) and part 814, subpart H (21 CFR part 814, subpart H). Under section 520(m) of the FD&C Act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) is designed to treat or diagnose a disease or condition that affects no more than 8,000 individuals in the United States; (2) would not be available to a person with a disease or condition unless an exemption is granted and there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose such disease or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

Respondents may submit a humanitarian device exemption (HDE) application seeking exemption from the effectiveness requirements of sections 514 and 515 of the FD&C Act as authorized by section 520(m)(2) of the FD&C Act. The information collected will assist FDA in making determinations on the following: (1) whether to grant HUD designation of a medical device; (2) whether to exempt an HUD from the effectiveness requirements under sections 514 and 515 of the FD&C Act, provided that the device meets requirements set forth under section 520(m) of the FD&C Act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to determine whether the holder of an HUD is in compliance with the HUD provisions under section 520(m) of the FD&C Act.

HUDs approved under an HDE cannot be sold for an amount that exceeds the costs of research and development, fabrication, and distribution of the device (*i.e.,* for profit), except in narrow circumstances. Under section 520(m)(6)(A)(i) of the FD&C Act, an HUD approved under an HDE is eligible to be sold for profit if the device meets the following criteria: The device is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in a pediatric subpopulation in which the disease or condition occurs; or the device is intended for the treatment or diagnosis of a disease or condition that does not occur in pediatric patients, or that occurs in pediatric patients in such numbers that the development of the device for such patients is impossible, highly impracticable, or unsafe.

Section 520(m)(6)(A)(ii) of the FD&C Act, provides that the Secretary of Health and Human Services will determine the annual distribution number (ADN) for devices that meet the eligibility criteria to be permitted to be sold for profit. The Cures Act amended the FD&C Act definition of the ADN as the number of devices reasonably needed to treat, diagnose, or cure a population of 8,000 individuals in the United States.

Section 520(m)(6)(A)(iii) of the FD&C Act provides that an HDE holder immediately notify the Agency if the number of such devices distributed during any calendar year exceeds the ADN. Section 520(m)(6)(C) of the FD&C Act provides that an HDE holder may petition to modify the ADN if additional information arises.

In the **Federal Register** of April 7, 2022 (87 FR 20429), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section or FD&C Act section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Request for HUD designation—814.102	20	1	20	40	800
HDE Application—814.104	4	1	4	328	1,312
HDE Amendments and resubmitted HDEs—814.106	20	5	100	50	5,000
HDE Supplements—814.108	116	1	116	80	9,280
Notification of withdrawal of an HDE—814.116(e)(3)	2	1	2	1	2
Notification of withdrawal of institutional review board approval—814.124(b)	1	1	1	2	2
Periodic reports—814.126(b)(1)	50	1	50	120	6,000
Pediatric Subpopulation and Patient Information—515A(a)(2) of the FD&C Act (21 U.S.C. 360e–1(a)(2))	1	1	1	100	100
Exemption from Profit Prohibition Information—520(m)(6)(A)(i) and (ii) of the FD&C Act	1	1	1	50	50
Request for Determination of Eligibility Criteria—section 613(b) of the Food and Drug Administration Safety and Innovation Act	1	1	1	10	10
ADN Notification—520(m)(6)(A)(iii) of the FD&C Act	1	1	1	100	100
ADN Modification—520(m)(6)(C) of the FD&C Act	1	1	1	100	100
Total					22,756

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
HDE Records—814.126(b)(2)	62	1	62	2	124

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3.—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Notification of emergency use—814.124(a)	22	1	22	1	22

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an increase of 360 total burden hours and a corresponding increase of five total annual responses. For efficiency of Agency operations, we are consolidating the related information activity and account for burden associated with HDE regulations currently approved in OMB control number 0910–0661. As a result, there is an increase in the total number of burden hours for this information collection.

Dated: August 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18271 Filed 8–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0430]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for Quick Turnaround Testing of Communication Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 23, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0876. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Clearance for Quick Turnaround Testing of Communication Effectiveness

OMB Control Number 0910–0876—Extension

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. FSMA recognizes the important role consumers and stakeholders play in ensuring the safety of the food supply, which helps ensure that suppliers produce food that meets U.S. safety standards.

Occasionally, FDA will need to communicate with consumers and other stakeholders about immediate health issues that could affect public health and safety. This collection of information allows the use of fast-track methods of communication such as quick turnaround surveys, focus groups, and indepth interviews collected from consumers and other stakeholders to communicate FDA issues of immediate and important public health significance. We plan on using these methods of communication to collect vital public health and safety information.

For example, these methods of communication might be used when there is a foodborne illness outbreak, food recall, or other situation requiring expedited FDA food, dietary supplement, cosmetics, or animal food or feed communications. So that FDA may better protect the public health, the Agency needs quick turnaround information provided by this collection of information to help ensure its messaging has reached the target audience, has been effective, and, if needed, to update its communications during these events.

Respondents to this collection of information include a wide range of consumers and other FDA stakeholders such as producers and manufacturers of FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed. Participation will be voluntary.

In the **Federal Register** of April 18, 2022 (87 FR 22906), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although three comments were received, they were not responsive to the four collection of information topics solicited.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Survey type	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Indepth Interviews, Cognitive Interviews Screener	45	1	45	0.083 (5 minutes)	4
Indepth Interviews, Cognitive Interviews	9	1	9	1	9
Indepth Interviews Screener	900	1	900	0.083 (5 minutes)	75
Indepth Interviews	180	1	180	1	180
Survey Cognitive Interviews Screener	45	1	45	0.083 (5 minutes)	4
Survey Cognitive Interviews	9	1	9	1	9
Pretest Survey Screener	750	1	750	0.083 (5 minutes)	62
Pretest Survey	150	1	150	0.25 (15 minutes)	38
Self-Administered Surveys—Study Screener	75,000	1	75,000	0.083 (5 minutes)	6,225
Self-Administered Surveys	15,000	1	15,000	0.25 (15 minutes)	3,750
Focus Group/Small Group, Cognitive Groups Screener.	180	1	180	0.083 (5 minutes)	15
Focus Group/Small Group, Cognitive Groups	60	1	60	1.5 (90 minutes)	90
Focus Group/Small Group Participant Screening	720	1	720	0.083 (5 minutes)	60
Focus Group/Small Group Discussion	240	1	240	1.5 (90 minutes)	360
Total					10,881

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: August 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18265 Filed 8–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4188]

Tobacco Products: Principles for Designing and Conducting Tobacco Product Perception and Intention Studies; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry entitled ''Tobacco Products: Principles for Designing and Conducting Tobacco Product Perception and Intention Studies.'' The final guidance provides information intended to assist applicants design and conduct tobacco product perception and intention (TPPI) studies that may be submitted as part of a modified risk tobacco product application (MRTPA), a premarket tobacco product application (PMTA), or a substantial equivalence (SE) report. The final guidance discusses a variety of scientific issues applicants may want to consider as they design and conduct TPPI studies.

DATES: The announcement of the guidance is published in the **Federal Register** on August 24, 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–2019–D–4188 for ''Tobacco Products: Principles for Designing and Conducting Tobacco Product Perception and Intention Studies; Guidance for Industry; Availability.'' 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 Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Paul Hart, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Tobacco Products: Principles for Designing and Conducting Tobacco Product Perception and Intention Studies.''

The Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) and granted FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. The FD&C Act, as amended by the Tobacco Control Act, requires new tobacco products to undergo premarket review and receive an order from FDA before being introduced or delivered for introduction into interstate commerce. The FD&C Act establishes three pathways to market for new tobacco products:

- Submission of a PMTA under section 910(b) of the FD&C Act (21 U.S.C. 387j(b)) and receipt of a marketing order under section 910(c)(1)(A)(i) of the FD&C Act (21 U.S.C. 387j(c)(1)(A)(i)),
- Submission of a SE report under section 905(j)(1)(A) of the FD&C Act (21 U.S.C. 387e(j)(1)(A)) and receipt of an SE marketing order, or
- Submission of a request for an exemption from the requirements of demonstrating SE under section 905(j)(3) of the FD&C Act (21 U.S.C. 387e(j)(3)) and receipt of an exemption from FDA (implemented at § 1107.1 (21 CFR 1107.1)).

To introduce or deliver for introduction into interstate commerce a modified risk tobacco product, there must be in effect an order under section 911(g) of the FD&C Act (21 U.S.C. 387k(g)) and the applicant must satisfy any applicable premarket review requirements under section 910 of the FD&C Act.

The final guidance is intended to assist applicants design and conduct TPPI studies that may be submitted as part of an MRTPA, a PMTA, or a SE report. TPPI studies can help applicants demonstrate that their product meets the applicable premarket authorization standard. For example, TPPI studies can be used to assess, among other things, individuals' perceptions of tobacco products, understanding of tobacco product information, and intentions to use tobacco products. The final guidance is intended to address a variety of scientific issues applicants may consider as they design and conduct TPPI studies to support tobacco product applications.

A notice of availability for the draft guidance appeared in the **Federal Register** of October 28, 2020 (85 FR 68341). FDA considered comments received and revised the final guidance as appropriate in response to the comments. This included, for example, reorganizing the structure of the guidance to ensure the document is more user-friendly, defining additional terms to improve clarity, and providing additional information on various recommendations related to the development of TPPI studies.

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 designing and conducting tobacco product perception and intention studies, and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. This guidance provides non-binding recommendations on TPPI studies and does not establish requirements for submitting studies in support of an application. 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 § 1107.1(b) and (c) have been approved under OMB control number 0910–0684. The collections of information under section 910 of the FD&C Act have been approved under OMB control number 0910–0768. The collections of information under 21 CFR part 1114 have been approved under OMB control number 0910–0879. The collections of information in 21 CFR part 1107, subparts B through E, have been approved under OMB control number 0910–0673.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the guidance at *https://www.fda.gov/tobacco-products/products-guidance-regulations/rules-regulations-and-guidance, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18073 Filed 8–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Committee on Rural Health and Human Services (NACRHHS) has scheduled a public meeting. Information about NACRHHS and the agenda for this meeting is available on the NACRHHS website at: *https://www.hrsa.gov/advisory-committees/rural-health/index.html.*

DATES:

- Wednesday, September 14, 2022, 9:00 a.m.–5:00 p.m. Central Time (CT);
- Thursday, September 15, 2022, 9:00 a.m.–4:00 p.m. CT; and
- Friday, September 16, 2022, 9:00 a.m.–12:00 p.m. CT.

ADDRESSES: This meeting will be held at Spring Hill Suites, Naismith Ballroom, One Riverfront Plaza, Lawrence, Kansas 66044. On the morning of September 15, 2022, NACRHHS will break into subcommittees. One subcommittee will travel first to Midland Care Connection Inc. Emporia Program of All-inclusive Care for the Elderly (PACE) Center, 2720 W 15th Ave. Emporia, Kansas 66801 and then travel to Emporia State University, Union Building Room PKP, 1331 Market Street, Emporia, Kansas 66801. The other subcommittee will travel to Midland Care Connection Inc. Topeka PACE Center, 2134 SW Westport Drive, Topeka, Kansas 66614. In the afternoon, at approximately 3:00 p.m. CT., NACRHHS will reconvene at the Spring Hill Suites, Naismith Ballroom, One Riverfront Plaza, Lawrence, Kansas 66044.

On September 16, 2022, the address for the meeting is Spring Hill Suites, Naismith Ballroom, One Riverfront Plaza, Lawrence, Kansas 66044.

This meeting will also be held via webinar. This meeting is open to the public and can be joined by using these links:

Day One: Wednesday, September 14, 2022, 9:00 a.m.–5:00 p.m. CT: *https://us02web.zoom.us/j/84472628124?pwd=enYrTEx2Q1B0RmJhdzNGU0VuNkoxdz09.*

Day Two, Site Visit One: Midland Care Connection—Topeka, Kansas: Thursday, September 15, 2022, 10:45 a.m.–1:30 p.m. CT: *https://us02web.zoom.us/j/89607611954?pwd=TzBpOHhNTm5lY2JqZlY3WlpDS29aQT09.*

Day Two, Site Visit Two: Midland Care Connection—Emporia, Kansas: Thursday, September 15, 2022, 11:15 a.m.–1:30 p.m. CT: *https://us02web.zoom.us/j/87992931769?pwd=L00yMVJ3QXBnVmVHelBWTXFpaHBpZz09.*

Day Two, Full Committee meeting: Thursday, September 15, 2022, 3:00 p.m.–5:00 p.m. CT: *https://us02web.zoom.us/j/84472628124?pwd=enYrTEx2Q1B0RmJhdzNGU0VuNkoxdz09.*

Day Three: Friday, September 16, 2022, 9:00 a.m.–12:00 p.m. CT: *https://us02web.zoom.us/j/84472628124?pwd=enYrTEx2Q1B0RmJhdzNGU0VuNkoxdz09.*

FOR FURTHER INFORMATION CONTACT: Sahira Rafiullah, Chief Advisor at the Federal Office of Rural Health Policy, HRSA, 5600 Fishers Lane, 17W37, Rockville, Maryland 20857; 301–443–7095; or *srafiullah@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS provides advice and recommendations to the Secretary of Health and Human Services on policy, program development, and other matters of significance concerning both rural health and rural human services.

During the September 14–16, 2022 meeting, NACRHHS will discuss the provision of PACE in rural communities. Refer to the NACRHHS website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants wishing to provide oral comments must submit a written version of their statement at least 3 business days in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time permits. Public participants wishing to offer a written statement should send it to Sahira Rafiullah, using the contact information above, at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Sahira Rafiullah at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–18194 Filed 8–23–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel: Gene Regulatory Networks Mediating Alzheimer's Disease.

Date: September 13, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reymundo Dominguez, Ph.D., Scientific Review Branch NIA, BG GWY RM 2C230, 7201 Wisconsin Ave. Bethesda, MD 20814, (301) 555–1212 *rey.dominguez@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 19, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18297 Filed 8–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R13 Conference Grant Applications.

Date: September 29, 2022.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 19, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18300 Filed 8–23–22; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA/REAP: Infectious Diseases and Immunology.

Date: September 22, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dayadevi Balappa Jirage, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4422, Bethesda, MD 20892, (301) 867–5309, *jiragedb@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Informatics and Digital Health Study Section.

Date: September 29–30, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Paul Hewett-Marx, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room, Bethesda, MD 20892, (240) 672–8946, *hewettmarxpn@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: October 6–7, 2022.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW, Washington, DC 20037.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.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: August 18, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18191 Filed 8–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Study Section—B TWD–B review of T32 applications.

Date: October 11–12, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (301) 594–4859, *latarsha.carithers@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 18, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18192 Filed 8–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; T32/T35 Review Jan 2023 Council.

Date: October 13, 2022.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anita H. Undale, Ph.D., MD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827–7428, *anita.undale@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 18, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18193 Filed 8–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend in person as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should register at (*https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil/Registration*) in advance of the meeting so that the meeting organizers can plan accordingly.

The meeting will be videocast and can be accessed from the NIH Videocasting website (*https://videocast.nih.gov/watch=45767*).

Name of Committee: Center for Scientific Review Advisory Council.

Date: September 19, 2022.

Open: 10 a.m. to 4 p.m.

Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: National Institutes of Health, 6701 Rockledge Drive, Conference Rooms 260 C, D, E and F, Bethesda, MD 20892.

Contact Person: Bruce Reed, Ph.D., Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–9159, *reedbr@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* and the NIH testing and assessment web page at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/visitor-testing-requirement.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/.* Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx* and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx.*) Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee website listed below, for the most up-to-date guidance as the meeting date approaches.

Information is also available on the Institute's/Center's home page: *https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil,* where an agenda and any additional information for the meeting will be posted when available.

(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: August 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18262 Filed 8–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed 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 Center for Advancing Translational Sciences Special Emphasis Panel; Rare Disease Review.

Date: September 16, 2022.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of

Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jing Chen, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892, (301) 827–3268, *chenjing@mail.nih.gov*.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CCIA Review Meeting.

Date: September 20, 2022.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892, (301) 412–9752, *lourdes.ponce@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 18, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18216 Filed 8–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services (ACWS); Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on September 6, 2022. This notice may publish under the 15 days due to agency's unforeseen exceptional scheduling conflict.

The meeting will include discussions on assessing SAMHSA's current strategies, including the mental health and substance use needs of the women and girls population. Additionally, the ACWS will be addressing priorities regarding the impact of COVID–19 on the behavioral health needs of women and children and directions around behavioral health services and access for women and children.

The meeting is open to the public and will be held virtually. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person by September 1, 2022. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact person on or before September 1, 2022. Up to five minutes will be allotted for each presentation.

The meeting may be accessed via telephone or web meeting. To obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at: *https://snacregister.samhsa.gov* or communicate with SAMHSA's Designated Federal Officer, Ms. Valerie Kolick.

Substantive meeting information and a roster of ACWS members may be obtained either by accessing the SAMHSA Committees' Web *https://www.samhsa.gov/about-us/advisory-councils/meetings,* or by contacting Ms. Kolick.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services (ACWS).

Date/Time/Type: Tuesday, September 6, 2022, from: 1:00 p.m. to 4:30p.m. EDT (OPEN).

Place: SAMHSA, 5600 Fishers Lane, Rockville, MD 20857 (Virtual).

Contact: Valerie Kolick, Designated Federal Officer, SAMHSA's Advisory Committee for Women's Services, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (240) 276–1738, Email: *Valerie.kolick@samhsa.hhs.gov*.

Dated: August 19, 2022.

Carlos Castillo,

Capt, USPHS, Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2022–18236 Filed 8–23–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Notice of Revocation of Customs Brokers' Licenses

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Revocation of customs brokers' licenses.

SUMMARY: This document provides notice of the revocation by operation of law of customs brokers' licenses.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Branch Chief, Broker Management, Office of Trade, (202) 325–6986, *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs brokers' licenses were revoked by operation of law, without prejudice, for failure to file a triennial status report. A list of revoked customs brokers' licenses appears below with both the port, which issued the licenses, and the brokers' names within the port of issuance whose licenses were revoked, set forth alphabetically.

Last name/company name	First name	License	Port name
Johnston	Kathy M	20453	Anchorage.
Klein	Brenda	16428	Anchorage.
Mader	Mary L	14274	Anchorage.
Allardice	Tracy Tumlin	28429	Atlanta.
American Global Logistics		32153	Atlanta.
Bell	Mark E	12539	Atlanta.
Blanc	Evelyne	30706	Atlanta.
Blanks	Vincent Elliot	14816	Atlanta.
Boyd	Kathryn T	13387	Atlanta.
Broyhill	Eric	30594	Atlanta.
CDS Global Logistics—One, LLC		15473	Atlanta.
Connerly	Lori	16853	Atlanta.
Egan	Dennis Michael	11857	Atlanta.

Last name/company name	First name	License	Port name
Elle International		17244	Atlanta.
FML Customs Brokers		29827	Atlanta.
Global Trade Strategies		32349	Atlanta.
Gore	Barbara Ann	23612	Atlanta.
Gutierrez	Alvaro D	20427	Atlanta.
Hoerner	Joel	23507	Atlanta.
Johnson	William G	29328	Atlanta.
Judd	Vicki	22532	Atlanta.
McNeil	Eric	24159	Atlanta.
Micek	Chester J	20548	Atlanta.
Scan Global Logistics, Inc		20721	Atlanta.
Schultz	Jeffrey R	10390	Atlanta.
Shaukat	Wendy	22866	Atlanta.
Travis	Elissa B	06243	Atlanta.
UPS Trade Management Services		22343	Atlanta.
USA Customs Brokers		28465	Atlanta.
Bales	Amy Diane	16385	Baltimore.
Billings	Leanna	27441	Baltimore.
Bonhoff	Tina M	10985	Baltimore.
Bruno	Ann T	10526	Baltimore.
Burgard	Marc A	12272	Baltimore.
Cruz	Janine Sheryl	07466	Baltimore.
Customs & Trade Solutions, LLC		32375	Baltimore.
Galvin Customs Brokerage, LLC		30817	Baltimore.
Heather Caporrino LLC		32950	Baltimore.
Higinbothom	Jean C	09807	Baltimore.
Higinbothom	John D	09746	Baltimore.
Kang	Boramae	28251	Baltimore.
M. O'Sullivan Brokerage & Logistics, Inc		15438	Baltimore.
Marchman	Mark	30306	Baltimore.
Martin	Vernon R	09806	Baltimore.
Nelson	David A	07292	Baltimore.
Rothenberg	Robert Anthony	28370	Baltimore.
Shapiro	M. Sigmund	02355	Baltimore.
Van Dine	Denise J	13164	Baltimore.
Yin	Ling	21579	Baltimore.
Alajajian	Anna	4996	Boston.
Anemoduris	Debra	21884	Boston.
Broderick	Helen	12095	Boston.
Cady	Anthony	10172	Boston.
Carignan	Dennis	11426	Boston.
Corrado	Bernadette	23641	Boston.
Coyle	Christopher	12094	Boston.
Curley	Dawn	10102	Boston.
Dawe	Mary Beth	09898	Boston.
Edmonds	Alan	11367	Boston.
Gagnon	Denise	14774	Boston.
Hopping	Ronald	06479	Boston.
Katzman	David	04358	Boston.
Lawless	James	07655	Boston.
Leeney	Marilynn	09636	Boston.
Lippman	William	05538	Boston.
Madden	Brenda	06554	Boston.
Mallon	Alanna	20137	Boston.
Mallon	Julie	06214	Boston.
Mayzel	Richard	15803	Boston.
McGinty	Kevin	12640	Boston.
Miller	James	21669	Boston.
Parker	Donna	20799	Boston.
Pelletier	David	14046	Boston.
Powell	Brent	09255	Boston.
Powell	Charles	05279	Boston.
Sawyer	Angela	14206	Boston.
Sheehan	John	17150	Boston.
Sheldon	Timothy	11567	Boston.
Swenson	Elyce	09803	Boston.
Tobin	Jeannette	11568	Boston.
Abbott, Jr.	James H	06186	Buffalo.
Ameno	James C	09488	Buffalo.
Bardo	Cindi	31431	Buffalo.
Bundt	Nancy A	10326	Buffalo.
Burdick	Paul	28672	Buffalo.
Doran	Hilary	31662	Buffalo.
Doran	Sean	29547	Buffalo.

Last name/company name	First name	License	Port name
Dye	Lorene C	24079	Buffalo.
Heinonen	Debra K	20673	Buffalo.
Homokay	Gaynor S	06181	Buffalo.
Houle	Dawn M	13897	Buffalo.
Johansen	Linda M	20635	Buffalo.
Johnston	Heather	33507	Buffalo.
Liptak	Diane T	06815	Buffalo.
Maras	Kevin R	16429	Buffalo.
Moran	Mary Beth M	10323	Buffalo.
Morley	Alan	16667	Buffalo.
Nocera	Paul M	12407	Buffalo.
Riscili	Patricia	21505	Buffalo.
Scanlon	Patricia	29201	Buffalo.
Snodderly	Charles A	05651	Buffalo.
Taylor	Janet M	23190	Buffalo.
Toombs	Coleen M	16490	Buffalo.
Walters	Judith Ann	27493	Buffalo.
Witt	Douglas F	11672	Buffalo.
Zynda	Jennifer	23119	Buffalo.
Baker	Ann	20465	Champlain.
Brannen	Jason	28408	Champlain.
Facey	Thomas W	06039	Champlain.
Glaude	Tammy L	20464	Champlain.
Kavanaugh	Robert Wayne	04180	Champlain.
Leahy	Michael T	05387	Champlain.
Moore	Susan J	14416	Champlain.
Ogden	Kiley	31572	Champlain.
Paola	Rose	14492	Champlain.
Sterling	Linda	12284	Champlain.
Tremblay	Debra Ann	13914	Champlain.
Adamson	Jacqueline H. Hynes	10424	Charleston.
Alexander	Renee	10158	Charleston.
Amaro	Carolyn	17325	Charleston.
Anderson	Frances B	09196	Charleston.
Apter	Thomas David	12533	Charleston.
Avakian	Samuel George	14411	Charleston.
Bannish	Susan Elizabeth	16234	Charleston.
Barry	Andrea L	21237	Charleston.
Bishop	James Robert	10647	Charleston.
Blanks	Caroline Ruth	20797	Charleston.
Blatchford	Deborah Ann	13823	Charleston.
Boghani	Rikhav Bharat	27419	Charleston.
Brown	Michele E	17520	Charleston.
Cudworth	Jennifer S	30576	Charleston.
Daugherty	Lindsey	31252	Charleston.
Delgado-King	Wendy	30020	Charleston.
Diamond	Carol A	14342	Charleston.
Eagen	Anne Taylor Arnett	24252	Charleston.
Estes Air Forwarding, LLC		24229	Charleston.
Exline	H. Deborah	10556	Charleston.
Fosberry	Donald Eugene	10558	Charleston.
Fowler	Michael B	10560	Charleston.
Gilmore	Jeremy	31989	Charleston.
Hester	Tobe	29016	Charleston.
International Forwarders, Inc		02837	Charleston.
International Trade Consultants, Inc		21601	Charleston.
Lamb	Joseph Paul	29042	Charleston.
Llavore	Catherine Z	15294	Charleston.
Newman	Nancy C. Fabian	09682	Charleston.
Nichols	William R	10563	Charleston.
Philpott	Debra W	15157	Charleston.
Quick	Tracy Hannah	29144	Charleston.
Sauers	Tracy Evans	09604	Charleston.
Schuler	Sharon A	09169	Charleston.
Sparwasser	Roger Paul	15895	Charleston.
Spivey	Michael Hank	31296	Charleston.
Walsh-Pierpoint	M. Diane	23569	Charleston.
Williams	Emily Petrusa	28310	Charleston.
Willoughby	Susan	10567	Charleston.
Witte	Deborah S	09665	Charleston.
Allen	Robert S	15428	Charlotte.
Bennett Jr.	Samuel	6968	Charlotte.
Berryman	Diane	15000	Charlotte.
Bibey	Laura	16911	Charlotte.

Last name/company name	First name	License	Port name
Brewer	Grace	31833	Charlotte.
Curtis	Jim	22525	Charlotte.
Daybreak Logistics, Inc		22168	Charlotte.
Girvin	Lisa E	27674	Charlotte.
Halaz	Edward	20441	Charlotte.
Hammer	Bruce	15149	Charlotte.
Horne	Gary N	20331	Charlotte.
Howell	Jeffrey	34007	Charlotte.
Kotterer	Lisa T	14478	Charlotte.
Martin	Brady	21566	Charlotte.
Masten	Linda B	06481	Charlotte.
Mc Mahon	Katherine	14966	Charlotte.
Roberts	Gary Jerome	10166	Charlotte.
Stuckey	Joshua	31752	Charlotte.
Sutter	Theodore W	17287	Charlotte.
Thomas	Andrew	28907	Charlotte.
Zaun	Lisa M	28121	Charlotte.
Anderson	Catherine A	16013	Chicago.
Anderson	Laura C	16064	Chicago.
Barnard	Helen T	13787	Chicago.
Brancato	Matthew F	14029	Chicago.
Bruno	Angela J	11659	Chicago.
Ciaccio	Donna L	14565	Chicago.
Cole	Michelle M	10833	Chicago.
Collignon	Connie L	14566	Chicago.
Covemaker	Colleen	29545	Chicago.
Darrow	Jennifer S	23434	Chicago.
Domek	Edward J	4164	Chicago.
Dreger	Janice M	15343	Chicago.
English	Richard D	7539	Chicago.
Fee	Garnet J	22254	Chicago.
Fife	Nancy K	14897	Chicago.
Gallagher	James P	14587	Chicago.
Garand	Robert N	10737	Chicago.
Gaudi	Peggy R	23216	Chicago.
Gayheart	Henry	21466	Chicago.
Gensch	Catherine I	10875	Chicago.
Goodwin	Deboraha B	15314	Chicago.
Graf	Jeanne Marie	22183	Chicago.
Guarino	Candice M	23889	Chicago.
Hester	Kelly	14296	Chicago.
Hooper	Robert M	5127	Chicago.
Issa	Samar	14706	Chicago.
Lukas	Judith Ann	12214	Chicago.
Malina	David J	12827	Chicago.
McGuire	Michele E	16512	Chicago.
Mucha	Jeanette L	9748	Chicago.
Neubauer	Donald P	9078	Chicago.
Oh	Marshall	9971	Chicago.
Padavic	Joseph B	22814	Chicago.
Pierce	Janet S	14327	Chicago.
Rago	Elizabeth M	11587	Chicago.
Roll	Denise J	31285	Chicago.
Saving Shipping & Forwarding Usa, Inc		21808	Chicago.
Schillace	Anthony T	11270	Chicago.
Schulz	Emily Kathleen	29665	Chicago.
Schulz	Jeremiah Joseph	29384	Chicago.
Seely	Robert F	17013	Chicago.
Snodell	Kathleen	7567	Chicago.
Speer	Timothy P	24191	Chicago.
Strahl	Helen M	23888	Chicago.
Strategic Global Trade, Inc		31072	Chicago.
Sutton	Cheryl L	11418	Chicago.
Tarbell	Kathryn A	20690	Chicago.
Tarsa	Catherine A	22197	Chicago.
Tarte	Robert R	7052	Chicago.
Tayler	Robert M	16067	Chicago.
Verden	Ellen F	16454	Chicago.
Watkins	David S	22881	Chicago.
Woodfork	Ashley	32761	Chicago.
Zabka	Robert Allen	13092	Chicago.
Adams	Robert L	23918	Cleveland.
Apke	Kristina B	16557	Cleveland.
Beam	Michelle	23453	Cleveland.

Last name/company name	First name	License	Port name
Blakely	Saundra	20909	Cleveland.
Blum	Judith A	11054	Cleveland.
Boggs	Cynthia M	22128	Cleveland.
Boley	Connie Jean	21173	Cleveland.
Burroughs	Jacqueline L	20601	Cleveland.
Caro	Linda J	22415	Cleveland.
Coe	Betsie J	15871	Cleveland.
Cray	Laurence E	19654	Cleveland.
Frazier	Patricia	31249	Cleveland.
Gettelfinger	Anthony J	12431	Cleveland.
Green	Althea K	11112	Cleveland.
Horn	Michael L	17448	Cleveland.
Interchez Global Services, Inc		29723	Cleveland.
Kalvig	Douglas A	22440	Cleveland.
Keller	Mary E	09854	Cleveland.
Koropey	Oleh	21172	Cleveland.
Laughman	Heather L	13237	Cleveland.
Lietz	James H	17530	Cleveland.
Loszack	Cynthia	21549	Cleveland.
Matthews	Judy A	07402	Cleveland.
Mc Cray	Judith K	22723	Cleveland.
Mc Fadden	Jeffrey R	11614	Cleveland.
McClellan	Cassie Sharlene	29105	Cleveland.
Mitchell Jr.	Richard A	11052	Cleveland.
Montgomery	Samuel L	14527	Cleveland.
Muhlenkamp	Isaac B	28738	Cleveland.
Nield	Sherri L	23370	Cleveland.
Oyler	Karen M	23097	Cleveland.
Perin	Brooke Ellen	21311	Cleveland.
Resnick	Marc	32221	Cleveland.
Schiess	Paula	15028	Cleveland.
Schoerverth	Gayle	20229	Cleveland.
Sidoti	Capri M	22811	Cleveland.
Slepecky	Ruth A	27389	Cleveland.
Svendson	David A	13495	Cleveland.
Triplett	Brian	10148	Cleveland.
Tullio	Rennee De	22129	Cleveland.
Turner	Thomas J	15187	Cleveland.
Vaughn	Kay A	12208	Cleveland.
Voss	Thomas G	15648	Cleveland.
Wheeler	Martha J	15899	Cleveland.
Widlicka	Bruce A	21879	Cleveland.
Wolber	John C	27840	Cleveland.
Abbott	Charlotte T	09203	Dallas/Ft. Worth.
Cashion	Brenda M	27405	Dallas/Ft. Worth.
Caver	Joelle L	29136	Dallas/Ft. Worth.
Hendrick	Andrea K	15402	Dallas/Ft. Worth.
Hernandez Jr.	Silverio	05792	Dallas/Ft. Worth.
Kwok	Patricia L	16402	Dallas/Ft. Worth.
Laden	Michael D	06801	Dallas/Ft. Worth.
Martin	Thomas D	21969	Dallas/Ft. Worth.
Pushor	Kristen Ashley	33088	Dallas/Ft. Worth.
Renteria	Susan Christine	21180	Dallas/Ft. Worth.
Rindfuss	Robert McQueen	22386	Dallas/Ft. Worth.
Rush	Kendall	32040	Dallas/Ft. Worth.
Sartin	Monica D	22548	Dallas/Ft. Worth.
White	David L	20320	Dallas/Ft. Worth.
Wright	Royal Glen	23001	Dallas/Ft. Worth.
Berg	Donnell Elizabeth Stocker	14726	Detroit.
Bridenbaugh	Richard G	24371	Detroit.
Brosko	Collin	32952	Detroit.
Carnes	Carol A	11008	Detroit.
Cesarek	Ryan B	24231	Detroit.
Corby	Judith Ann	05139	Detroit.
Customs Services International, Ltd		10394	Detroit.
Davies	Lynne	20403	Detroit.
Free Trade Automation LLC		32244	Detroit.
Gavini	Anu	14977	Detroit.
Gilkerson	Vickie Sue	10227	Detroit.
Henderson	Harold J	05038	Detroit.
Hutchens	Eric	09964	Detroit.
Johnson	Carol	17292	Detroit.
Kavanaugh	Sara M	22535	Detroit.
Kramer	James Francis	03862	Detroit.

Last name/company name	First name	License	Port name
Krueger	Karl F	12435	Detroit.
Lafeve	Beth Ann	13409	Detroit.
Mabrey	Anthony	17270	Detroit.
Mathew	Melissa	23556	Detroit.
Maynard	Mary F	11026	Detroit.
McKissack	Julie Raye	16342	Detroit.
Meade	Richard William	04847	Detroit.
Meck International Trade Services, LLC		31865	Detroit.
Montroy	Jonalyn M	17382	Detroit.
Morrow	William A	17018	Detroit.
Moyer	Janis L	22628	Detroit.
Polturanus	James Anthony	09317	Detroit.
Rivard	Cindy J	13077	Detroit.
Salden	Nicolas S	32344	Detroit.
Scherbey	Nestor A	06071	Detroit.
Schmidt	Donna R	32555	Detroit.
Singular Tariff Solutions Ltd		29381	Detroit.
Smith	Kevin M	09772	Detroit.
Smith	Evan	12789	Detroit.
Stair	Gregory D	28027	Detroit.
Stark	Debrah	21208	Detroit.
Tanton	Jeffrey T	06541	Detroit.
Thomas-Mellema	Amy	17549	Detroit.
Upton	Christina Marie	07666	Detroit.
Villiard	Robert J	05281	Detroit.
Walter	Susan E	11678	Detroit.
Wilk	Gerald	09961	Detroit.
Willy	Sheryl J	21526	Detroit.
Zhong	Ling	20399	Detroit.
Aguayo	Sylvia E	29176	El Paso.
Alcantar	Richard	05469	El Paso.
AMA Freight USA, LLC		23377	El Paso.
Castorena	Sylvia C	15951	El Paso.
Eagen	Dinora	29854	El Paso.
Guerra	Sara M	16692	El Paso.
Mena	Antonia	21044	El Paso.
Miles	Rudolph Martin	04635	El Paso.
Moses	Kenneth P	15123	El Paso.
O'Quinn	Allen Neil	20901	El Paso.
Pond	Jared Farrell	30015	El Paso.
Schayer, III	Charles M	04544	El Paso.
Spears	Paul Gordon	11668	El Paso.
Trans-Expedite, Inc		23203	El Paso.
Valdez	Jose Maria	05761	El Paso.
Warren	Sara Veloz	13375	El Paso.
Amos	Debra Walke	13560	Great Falls.
Bridgeman	Michael R	28160	Great Falls.
Brodsho	Randall K	21604	Great Falls.
Denver Customs Brokerage, LLC		31154	Great Falls.
Fisher	Amy D	17318	Great Falls.
High Desert CHB, Inc		20270	Great Falls.
Jackson	Tanner Scott	32438	Great Falls.
Jesser	Samantha Jo	29003	Great Falls.
Kellerman	Charles	11647	Great Falls.
Kennedy	Donald James	07319	Great Falls.
Knight	Damon T	21007	Great Falls.
Ly	Dao	30402	Great Falls.
Norris	Jeffery Amos	28531	Great Falls.
Ohman	Benjamin	31871	Great Falls.
Oliver	Douglas H	22231	Great Falls.
Olsen	Kimber J	14815	Great Falls.
Reid	Rex Kyle	23161	Great Falls.
Rogers	Deborah A	14020	Great Falls.
Rogers	Robert Dean	11558	Great Falls.
Samsal	Randi	17563	Great Falls.
Schmude	Frederick E	20121	Great Falls.
Slaven	Kerry Michael	16980	Great Falls.
Stuart	Mary Jo	16391	Great Falls.
Sveum	Martin J	07318	Great Falls.
West	Louise Schiller	22693	Great Falls.
Zimmerman	Connie R	10895	Great Falls.
Alexander	Brenda J	9371	Houston.
Andre	Michael	30105	Houston.
Blasdel	Patricia	5625	Houston.

Last name/company name	First name	License	Port name
Boortz	Linda Demny	11240	Houston.
Brown	Aquanella J	9927	Houston.
Castaing	Richard W	11560	Houston.
Couts	Susan J	7551	Houston.
Doughty	Travis	16579	Houston.
Escobar	Lois	7329	Houston.
Fleetwood Shipping, Inc		9994	Houston.
Gregersen	Gerda	10970	Houston.
Hajovsky	Daphne	6700	Houston.
Holzheauser	Steven G	11694	Houston.
Huggard	Joseph M	23718	Houston.
Johnson	Sean Thomas	22624	Houston.
Lee, Jr	Herbert	16240	Houston.
Lewis	Nicole	29178	Houston.
Lindsay	John	15804	Houston.
Naujoks	Diane C	32903	Houston.
Osterland	Pamela J	9905	Houston.
Prasla	Arif Ali	32982	Houston.
Quality Customs Brokers, Inc		10464	Houston.
Ramos, Jr	Jose A	5284	Houston.
Reeder	Pamela P	9740	Houston.
Samson	Michael H	4350	Houston.
Shimada	Mitchell M	13770	Houston.
Skweres	Emily Sue	12385	Houston.
Sowda	Stephen A	15261	Houston.
Stanka	Jean	12120	Houston.
Vieira De Macedo	Felipe	33184	Houston.
Wick	Carl J	6036	Houston.
Wills	Marion	5121	Houston.
Wood	Ruby L	7050	Houston.
Ballard	Willison	12538	Laredo
Cowen	Thomas Anthony	09165	Laredo.
Craig	Robert E	12537	Laredo.
Garcia	Diana T	5306	Laredo.
Mc Keown	Jeanette M	12027	Laredo.
Mc Namara	James J	06984	Laredo.
Montes De Oca	Monica G	22409	Laredo.
Pena, III	Florencio	12287	Laredo.
Puente	Teresa M	11640	Laredo.
Ray	Audie E	06787	Laredo.
Roberson	Charles A	29597	Laredo.
Aspen	Linda Louise	13752	Los Angeles.
B. J. Customs Brokerage Co., Inc		13604	Los Angeles.
Boerner	Fredric Harold	22368	Los Angeles.
Boucher	Michael Louis	13307	Los Angeles.
Brown	Valerie Jean Abe	11778	Los Angeles.
Chen	Sunny	21409	Los Angeles.
Conant	Pyung Ok	29428	Los Angeles.
DeJarnett	Diane Marie	22526	Los Angeles.
Del Rio	Belinda M	09790	Los Angeles.
Edward P. Tallon Customs Brokers, Inc		22687	Los Angeles.
Feehan	Denis Owen	16935	Los Angeles.
Fernandes	Antonio Silvano	09823	Los Angeles.
Ferrari	Jane Sashpid	13249	Los Angeles.
Garcia	Richard Jose	07205	Los Angeles.
Hager	Donna Renee	09342	Los Angeles.
Hamanaka	Ken	03363	Los Angeles.
Han	Brian S	29838	Los Angeles.
Han	James	31417	Los Angeles.
Hoff	Christopher Eric	16333	Los Angeles.
Huerta	Heriberto	15552	Los Angeles.
Jiang	Jacy	22040	Los Angeles.
Jordan	David Frank	16529	Los Angeles.
Karimi	Ali	29939	Los Angeles.
Karrian	Vahe	17043	Los Angeles.
Kim	Alexander Buyong	29398	Los Angeles.
Kim	Andy Min	33308	Los Angeles.
Kim	Eric	33517	Los Angeles.
Krueger	Michael Rudolph	03555	Los Angeles.
Lam	Daisy Cuc	16161	Los Angeles.
Laurie	Jane E	11171	Los Angeles.
Lee	Nam Joo	09876	Los Angeles.
Low	Allan Terrence	09835	Los Angeles.
Luong	Brian Duc	17354	Los Angeles.

Last name/company name	First name	License	Port name
Luong	Jessica	22529	Los Angeles.
Ma	Anthony Hung Kay	13582	Los Angeles.
Mallard	Christine Lee	16929	Los Angeles.
Mc Clure-Lee	Lydia Ann	14850	Los Angeles.
Miller	Vivian Corinne	09393	Los Angeles.
Mitchell	Craig Alan	07444	Los Angeles.
Murray	Linda L	10634	Los Angeles.
Nakamura	Toshio	05964	Los Angeles.
Nimmo-Price	Elisabeth	07597	Los Angeles.
Palacios	Anatilde Carmen	06297	Los Angeles.
Petty	Cynthia	30500	Los Angeles.
Plazas	Carlos Edmundo	07881	Los Angeles.
Rathgeber	Carole L	22185	Los Angeles.
Reid	Paul Wesley	14297	Los Angeles.
Reiner	Janet S	08068	Los Angeles.
Sapida	Armorsito Canaon	11832	Los Angeles.
Shill	Joseph Gregory	09333	Los Angeles.
Snyder	Robert Alan	17086	Los Angeles.
Tallon	Edward Paul	06618	Los Angeles.
Tang	James Bing Jarm	05939	Los Angeles.
Tubbs	George Allen	13950	Los Angeles.
Turk	Carrie Margaret	16502	Los Angeles.
Wagner	Wayne	23005	Los Angeles.
Weaver	Richard Roy	07618	Los Angeles.
Yi	Song Han	28004	Los Angeles.
Hopper	Jonathan	28971	Memphis.
Kay	Karen	30626	Memphis.
Roye	Vicki	20281	Memphis.
Shelton	John	31084	Memphis.
A2Z Logistics, Corp		33091	Miami.
Abello-Rivera	Aileen	32455	Miami.
Absolute Freight Services, Inc		16711	Miami.
Acevedo	Edwin	10066	Miami.
Action Brokerage Corporation		21815	Miami.
Aircargo Brokerage Co		4369	Miami.
All World Inc		14581	Miami.
Amor	David	14679	Miami.
Aveille	Michael	7120	Miami.
Batalini	Maria L	16992	Miami.
Borrelli	Carmela M	12796	Miami.
Briggs, Jr	Robert Edson	24164	Miami.
Carrillo	Maria Belen	23878	Miami.
Chadwick	James R	15632	Miami.
Contreras	David	15685	Miami.
Cook	Travis T. Maclean	28534	Miami.
Cross	Jeffery Carlton	15362	Miami.
Cruz	Robert	20092	Miami.
Danesi Customs Brokers, LLC		27685	Miami.
Diamond Customs Brokers, Inc		31880	Miami.
Dolphin Brokerage International Inc		12033	Miami.
Echevarria	Gonzalo Miguel	23430	Miami.
Estevez	Edward	16279	Miami.
Express Brokers, Inc		20706	Miami.
Fast Global Logistics, Inc		14493	Miami.
Francisco	Carlos A	22011	Miami.
Garrido	Consuelo	7547	Miami.
Gil	Francisco J	5640	Miami.
Gonzalez	Robert	24098	Miami.
Hernandez	Abby	33407	Miami.
Hernandez	Christopher Andre	33735	Miami.
Hernandez	Jorge M	5444	Miami.
Herrick	Kathy M	16778	Miami.
ILS Cargo Corp		29323	Miami.
Karakaeva	Maya	30893	Miami.
Keightley	Michael	14266	Miami.
Kennedy-Erb	Sandra Lynn	14175	Miami.
Knowles	John A	4413	Miami.
Kuepker	David G	4148	Miami.
Leon	Emilio P	7570	Miami.
Lewin Logistics, Inc		23438	Miami.
Liu	Alice	20216	Miami.
Llach	Henry	20384	Miami.
Logan	Janet L	21124	Miami.
Lopez	Alexander Joseph	31310	Miami.

Last name/company name	First name	License	Port name
M & H Brokerage, Inc		03723	Miami.
M.I.A.O.K. CHB Inc		33081	Miami.
Manaco International Forwarders, Inc		31899	Miami.
Mejia	Ricardo A	29763	Miami.
Menezes	Rodger Albert	10755	Miami.
Neutralogistics Customs Brokerage, LLC		27637	Miami.
Nistal	Salvador	4329	Miami.
Nordlund	Marie-Claire	15417	Miami.
Olaechea	Brenda M	15517	Miami.
Paula	Laura	21123	Miami.
Perez	Clara Helena	16742	Miami.
Perris	Carmela Eva	14174	Miami.
Pignato	Damiano J	15604	Miami.
Posada	Freda Lori	15635	Miami.
Propsom	Jason John	16803	Miami.
Puga	Carmen E	7267	Miami.
Quintero	Vivian	15447	Miami.
Randall	James David	12816	Miami.
Randazzo	Marc Allen	20742	Miami.
Redlhammer	Albert J	11358	Miami.
Regan	Michael	12440	Miami.
Ricotti	Ricardo Alberto	9858	Miami.
Ripoll	Francisco M	17458	Miami.
Roberts	Penny L	15762	Miami.
Rodriguez	Alberto	16425	Miami.
Rodriguez	Jose A	20509	Miami.
Rodriguez	Roman	4044	Miami.
Schreier	Susann Elaine	16809	Miami.
Siddiqui	Catherine S	27746	Miami.
Silvers	Barry A	4803	Miami.
Smith	Clive	20385	Miami.
Soll	Martin A	11059	Miami.
Soto	Luis A	15565	Miami.
Swift Customs House Brokers LLC		28023	Miami.
Thorin	Juan Felipe	22157	Miami.
Torre-Verdejo	Jorge Luis	5060	Miami.
Torres	Harry M	20213	Miami.
Valdes	Rodolfo	21101	Miami.
Valle	Leylania Del	15687	Miami.
Windstar Customs Brokers, Inc		22818	Miami.
Borges	Elisio F	31771	Milwaukee.
Guevara	Marcos E	31798	Milwaukee.
Hubbard	Paula J	15304	Milwaukee.
Levin	Tague	30234	Milwaukee.
O'Brien	Dennis J	21100	Milwaukee.
Spreeman	Beverly J	29974	Milwaukee.
Boetcher	Marly C	22546	Minneapolis.
Christensen	Paige J	13482	Minneapolis.
DeSalvo	Serge R	10794	Minneapolis.
Dumer	Michael L	23130	Minneapolis.
Eckman	Jennifer	30002	Minneapolis.
Frank	Kathleen H	12143	Minneapolis.
Heie	Mary B	12371	Minneapolis.
Hopkins	Kami	31101	Minneapolis.
Houska	Robert T	03133	Minneapolis.
Kittell	Patricia J	16879	Minneapolis.
Ritchie	Bonnie L	10161	Minneapolis.
Scott	Kathryn	30619	Minneapolis.
Thompson	Sherry L	15353	Minneapolis.
Tierney	Michael R	31698	Minneapolis.
Westberg	John	28909	Minneapolis.
Carrol	John	19707	Mobile.
Emerson	Cathryn	17099	Mobile.
Navarra	Charles	31728	Mobile.
Aufdenkamp	Brett	20782	New Orleans.
Banks	Natasha	22758	New Orleans.
Callonas	Michael	21697	New Orleans.
Foster	Sherry	15063	New Orleans.
Holder	David	21472	New Orleans.
Kiang	Kyle	22238	New Orleans.
Legins	Kenneth	21834	New Orleans.
McDowell	Debra	21748	New Orleans.
Perez	Silvia M	11234	New Orleans.
Russell	Marsha	10196	New Orleans.

Last name/company name	First name	License	Port name
Solis	Marco	17306	New Orleans.
Walker	Robert	21002	New Orleans.
Wilbourn	Brooks	16523	New Orleans.
Williams	Sarah	24235	New Orleans.
Abrams	Paul J	23306	New York.
Aldamuy	Cheyenne	05857	New York.
ALLCustoms, Inc		27474	New York.
Anderson	Raymond E	06860	New York.
Andreyev	Naran L	13407	New York.
Associated Global Systems, Inc		27451	New York.
Aulbach	Karen	20741	New York.
Baker	Lawrence	07461	New York.
Bates	James R	07055	New York.
Baumgartner	Benjamin W	32874	New York.
Bekker	Yelena	28181	New York.
Belekis	Donna	09149	New York.
Blasucci	Maureen	09321	New York.
Blue Water Shipping U.S., Inc		30989	New York.
Bonatesta	Anthony J	04019	New York.
Bosseckert	Nancy L	07913	New York.
Boyd	Lawrence A	05762	New York.
Britton	Patricia Johnson	07769	New York.
Buscemi	John T	27991	New York.
Byrne	Susan	20107	New York.
Caldera	Michael A	17400	New York.
Catalfamo	Philip M	17133	New York.
Cesare	Flavia	12509	New York.
CFF World Freight Corp		17259	New York.
Cha	Christopher Y	13320	New York.
Chen	Kayla	28529	New York.
Chin	Donald K	13003	New York.
Choo	Patricia M	10622	New York.
Chou-Wong	Ming Chu	24089	New York.
Cline	James A	09945	New York.
Colon	Jordan	32257	New York.
Comisar	Marlene S	20311	New York.
Conte	Joseph A	08061	New York.
Cordano	Thomas	05509	New York.
Cretella	Regina	07222	New York.
Crowe	Laura Diane	16062	New York.
Curran	James E	10118	New York.
Darnowski	Richard	07450	New York.
De Gouveia	George A	06861	New York.
Dhara	Doenarine	16244	New York.
Diaz	Irene D	20977	New York.
DiMarco	William R	05211	New York.
Ditkowsky	Joel	07840	New York.
Donahue	Martin	09144	New York.
Farella	Steven F	10232	New York.
Ferreira	George	04487	New York.
Firriolo	Anthony S	03369	New York.
Gabbert	Charles A	16435	New York.
Gabelman	William E	07112	New York.
Galligan	Kevin	27769	New York.
Gebbie	John W	05406	New York.
Genghis Khan Freight Service, Inc		07370	New York.
Gonzalez	Edward	13879	New York.
Gorgone	Joseph	09713	New York.
Greco	Thomas R	09311	New York.
Greenlee	Andrew	29944	New York.
Guglielmo	Augustine	05244	New York.
Guluzzi	Michael	06933	New York.
Gunnerson	Adam	32138	New York.
Hanifin	Jerome L	17449	New York.
Hansson	Donald A	10772	New York.
Hardy	Robert W	11294	New York.
Hauser	Stewart B	03878	New York.
Ho	Antony Kin Kei	21875	New York.
Ho	Jacky Zhaojie	28070	New York.
Hotaling	John P	10764	New York.
Huang	Michael Shuen	31554	New York.
Hubers	John H	10704	New York.
Kaszubski	Louis A	14447	New York.
Kayal	Kenneth	21759	New York.

Last name/company name	First name	License	Port name
Kelly	Edward	22329	New York.
Kim	Chae Jung	09646	New York.
Knipper	Esta	13892	New York.
Kreps	Carol L	11445	New York.
Kukanza	Thomas	33615	New York.
Kwon	Samuel	30095	New York.
Lambert	Steven	07485	New York.
Landau	Yolanda	05634	New York.
Lee	William Jeong Do	28607	New York.
Leimgruber	Rolf	13465	New York.
Lewin	Kirk E	22463	New York.
Li	Levi	29213	New York.
Li	Linda	32876	New York.
Lian	Minqi	31005	New York.
Lim	Steve S	14636	New York.
Lin	Patrick	29101	New York.
Liu	Yinan	29569	New York.
Lombardi	Carmela	21908	New York.
M. W. Customs, Inc		05323	New York.
Mahler	Marilyn	12052	New York.
Maloney	James J	04830	New York.
Manuelian	George	05969	New York.
Mastrandrea-DeMatteis	Susan J	12820	New York.
McCarthy	Francis M	04420	New York.
McCarty	John T	03987	New York.
McCullough	Michael J	16436	New York.
McGeary	Thomas	06303	New York.
McTigue	Mary M	13404	New York.
Mejia-Gallardo	Armando	33392	New York.
Mercer	Michael J	06955	New York.
Miao	Yin Ho	28216	New York.
Mikell	Brenda J	24058	New York.
Minior	Christine	07844	New York.
Moore	Barbara J	09720	New York.
Navedo Salas	Rafael M	16721	New York.
NCHB Corporation		23100	New York.
Ng	Vicki	31343	New York.
Noriega	Gisela	13953	New York.
O'Donnell	Dennis	06075	New York.
O'Keefe	William M	07857	New York.
Olsen Jr	Stewart H	06678	New York.
Onpoint International, LLC		30818	New York.
O'Rourke	William J	16615	New York.
Palaganas	Arnaldo	15622	New York.
Panetta	Gladys S	14021	New York.
Papa	Angelo	11406	New York.
Pellino	Joseph	07125	New York.
Petrosini	Daniel	06195	New York.
Pontieri	Samuel	05099	New York.
Powell	Andrew F	10707	New York.
Pozo	Juan Del	06026	New York.
Pratt & Lee International LLC		31759	New York.
Priority Air Freight N.Y., Ltd		14045	New York.
Quadrino	Sue	06025	New York.
Quigley	Christine T	16128	New York.
Quinones	Miriam M	07367	New York.
Rea	Michael	09585	New York.
Ren	Meifei	29365	New York.
Resetar	Robert	15265	New York.
Right Way Logistics, Corp		29927	New York.
Rivera	Fernando	04978	New York.
Rossetti	Susan	08087	New York.
Royal CHB Corp		21364	New York.
Rudkoski	Donna	09883	New York.
Russell	Michael E	22702	New York.
Schepacarter	Florian	11302	New York.
Scherer	Michael J	16371	New York.
Scotti	Michael D	07223	New York.
Seredinsky	Richard W	06870	New York.
Singh	Harjinder P	07196	New York.
Smith	Jacqueline J	11014	New York.
Sodano	Robert	10850	New York.
Stein	Arthur	12045	New York.
Stern	Peter J	08081	New York.

Last name/company name	First name	License	Port name
Stile	Salvatore J	03762	New York.
Tang	Raoxu	33708	New York.
Todaro	Biagio	07228	New York.
Total Port Clearance, Inc		08062	New York.
Vatier	Barbara E	07138	New York.
Verrall Jr	Robert	09676	New York.
Villena	Bert F	12583	New York.
Vitale	Benjamin	12030	New York.
Wang	Ray	33277	New York.
Wayser	Jack	10348	New York.
Weidgans	Hannelore J	10610	New York.
Wells	John	13795	New York.
Whisler	Jonelle M	14723	New York.
Wood	Peter Teh-Hui	10198	New York.
Wu	Yongpeng	31372	New York.
Yamcek	Peter C	03704	New York.
Yang	Wei	28898	New York.
Yeung	Sarah	07939	New York.
Yin	Minjuan	33659	New York.
Ying	Justin	33258	New York.
Zhu	Zhiyuan	23206	New York.
DeFazio	Arthur F	23378	Nogales.
Elite Logistics Inc		30445	Nogales.
Ibanez	Juan	29305	Nogales.
Ivins	Edward G	13420	Nogales.
Lilly	Bryan	13064	Nogales.
Mier	Sergio	31600	Nogales.
Allen	Denise Roxanne	21662	Norfolk.
Bartz	Barbara Ann	15822	Norfolk.
Bond	Christina P	07722	Norfolk.
Forehand	Carroll Lee	13060	Norfolk.
Lanari	Sally J	15194	Norfolk.
Lennarz	Alison V	23208	Norfolk.
Mawyer	Erin Nicole	29202	Norfolk.
Murphy	Michael J	05266	Norfolk.
Myrick	Alton Wayne	06213	Norfolk.
U.S. Entre, Ltd		27945	Norfolk.
Williams	Roger A	07724	Norfolk.
Witt	Anne Lane	22930	Norfolk.
Burow	Glenn R	13994	Otay Mesa.
Cap Customhouse Broker, Inc		23814	Otay Mesa.
Cho	Keith	28511	Otay Mesa.
Cindrich	Michael E	28930	Otay Mesa.
Crockett	Mary Milinda	12762	Otay Mesa.
Gonzalez	Andrea Victoria	30865	Otay Mesa.
Gretencord	Georgann	06818	Otay Mesa.
Kruse	Loretta May	11334	Otay Mesa.
Lasalle	Dan A	07660	Otay Mesa.
Lewis	Myrna	09563	Otay Mesa.
Makey	Laura Martin	14055	Otay Mesa.
Nakai-Lee	Keiko	28313	Otay Mesa.
Neal Jr	Ronald A	07428	Otay Mesa.
Pettengil	Linda K	17122	Otay Mesa.
Ponsar	David Brian	12835	Otay Mesa.
Premier Customhouse Brokers, Inc		30010	Otay Mesa.
Rodriguez	Manuel	11438	Otay Mesa.
Slipek	Thomas J	16743	Otay Mesa.
Worldtrans Customs Brokers, Inc		31628	Otay Mesa.
Burau	Laura	21591	Pembina.
Napper	Susan M	23519	Pembina.
Olson	Martha R	11576	Pembina.
5K Logistics		27977	Philadelphia.
Bennett	David A	06631	Philadelphia.
Bolalek	Philip J	21312	Philadelphia.
Cardinal Trade Associates		31239	Philadelphia.
Cargo Express		20105	Philadelphia.
Ciaccio	Nicholas Antonio	04719	Philadelphia.
Corsi	Linda M	21773	Philadelphia.
Dostmann	Sharon M	12809	Philadelphia.
EPC Logistics		31469	Philadelphia.
Francis	Mary Lou	09690	Philadelphia.
Gray	Maureen E	11682	Philadelphia.
Grebe	James J	07962	Philadelphia.
Harris	Ryan M	30575	Philadelphia.

Last name/company name	First name	License	Port name
International Trade & Logistics Management		24016	Philadelphia.
Johnson	Edward	07792	Philadelphia.
Krohn	Risa Lauren	21495	Philadelphia.
Mc Glinchey	Patrick Thomas	06821	Philadelphia.
Morawski	Alfred S	11876	Philadelphia.
Nolan	John P	07285	Philadelphia.
Pickering	Edward H	07195	Philadelphia.
Rittersbacher	Michael	12802	Philadelphia.
Stucky	Max L	17480	Philadelphia.
Sumetskaya	Natalia	27756	Philadelphia.
Sweeney	Maryanne	16445	Philadelphia.
Tavella	Steven	09743	Philadelphia.
Teti	John S	11684	Philadelphia.
Walker	Shirley A	17176	Philadelphia.
Barry	Nancy E	07896	Portland, ME.
Chartier	Billie	28550	Portland, ME.
Anderson	Susan L	22631	Portland, OR.
Andrist	Leora Catherine	05079	Portland, OR.
Coleman Haggin Brokerage Inc		30537	Portland, OR.
Corey	Charles A	14541	Portland, OR.
Curtin	Charles	28332	Portland, OR.
Grader	Nancy	14730	Portland, OR.
Hazen	David	30338	Portland, OR.
Miller	Linda S	16901	Portland, OR.
Patrick	Donald L	03511	Portland, OR.
Smith	Kathryn Marie	17026	Portland, OR.
Twite	Gary A	05588	Portland, OR.
Wanless	Deborah L	21738	Portland, OR.
Williams	Nicole	23994	Portland, OR.
Wolfer	Dale E	05072	Portland, OR.
Yacob	Betsy A	16665	Portland, OR.
Boornazian	Gladys	10431	Providence.
Canning	Brent	30689	Providence.
Hundertmark	Diane Catherine	7010	Providence.
Oakley	Anne M	15599	Providence.
Sierra	Therese	14119	Providence.
Barczay	George T	5305	San Francisco.
Behr	Rosalie G	17254	San Francisco.
Boos	Andrea L	13542	San Francisco.
Brown	Vanessa	32319	San Francisco.
Cho	Esther	29608	San Francisco.
Cordry	Mindy	14069	San Francisco.
Crane	Gabriel S	33314	San Francisco.
D.F.M. International, Inc		9770	San Francisco.
Dell	Karen L	17120	San Francisco.
Do	Toan T	32490	San Francisco.
Flaherty	Robin K	20958	San Francisco.
Fleming	Jody L	16694	San Francisco.
Ghiorzoe	James E	14720	San Francisco.
Gleason	Susan H	6449	San Francisco.
Godfrey	Timothy M	12139	San Francisco.
Greenwood	Casey	22616	San Francisco.
Harper, Jr.	Lew H	5161	San Francisco.
Hashimoto	Ken E	7073	San Francisco.
Jarvis	Jan Franck	22407	San Francisco.
Kelly	Kelley M	9655	San Francisco.
Kelly	Timothy E	13011	San Francisco.
Kota	Shyam K	33331	San Francisco.
Kott	Jennifer V. E	30885	San Francisco.
Kwuan	Edward C	29022	San Francisco.
La Tinis	Karen L	21617	San Francisco.
Lee	Elseala	11454	San Francisco.
Leitner	John A	5301	San Francisco.
Liu	Min	23164	San Francisco.
Luy	Felix T	14716	San Francisco.
Mitchell	Patrick M	29935	San Francisco.
Nguyen	Huy	29341	San Francisco.
Novo Customs And Logistics LLC		28384	San Francisco.
Padilla	Grace	23000	San Francisco.
Parkinson	Jalyn R	23948	San Francisco.
Pepper	Scott B	20161	San Francisco.
Piskin	Evren	33044	San Francisco.
Prime Freight Forwarders, Inc		22055	San Francisco.
Robison	Joel V	13120	San Francisco.

Last name/company name	First name	License	Port name
Runner	Kathy A	11409	San Francisco.
Scott Jr	Edmund N	5849	San Francisco.
Spenta	Porus	29921	San Francisco.
Steinbock	Eric A	11137	San Francisco.
Swanson	Sandra	5918	San Francisco.
Syrova	Ursula Ingalls	16353	San Francisco.
Tam	Kelly	12409	San Francisco.
Van Den Broeke	Donna M	17473	San Francisco.
Vavao	Mildred L	16961	San Francisco.
Zhang	Suping H	16649	San Francisco.
Ackerman	Nancy O	21774	Savannah.
Appel-Revoir Incorporated		22070	Savannah.
Bill Fitch International		14252	Savannah.
Carlander	David Hall	16056	Savannah.
Erkus	Charles	09405	Savannah.
Fitch	Diane H	09621	Savannah.
Lapinski	Lisa	15129	Savannah.
Mills	Betty Rogers	07677	Savannah.
Mitchell	Louis J	14530	Savannah.
Nebel	Nancy L	15557	Savannah.
Neil	Arthur G	15556	Savannah.
Nelson	Deborah Holton	10947	Savannah.
Pellino	Lawrence A	12607	Savannah.
Peterson	Kay J	10927	Savannah.
Randolph	Debra G	14859	Savannah.
Simpson	Richard H	05919	Savannah.
Sloan	Rebecca D	14131	Savannah.
Stepka International		15039	Savannah.
Stokes	Candace Rast	14453	Savannah.
Wall	Tammy G	14125	Savannah.
White	David H	13903	Savannah.
Worster	Erich C	13608	Savannah.
Yu	Helena Chiasian	16153	Savannah.
Anderson	Kelsey	23883	Seattle.
Brown	Sandra J	09440	Seattle.
Cadigan	Jessica	28260	Seattle.
Cornett Jr	Robert A	06685	Seattle.
Forbes	Shelley W	22083	Seattle.
Forman	Ruth L	15376	Seattle.
Gill	Brian D	06513	Seattle.
Gliva	Thomas F	23334	Seattle.
Gouker	Leslie M	11332	Seattle.
Gwin	Billy J	06002	Seattle.
Gwin Customs Consulting, Inc		23512	Seattle.
Hernandez	Emily	33237	Seattle.
Iverson	Robin D	09731	Seattle.
Jensen	Jerald A	30694	Seattle.
Kuiper	Christine M	15465	Seattle.
Law	Robert A	23038	Seattle.
Leary	John Kelly	07917	Seattle.
Lee	Rahn B	32280	Seattle.
Lorentz	Li-Ching H	09000	Seattle.
Madlen	Donna K	15901	Seattle.
Morts	Denise	21668	Seattle.
Nakamoto	Richard M	09142	Seattle.
Nieswandt	Marcella Helena	14975	Seattle.
Osborne	Crystal L	07014	Seattle.
Rane	Jonna	21869	Seattle.
Rice	Roslyn	20060	Seattle.
Robinson	Emily G	32318	Seattle.
Summers	Joanne M	08036	Seattle.
Swett	Douglas A	06223	Seattle.
Swinburnson	Cory M	07245	Seattle.
Thorsteinson	Benjamin S	07053	Seattle.
Tust	Carl J	17050	Seattle.
Tuvey	Amy B	13455	Seattle.
Whitson	John	28779	Seattle.
Wild	Joanne	21938	Seattle.
Wolf	Henry H	20796	Seattle.
Randall	Anne	20693	St. Albans.
Tessier	Donald	12516	St. Albans.
Cook	Judy L	4926	St. Louis.
Cybulski	Sarah E	17231	St. Louis.
Ellgen	Eric J	17010	St. Louis.

Last name/company name	First name	License	Port name
Held And Associates, Inc		7409	St. Louis.
Johnson	Nicholas	33598	St. Louis.
Jung	Nicholas	31410	St. Louis.
Lainfiesta	Mario	28726	St. Louis.
Lange	Steven	27754	St. Louis.
Money	Steven	16246	St. Louis.
O'Ryan	Cindy M	23939	St. Louis.
Wooderson	Jeryl A	31398	St. Louis.
Cline, II	Walter M	07890	Tampa.
Groppe	Robert G	15013	Tampa.
Huck	Barbara E	28949	Tampa.
Polotto	Florence Blanche	15033	Tampa.
Pomerantz	Susan M	07728	Tampa.
Redden	James Hale	15364	Tampa.
Reedy Forwarding Co		03169	Tampa.
Sedar	Michael	21294	Tampa.
Shiffer	Suzanne Y	13762	Tampa.
Valdivia	Jeannette T	06053	Tampa.
Van Brackle	Steven L	16771	Tampa.
Von Keyserling	Michael	33019	Tampa.
Waters	Betty J	07729	Tampa.
Cawley	Stephen	9299	Washington, DC.
Cosimano	G.	4726	Washington, DC.
Crain	Roger	11440	Washington, DC.
Genesis Forwarding Serv. Inc		20610	Washington, DC.
Harmonized Tariff Services LLC		27856	Washington, DC.
Henderson	Frances	16562	Washington, DC.
Kemper	Matthew	28177	Washington, DC.
Owens	Cheryl	15208	Washington, DC.
Perricone	Christopher	28117	Washington, DC.

Dated: August 18, 2022.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2022–18213 Filed 8–23–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Transition of the Electronic Certification System (eCERT) to an Updated Version (eCERT 2.0)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces the transition of the Electronic Certification System (eCERT) to an updated version, eCERT 2.0, which will become the sole method for participating in the eCERT process. The updated version includes three new features that will enhance the existing system by implementing additional validations that verify the authorized use of quota certificates. The use of eCERT 2.0 will allow for the decrementing of quota certificates to prevent those certificates from being overused. Participating countries will have enhanced querying capabilities to query and track actual certificate usage. Additionally, importers will be able to query their usage of the quota certificates via the Automated Broker Interface. In order to participate in eCERT 2.0, importers must provide the participating country with the Importer of Record (IOR) number in advance of filing an entry, and, in turn, the participating country must submit the IOR number as an additional data element of information within the transmission for eCERT 2.0. The transition to eCERT 2.0 will not change the tariff-rate quota or tariff preference level filing process or requirements. Importers will continue to provide the export certificate or certificate of eligibility numbers from the participating countries in the same manner as when currently filing entry summaries with U.S. Customs and Border Protection. The format of the export certificate and certificate of eligibility numbers will remain the same for the corresponding eCERT transmissions.

DATES: The transition to eCERT 2.0 will be operational as of September 25, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Chief, Quota and Agriculture Branch, Trade Policy and Programs, Office of Trade, (202) 384–8905, or *HQQUOTA@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Electronic Certification System (eCERT) is a system developed by U.S. Customs and Border Protection (CBP) that uses electronic data transmissions of information normally associated with a required export document, such as a license or certificate, to facilitate the administration of quotas and ensure that the proper restraint levels are charged without being exceeded. Foreign countries participating in eCERT transmit information directly or via a global network service provider to CBP's automated electronic system for commercial trade processing, the Automated Commercial Environment (ACE).

Specific data elements are transmitted to CBP by the importer of record (or an authorized customs broker) when filing an entry summary with CBP, and those data elements must match eCERT data from the foreign country before an importer may claim any applicable in-quota tariff rate of duty or the preferential duty rate under a tariff preference level (TPL). An importer may claim an in-quota tariff rate or preferential duty rate when merchandise is entered, or withdrawn from warehouse, for consumption, only if the information transmitted by the importer matches the information transmitted by the foreign government. If there is no transmission by the foreign

government upon entry, an importer must claim the higher over-quota tariff rate or most-favored nation (MFN) rate of duty.[1] An importer may subsequently claim the in-quota tariff rate [2] or preferential duty rate [3] under certain limited conditions.

Currently, Australia, Uruguay, New Zealand, and Argentina are approved for the use of eCERT for transmitting export certificates for certain beef entries subject to the tariff-rate quota.[4] Additionally, Mexico is approved for the use of eCERT for transmitting certificates of eligibility for certain textile and apparel goods that are eligible for preferential treatment under a TPL.[5]

This document announces that the transition of eCERT to eCERT 2.0 will be operational as of September 25, 2022, and eCERT 2.0 will become the sole method for participating in the eCERT process at that time. As of that date, the below-mentioned enhancements will become operational for the transmission of export certificates for certain beef entries from Australia, Uruguay, New Zealand and Argentina, and for the transmission of certificates of eligibility for certain textile and apparel goods from Mexico.

The updated system will include three new features that will enhance the existing eCERT system by implementing additional validations that verify the authorized use of quota certificates. One of the enhancements will allow the eCERT system to decrement the usage of quota certificates and prevent those certificates from being overused, and thus, provide CBP with better and more easily available awareness of the certificate usage. Secondly, participating countries will have enhanced querying capabilities to query and track actual certificate usage in eCERT 2.0. The third enhancement will be a new Automated Broker Interface (ABI) query which will enable importers to query their usage of quota certificates.[6] Importers are expected to exercise reasonable care pursuant to 19 U.S.C. 1484 when filing entries and tracking their usage of quota certificates and the availability of a new query capability in eCERT 2.0 does not relieve importers of this responsibility.

In order to participate in eCERT 2.0, importers must provide the participating country with their Importer of Record (IOR) number in advance of filing an entry, and, in turn, the participating country will submit the IOR number as part of the eCERT transmission to CBP.[7] The participating country will submit the IOR number as an additional data element of information within the single transmission message to eCERT 2.0.

At this time, CBP recommends that importers share the IOR numbers with their exporters in advance of September 25, 2022, to allow for participating countries to test the updated system with actual IOR numbers and avoid rejection of the transmission due to missing IOR numbers once eCERT 2.0 is deployed.[8] In general, importers will need to provide the IOR numbers only once to the participating exporter or country (which should be no later than 30 days in advance of filing an entry), but importers should ensure that the exporter has the IOR number on file for future transmissions.

The transition to eCERT 2.0 will not change the tariff-rate quota or TPL filing process or requirements. Importers will continue to provide the export certificate or certificate of eligibility numbers from the participating countries in the same manner as when currently filing entry summaries with CBP. The format of the export certificate and certificate of eligibility numbers will remain the same for the corresponding eCERT transmissions.

Dated: August 18, 2022.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2022–18214 Filed 8–23–22; 8:45 am]

BILLING CODE P

[1] If there is no associated foreign government eCERT transmission available upon entry of the merchandise or filing of the entry summary, an importer may enter the merchandise for consumption subject to the over-quota tariff rate or the MFN rate of duty or opt not to enter the merchandise for consumption at that time (*e.g.,* transfer the merchandise to a Customs bonded warehouse or foreign trade zone or export or destroy the merchandise).

[2] If an importer enters the merchandise for consumption subject to the over-quota tariff rate and the associated foreign government eCERT transmission becomes available afterwards, an importer may claim the in-quota rate of duty by filing a post summary correction (before liquidation) or a protest under 19 CFR part 174 (after liquidation). In either event, the in-quota rate of duty is allowable only if there are still quota amounts available within the original quota period.

[3] An importer has the opportunity to make a post importation claim for a TPL by requesting a refund of any excess customs duties at any time within one year after the date of importation of the goods. However, the preferential duty rate is allowable only if there are still amounts available within the original TPL period.

[4] *See* the published general notices for the approved use of eCERT for Australia (75 FR 81632 (December 28, 2010)), Uruguay (86 FR 47127 (August 23, 2021)), New Zealand (87 FR 1771 (January 12, 2022)), and Argentina (87 FR 2172 (January 13, 2022)) for certain beef imports subject to a tariff-rate quota.

[5] *See* the published general notice for the approved use of eCERT for Mexico for certain textile and apparel goods that are eligible for preferential treatment under a TPL (FR 86 FR 54225 (September 30, 2021)).

[6] Use of this enhancement will be facilitated through a new CBP and Trade Automated Interface Requirements (CATAIR) message, Certificate Query, which may be found in the Implementation Guide on CBP's website at: *https://www.cbp.gov/document/guides/certificate-query-catair-ecert-20.*

[7] Pursuant to 19 CFR 142.3(a)(1), importers provide the IOR numbers to CBP on CBP Form 3461 upon entry.

[8] As of July 7, 2022, CBP began testing eCERT 2.0 with the participating countries using test data. Early submission of IOR numbers by importers will help facilitate the testing process.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0023]

RIN 1660–ZA26

Hazard Mitigation Assistance Program and Policy Guide

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice, request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on its 2022 update to the Hazard Mitigation Assistance (HMA) Program and Policy Guide (formerly 2015 HMA Guidance and Addendum). The HMA Program and Policy Guide was last published in 2015. The primary purpose of this update is to incorporate existing policies and guidance materials issued since 2015, simplify guidance materials, and revise the document to increase overall accessibility and organization.

DATES: Comments must be received by September 23, 2022.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2022–0023, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennie Orenstein, Branch Chief, Hazard Mitigation Division, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–4071, *jennie.gallardy@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this update to the Hazard Mitigation Assistance (HMA) Program and Policy Guide (formerly 2015 HMA Guidance and 2015 HMA Guidance Addendum) by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA–2022–0023, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. For more about privacy and the docket, visit *https://www.regulations.gov/document?D=DHS-2018-0029-0001.*

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

II. Background

FEMA's Hazard Mitigation Assistance (HMA) grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages.

The proposed 2022 HMA Program and Policy Guide consolidates the 2015 HMA Guidance and the 2015 HMA Guidance Addendum into one HMA guidance document, and renames the document as ''Hazard Mitigation Assistance Program and Policy Guide.'' The HMA Program and Policy Guide covers the following hazard mitigation assistance programs: (1) the Flood Mitigation Assistance (FMA) program; (2) the Hazard Mitigation Grant Program (HMGP); (3) the Hazard Mitigation Grant Program Post Fire (HMGP Post Fire); and (4) the Building Resilient Infrastructure and Communities (BRIC) program. FEMA implemented the BRIC program following the passage of the Disaster Recovery Reform Act of 2018, which amended Section 203 of the Stafford Act.[1]

The updated HMA Program and Policy Guide includes the following content updates:

- Highlights FEMA priorities such as resilience and climate adaptation, community lifelines, whole community, equity, capability and capacity building, comprehensive planning, and building codes.
- Incorporates changes resulting from the Disaster Recovery Reform Act.[2] For instance, the proposed 2022 HMA Program and Policy Guide incorporates the BRIC Policy,[3] the HMGP—Post Fire Policy,[4] the HMGP Management Costs Interim Policy,[5] the earthquake early warning systems factsheet,[6] and expanded wildfire mitigation activities.[7]
- Incorporates additional policy changes that were published after 2015, such as the Ecosystem Service Benefits in Benefit-Cost Analysis for FEMA's Mitigation Program Policy.[8]
- Expands information on project types in Part 12 based on existing job aids and factsheets, such as aquifer storage and recovery,[9] floodplain and stream restoration,[10] flood diversion and storage,[11] wind retrofit,[12] acquisition projects,[13] and generators.[14]
- Incorporates 2021 updates to Hazard Mitigation Assistance and Mitigation Planning regulations.[15]
- Clarifies issues specific to HMGP, including application period, the HMGP 12-month lock-in and de-obligation, extensions, and the total award amount for the purpose of management costs.
- Extends the period of performance for HMGP from 36 to 48 months.
- Expands the eligibility of codes and standards assistance in Part 11.
- Incorporates the 2020 regulatory changes made to 2 CFR part 200[16] and expands information on grants management requirements and procedures.
- Expands guidance content and resources on mitigation planning, recognizing its importance to effective hazard mitigation.
- Includes new guiding principles, such as nature-based solutions and the National Mitigation Investment Strategy.[17]
- Makes nonsubstantive revisions to increase overall accessibility and organization of the document.

FEMA seeks comment on the proposed 2022 HMA Program and Policy Guide, which is available online at *http://www.regulations.gov* in docket ID FEMA–2022–0023. Based on the comments received, FEMA may make appropriate revisions to the proposed 2022 HMA Program and Policy Guide. When or if FEMA issues a final policy, FEMA will publish it on its website at *https://www.fema.gov/grants/mitigation/hazard-mitigation-assistance.*

[1] The Pre-Disaster Mitigation (PDM) program is no longer covered in the HMA Program and Policy Guide. Congress may appropriate additional funds under Section 203 outside of the established HMA programs, and such funds may be administered through the PDM program. FEMA intends to announce these funding opportunities through Notices of Funding Opportunity, which will specify the applicable program requirements.

[2] Div. D of Public Law 115–254, 132 Stat. 3438.

[3] FEMA Policy 104–008–05, Mitigation Assistance: Building Resilient Infrastructure and Communities, *available at https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities* (last accessed July 17, 2022).

[4] FEMA Policy 207–088–2, Hazard Mitigation Grant Program—Post Fire, *available at https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1204-policy.pdf* (last accessed Apr. 1, 2021).

[5] FEMA Policy 104–11–1, Hazard Mitigation Grant Program Management Costs (Interim), *available at https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1215-hazard-mitigation-grant-program-management-costs-interim-policy.pdf* (last accessed Apr. 1, 2021).

[6] FEMA Fact Sheet, Disaster Recovery Reform Act and Earthquake Early Warning Systems, *available at https://www.fema.gov/sites/default/files/2020-09/fema_drra-earthquake-early-warning-systems_fact-sheet_September-2020.pdf* (last accessed Apr. 1, 2021).

[7] FEMA Job Aid, Job Aid for Disaster Recovery Reform Act, Section 1205, Additional Activities for Wildfire & Wind Implementation under Hazard Mitigation Assistance Programs, Dec. 3, 2019, *available at https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1205-implementation-job-aid.pdf* (last accessed May 19, 2021).

[8] FEMA Policy 108–024–02, Ecosystem Service Benefits in Benefit-Cost Analysis for FEMA's Mitigation Program Policy, *available at https://www.fema.gov/sites/default/files/2020-09/fema_ecosystem-service-benefits_policy_september-2020.pdf* (last accessed Apr. 1, 2021).

[9] FEMA, Climate Resilient Mitigation Activities Aquifer Storage and Recovery Fact Sheet (undated); FEMA, Job Aid: Aquifer Storage and Recovery (Aug. 2016); FEMA, Acquifer Storage and Recovery Supplemental (Dec. 2016).

[10] FEMA, Floodplain and Stream Restoration Fact Sheet (undated); FEMA, Job Aid: Floodplain and Stream Restoration (Aug. 2016); FEMA, Floodplain and Stream Restoration Supplemental (Dec. 2016).

[11] FEMA, Flood Diversion and Storage Fact Sheet (undated); FEMA Job Aid: Flood Diversion and Storage (Aug. 2016); FEMA, Flood Diversion and Storage Supplemental (Dec. 2016).

[12] FEMA, Memorandum, Cost Effectiveness Determination for Non-Residential Hurricane Wind Retrofit Measures Funded by FEMA (Mar. 1, 2018), available at *https://www.fema.gov/sites/default/files/2020-05/fema_bca_pre-calculated_non-residential-wind-retrofit.pdf* (last accessed May 19, 2021).

[13] FEMA, Acquisition and Relocation Job Aid (Aug. 2017), *available at https://www.fema.gov/sites/default/files/2020-09/fema_acquisition_relocation_job_aid_08-21-17.pdf* (last accessed May 19, 2021).

[14] FEMA, Job Aid, Eligibility of Generators as a Fundable Project by the Hazard Mitigation Grant Program and Pre-Disaster Mitigation Program, *available at https://www.fema.gov/sites/default/files/2020-09/fema_eligibility_generators_fundable_project_under_hmgp_pdm_02-19-15.pdf* (last accessed May 19, 2021).

[15] FEMA, FEMA's Hazard Mitigation Assistance and Planning Regulations, 86 FR 50653 (Sept. 10, 2021).

[16] *See* 85 FR 49506 (Aug. 13, 2020).

[17] *https://www.fema.gov/sites/default/files/2020-10/fema_national-mitigation-investment-strategy.pdf* (last accessed Apr. 1, 2021).

Most helpful to the agency will be comments that provide concrete suggestions and the reasoning for a proposed approach or change.

Authority: 6 U.S.C. 101 *et seq.;* 42 U.S.C. 4001 *et seq.;* 42 U.S.C. 5121 *et seq.*

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–17889 Filed 8–23–22; 8:45 am]

BILLING CODE 9111–BW–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0032; OMB No. 1660–0139]

Agency Information Collection Activities: Proposed Collection, Comment Request; Ready Campaign PSA Creative Testing Research

AGENCY: Federal Emergency Management Agency, Department of Homeland Security

ACTION: 30-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The notice seeks comments concerning the Ready Campaign, which is a national public service advertising (PSA) campaign in support of FEMA's mission and is designed to educate and empower Americans to prepare for and respond to emergencies including natural and man-made disasters.

DATES: Comments must be submitted on or before September 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Patricia Lea Crager, Director, Ready Campaign; at 404–695–5962 or *patricia.crager@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on March 1, 2022, at 87 FR 11455 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Ready Campaign PSA Creative Testing Research.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0139.

FEMA Forms: FEMA Form FF–305–FY–21–100 (formerly 008–0–21), Recruitment Screener; FEMA Form FF–305–FY–21–101 (formerly 008–0–22), Focus Group Discussion Guide.

Abstract: FEMA proposes conducting qualitative research in the form of focus groups in order to test creative concepts developed for FEMA's national Ready Campaign PSA campaign, which aims to educate and empower Americans to prepare for and respond to emergencies. The research will help determine the clarity, relevance, and motivating appeal of the concepts prior to final production of the advertising.

Affected Public: Individuals or households.

Estimated Number of Respondents: 90.

Estimated Number of Responses: 90.

Estimated Total Annual Burden Hours: 58.

Estimated Total Annual Respondent Cost: $2,356.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $54,507.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–18255 Filed 8–23–22; 8:45 am]

BILLING CODE 9111–69–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0024; OMB No. 1660–0085]

Agency Information Collection Activities: Proposed Collection; Comment Request; Crisis Counseling Assistance and Training Program

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

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Crisis Counseling Assistance and Training Program, which provides federal funding in response to a State or Federally recognized Tribe's request for Crisis Counseling services for a presidentially declared major disaster.

DATES: Comments must be submitted on or before October 24, 2022.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0024. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all

submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ani Brown, EM Specialist, Recovery/Individual Assistance/Community Services at *Tammya.Brown@fema.dhs.gov* or (202) 735–4047. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93–288, as amended and codified at 42 U.S.C. 5183) (''Act''), authorizes the President to provide professional counseling services, including financial assistance to States (which includes the fifty states, the District of Columbia, and the U.S. territories), Federally recognized Indian Tribal governments, local agencies or private mental health organizations for professional counseling services, to survivors of major disasters to relieve mental health problems caused or aggravated by a major disaster or its aftermath. The implementing regulations for Section 416 of the Stafford Act are at 44 CFR 206.171. Under 44 CFR 206.171 and by agreement, the U.S. Department of Health and Human Services-Center for Mental Health Services (HHS–CMHS), which has expertise in crisis counseling, coordinates with FEMA in administering the Crisis Counseling Assistance and Training Program (CCP). FEMA and HHS–CMHS provide program oversight, technical assistance, and training to States and Federally recognized Tribes applying for CCP funding for major disasters.

FEMA is proposing to revise the collection by rewording the sub-question from question 8 on the Crisis Counseling Assistance and Training Program (CCP), Immediate Services Program (ISP) Application, FEMA Form FF–104–FY–21–148 (formerly 003–0–1) and from question 12 on the Crisis Counseling Assistance and Training Program, Regular Services Program (RSP) Application, FEMA Form FF–104–FY–21–149 (formerly 003–0–2). The rewording of these sub-questions will allow for greater transparency of plans to ensure accessibility to all eligible survivors.

Collection of Information

Title: Crisis Counseling Assistance and Training Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0085.

FEMA Forms: FEMA Form FF–104–FY–21–148 (formerly 003–0–1), Crisis Counseling Assistance and Training Program, Immediate Services Program Application; FEMA Form FF–104–FY–21–149 (formerly 003–0–2), Crisis Counseling Assistance and Training Program, Regular Services Program Application; ISP Final Report Narrative; Quarterly Report Narratives; and Final RSP Report Narrative.

Abstract: The CCP consists of two grant programs, the Immediate Services Program (ISP) and the Regular Services Program (RSP). The ISP and RSP provide supplemental funding to States and Federally recognized Tribes following a Presidentially declared major disaster under the Stafford Act. These grant programs provide funding for training and services, including community outreach, public education, and counseling techniques. States and Federally recognized Tribes are required to submit an application that provides information on Needs Assessment, Plan of Service, Program Management, and an accompanying Budget.

Affected Public: State, local or Tribal Government.

Estimated Number of Respondents: 90.

Estimated Number of Responses: 108.

Estimated Total Annual Burden Hours: 1,728.

Estimated Total Annual Respondent Cost: $141,334.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $156,729.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–18256 Filed 8–23–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2022–0004]

Notice of Cybersecurity and Infrastructure Security Agency Cybersecurity Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following CISA Cybersecurity Advisory Committee virtual meeting. This meeting will be partially closed to the public.

DATES: *Meeting Registration:* Registration to attend the meeting is required and must be received no later than 5 p.m. eastern time (ET) on September 11, 2022. For more information on how to participate, please contact *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5 p.m. ET on September 11, 2022.

Written Comments: Written comments must be received no later than 5 p.m. ET on September 11, 2022.

Meeting Date: The CISA Cybersecurity Advisory Committee will meet virtually on September 13, 2022, from 2 p.m. to 4 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The CISA Cybersecurity Advisory Committee's meeting will be open to the public, per 41 CFR 102–3.150, and held via conference call. For access to the conference call bridge,

information on services for individuals with disabilities, or to request special assistance, please email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.by* 5 p.m. ET September 11, 2022. The CISA Cybersecurity Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Ms. Megan Tsuyi at (202) 594–7374 as soon as possible.

Comments: Members of the public are invited to provide comment on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/cisa-cybersecurity-advisory-committee-meeting-resources* by September 8, 2022. Comments should be submitted by 5:00 p.m. ET on September 11, 2022 and must be identified by Docket Number CISA–2022–0004. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.* Include the Docket Number CISA–2022–0004 in the subject line of the email.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the CISA Cybersecurity Advisory Committee, please go to *www.regulations.gov* and enter docket number CISA–2022–0004.

A public comment period is scheduled to be held during the meeting from 2:10 p.m. to 2:25 p.m. ET. Speakers who wish to participate in the public comment period must email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Megan Tsuyi, 202–594–7374, *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CISA Cybersecurity Advisory Committee was established under the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283. Notice of this meeting is given under FACA, 5 U.S.C. appendix (Pub. L. 92–463). The CISA Cybersecurity Advisory Committee advises the CISA Director on matters related to the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency.

Agenda: The CISA Cybersecurity Advisory Committee will hold a conference call on Tuesday, September 13, 2022, to discuss current CISA Cybersecurity Advisory Committee activities. The open session will include: (1) a period for public comment, and (2) updates regarding the CISA Cybersecurity Advisory Committee's seven subcommittees, to include deliberation and voting on recommendations from the CISA Cybersecurity Advisory Committee to CISA. The seven subcommittees include: (1) Building Resilience and Reducing Systemic Risk to Critical Infrastructure Subcommittee; Transforming the Cyber Workforce Subcommittee; (2) National Cybersecurity Alert System Subcommittee; (3) Protecting Critical Infrastructure from Misinformation and Disinformation Subcommittee; (4) Turning the Corner on Cyber Hygiene Subcommittee; (5) Transforming the Cyber Workforce Subcommittee; (6) Technical Advisory Council Subcommittee; and (7) Strategic Communications Subcommittee.

The committee will also meet in a closed session from 1 p.m. to 2 p.m. ET to participate in an operational discussion that will address areas of critical cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with CSAC members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B), *The Government in the Sunshine Act,* it has been determined that one agenda item requires closure, as the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency actions.

This agenda item addresses areas of CISA's operations that include critical cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with CSAC members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

As the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency action, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B).

Megan M. Tsuyi,

Designated Federal Officer, CISA Cybersecurity Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2022–18260 Filed 8–23–22; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: Department of Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place.

DATES: The meeting will be held as a webinar on Wednesday, September 7, 2022, from 1:00 p.m. to 5:00 p.m. and on Thursday, September 8, 2022, from 1:00 p.m. to 5:00 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held on-line and via teleconference. Instructions for accessing the meeting will be posted at *www.fgdc.gov/ngac.* Comments can be sent to Ms. Dionne Duncan-Hughes, Group Federal Officer, by email to *gs-faca@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Mahoney, Federal Geographic Data Committee (FGDC), USGS, by mail at 909 First Avenue, Room 703, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 375–2565.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory

Committee Act of 1972 (5 U.S.C., appendix 2), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The NGAC provides advice and recommendations related to management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of the Geospatial Data Act of 2018 (GDA) and the Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC meeting is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC meeting is available at: *www.fgdc.gov/ngac.*

Agenda Topics

—FGDC Update
—Landsat Advisory Group
—3D Elevation Program
—GDA Reporting
—Review of GDA Implementation
—Geospatial Excellence and Innovation
—Executive Order 14008, Climate Mapping Initiative
—Public Comment

Meeting Accessibility/Special Accommodations: The webinar meeting is open to the public and will take place from 1:00 p.m. to 5:00 p.m. on September 7, 2022, and from 1:00 p.m. to 5:00 p.m. on September 8, 2022. Members of the public wishing to attend the meeting should visit *www.fgdc.gov/ngac* or contact Mr. John Mahoney (see **FOR FURTHER INFORMATION CONTACT**). Webinar/conference line instructions will be provided to registered attendees prior to the meeting.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

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.

Public Disclosure of Comments: There will be an opportunity for public comment during both days of the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the NGAC for consideration. To allow for full consideration of information by the NGAC members, written comments must be provided to John Mahoney (see **FOR FURTHER INFORMATION CONTACT**) at least three (3) business days prior to the meeting. Any written comments received will be provided to Committee members before the meeting.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Dionne Duncan-Hughes,

FACA Liaison Officer USGS.

[FR Doc. 2022–18247 Filed 8–23–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900]

Tribal Tourism Grant Program; Solicitation of Proposals

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior (Secretary), through the Office of Indian Economic Development (OIED), Division of Economic Development (DED), is soliciting proposals from eligible federally recognized Tribes and Tribal organizations for the Tribal Tourism Grant Program (TTGP). The grant funding will be used to support Tribal tourism by providing Tribes and Tribal organizations funding to obtain technical assistance to perform feasibility studies or develop Tribal tourism business plans. The TTGP grant will provide Tribes resources to explore opportunities to increase Tribal capacity to plan, develop, and manage tourism and related infrastructure, in support of economic development and the Native American Tourism and Improving Visitor Experience Act or NATIVE Act. The feasibility study or business plan will empower Tribes to make informed decisions on potential tourism project(s).

DATES: Grant application packages will be accepted until 5 p.m. ET, on October 24, 2022. OIED will not consider proposals received after this time and date.

ADDRESSES: The required method of submitting proposals is through *Grants.gov.* For information on how to apply for grants in *Grants.gov*, see the instructions available at *https://www.grants.gov/help/html/help/Applicants/HowToApplyForGrants.htm.* Proposals must be submitted to *Grants.gov* by the deadline established in the **DATES** section.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Wilson, Grant Management Specialist, Office of Indian Economic Development, telephone: (505) 917–3235; email: *dennis.wilson@bia.gov.* If you have questions regarding the application process, please contact Ms. Jo Ann Metcalfe, Grant Officer, telephone (401) 703–3390; email *jo.metcalfe@bia.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Additional Program information can be found at: *https://www.bia.gov/service/grants/ttgp.*

SUPPLEMENTARY INFORMATION:

I. General Information

Award Ceiling: $150,000.
Award Floor: $25,000.
CFDA Number: 15.032.
Cost Sharing or Matching Requirement: No.
Number of Awards: 20–35.

Category: Business Development.

II. Number of Projects Funded

OIED anticipates awarding of approximately 20 to 35 grants under this announcement ranging in value from approximately $25,000 to $150,000. The funded projects are for a one-year term. OIED will use a competitive evaluation process for awarding based on criteria described in the Review and Selection Process (Criteria) section of this notice. Only one application will be accepted from an eligible Tribe, and only one application will be accepted from an eligible Tribal Organization of that Tribe.

III. Background

The Office of the Assistant Secretary—Indian Affairs, through OIED, is soliciting proposals from federally recognized Tribes listed as *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs* at 87 FR 4636 (January 28, 2022) and Tribal Organizations eligible for TTGP grants. Indian Tribes are referred to using the term ''Tribe'' throughout this notice. Tribal Organization is defined by 25 U.S.C. 5304(l). The grant funding is to retain consultants to perform feasibility studies on Tribal tourism opportunities or develop a tourism business plan. The feasibility studies will help facilitate informed decision-making regarding Tribes' economic futures and may concern the viability of a tourism project. The feasibility study or business plan will empower Tribes to make informed decisions on potential tourism project(s), a Tribal tourism business, or Tribal tourism businesses recovering from the economic impacts of the COVID–19 pandemic. The OIED supports Tribes and Tribal organizations capacity building to plan, develop and manage tourism and related infrastructure in support of economic development and the NATIVE Act (Pub. L. 114–221). The OIED administers this program through its DED.

The funding periods and amounts referenced in this solicitation are subject to the availability of non-recurring appropriation funds of the BIA budget at the time of award, as well as the Department of the Interior (DOI) and Indian Affairs priorities at the time of the award. Neither DOI nor Indian Affairs will be held responsible for proposal or application preparation costs. Publication of this solicitation does not obligate DOI or Indian Affairs to award any specific grant or to obligate all or any part of available funds. Future funding is subject to the availability of Congressional appropriations and cannot be guaranteed. DOI or Indian Affairs may cancel or withdraw this solicitation at any time.

IV. Eligibility for Funding

The Office of the Assistant Secretary—Indian Affairs, through OIED, is soliciting proposals from federally recognized Tribes listed as *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs* at 87 FR 4636 (January 28, 2022) and eligible Tribal Organizations as defined by 25 U.S.C. 5304(*l*). Note: The U.S. Department of the Interior Office of Native Hawaiian Relations is managing NATIVE Act tourism grants to Native Hawaiian Organizations. For additional information on grants for Native Hawaiian Organizations, please contact Ka'i'ini Kaloi, Director, Office of Native Hawaiian Relations, (202) 208–7462, *Kaiini_Kaloi@ios.doi.gov.*

V. Who May Perform Tourism Feasibility Studies or Develop Tourism Business Plans Funded by TTGP Grants

The applicant determines who will conduct its feasibility study or business plan. An applicant has several choices, including but not limited to:

- Universities and colleges, including but not limited to Tribal colleges and universities;
- Private consulting firms; or
- Non-academic, non-profit entities.

VI. Applicant Procurement Procedures

The applicant is subject to the procurement standards in 2 CFR 200.318 through 200.326. In accordance with 2 CFR 200.318, an applicant must use its own documented procurement procedures which reflect Tribal laws and regulations, provided the procurements conform to applicable Federal law and standards.

VII. Limitations

TTGP grant funding must be expended in accordance with applicable statutory and regulatory requirements, including 2 CFR 200. As part of the grant application review process, OIED may conduct a review of an applicant's prior OIED grant(s).

Applicants currently under BIA sanction Level 2 or higher resulting from non-compliance with the Single Audit Act are ineligible for a TTGP grants. Applicants at Sanction Level 1 will be considered for funding.

Only one application will be accepted from an eligible Tribe, and only one application will be accepted from an eligible Tribal Organization of that Tribe. Applications should address one project and any submissions that contain multiple project proposals will not be considered. OIED will apply the same objective ranking criteria to each proposal.

The purpose of TTGP grants is to empower Tribes to make informed decisions on potential tourism project(s), a Tribal tourism business, or Tribal tourism businesses recovering from the economic impacts of the COVID–19 pandemic. An application can request funding for a feasibility study, or a business plan, depending on the Tribe's needs.

TTGP grants may not be used for:

- Establishing or operating a Tribal office;
- Indirect costs or administrative costs as defined by the Federal Acquisition Regulation (FAR);
- Purchase of equipment used to develop the feasibility studies, such as computers, vehicles, field gear, etc. (however, leasing of this type of equipment for the purpose of developing feasibility studies is allowed);
- Creating Tribal jobs to complete the project. A TTGP grant is not intended to create temporary administrative jobs or supplement employment for Tribal members;
- Supplementing employment for current positions not significantly and directly involved in the proposed project (*e.g.,* positions like Executive Directors with little to no described involvement in the proposed work);
- International travel;
- Legal fees;
- Application fees associated with permitting;
- Training;
- Contract negotiation fees;
- Feasibility studies of energy, mineral, energy legal infrastructure, or broadband related projects, businesses, or technologies that are addressed by OIED's Energy and Mineral Development Program (EMDP), Tribal Energy Development Capacity (TEDC); and
- Any other activities not authorized by the grant award letter.

VIII. TTGP Application Guidance

All applications are required to be submitted in digital form to *grants.gov.* For instructions, see *https://www.grants.gov/help/html/help/Applicants/HowToApplyForGrants.htm.*

IX. Mandatory Components

The mandatory components, and forms identified below, must be included in the proposal package. Links to the mandatory forms can be found under the ''package'' tab on the TTGP FY2022 grant opportunity page at

www.grants.gov. Any information in the possession of the BIA or submitted to the BIA throughout the process, including final work product, constitutes government records and may be subject to disclosure to third parties under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of the Interior's FOIA regulations at 43 CFR part 2, unless a FOIA exemption or exception applies, or other provisions of law protect the information. Following are the names of the required forms:

- Cover Page;
- Application for Federal Assistance (SF–424) [V4.0];
- Cover Letter;
- Project Abstract Summary [V2.0];
- Project Narrative Attachment Form [V1.2];
- Budget Information for Non-Construction Programs (SF–424A) [V1.0];
- Attachments [V1.2];
- Key Contacts [V2.0].

Cover Page

A Cover Page must be included in the application and contain the following:

- Category of Funding for the TTGP application;
- Proposal Title;
- Total Amount of funding requested from the Program;
- Full and Proper Name of the applicant organization;
- Statement confirming the proposed work will have the potential to reach the intended goals and objectives;
- Confirm active registration in SAM, attaching print-out from *sam.gov* to the cover page. See instructions and registration instructions in Appendix;
- Provide active enrollment in ASAP and your Recipient ID with the BIA. Allow 3–4; weeks to complete all steps of enrollment prior to submission deadline. The organization must be enrolled in ASAP with BIA, current enrollment with other federal agencies is not sufficient. See instructions and registration instructions in Appendix;
- Confirmation of other completed Mandatory Components identified in this section (SF–424, Project Abstract Summary, etc.);
- Identification of partnerships such as Tribes, other Tribal Organizations or Entities.

Application for Federal Assistance SF–424

Applicants are required complete the Application for Federal Assistance SF–424. Please use a descriptive file name that includes tribal name and project description. For example: TTGPSF424.Tribalname.Project. The SF–424 form requires the Congressional District number of the applicant, which can be found at *https://www.house.gov/representatives/find-your-representative.*

Cover Letter

A cover letter is not to exceed one (1) page that summarizes the interest and intent, complete with authorized signature(s) of organization leadership.

Project Abstract Summary and Project Narrative Attachment

The first paragraph of the project narrative must include the title and basic description of the proposed Tribal tourism feasibility study and/or Tribal tourism business plan. The Project Narrative must not exceed 15-pages. Supplemental information such as letters of support, graphs, charts, maps, photographs and other graphic and/or other relevant information may be included in an appendix and not counted against the 15-page Project Narrative Limit. At a minimum, it should include:

- A technical description of the project and, if applicable, an explanation of how the proposed new study and/or business plan would benefit the applicant and does not duplicate previous work;
- A description of the project objectives and goals;
- Deliverable products that the consultant is expected to generate, including interim deliverables (such as status reports and technical data to be obtained) and final deliverables (the feasibility study); and
- Resumes of key consultants and personnel to be retained, if available, and the names of subcontractors, if applicable. This information may be included as an attachment to the application and will not be counted towards the 15-page limitation;
- Please use a descriptive file name that includes Tribal name and project description. For example: TTGPNarrative.Tribalname.Project.

In addition, unless prohibited by Tribal procurement procedures, please include a description of the consultant(s) the applicant wishes to retain, including the consultant's contact information, technical expertise, training, qualifications, and suitability to undertake the feasibility study. These documents may be included at the end of the Project Narrative and will not be counted toward the 15-page limitation.

Project Narratives are not judged based on their length. Please do not submit any unnecessary attachments or documents beyond what is listed above, *e.g.,* Tribal history, unrelated photos and maps.

Budget Information for Non-Construction Programs (SF–424A) [V1.0] and Budget Narrative Attachment Form [V1.2]

Applicants are required to utilize the SF–424A for the budget submission. Please use a descriptive file name that includes tribal name and project description. For example: TTGPBudget.Tribalname.Project. The budget must identify the amount of grant funding requested and a comprehensive breakdown of all projected and anticipated expenditures, including contracted personnel fees, consulting fees (hourly or fixed), travel costs, data collection and analysis costs, computer rentals, report generation, drafting, advertising costs for a proposed project and other relevant project expenses, and their subcomponents.

- Travel costs should be itemized by airfare, vehicle rental, lodging, and per diem, based on the current Federal government per diem schedule.
- Data collection and analysis costs should be itemized in sufficient detail for the OIED review committee to evaluate the charges.
- Other expenses may include computer rental, report generation, drafting, and advertising costs for a proposed project.

Attachments [V1.2]

Utilize the ''attachments form'' to include the Tribal resolution issued in the fiscal year of the grant application, authorizing the submission of a TTGP 2022 grant application. It must be signed by authorized Tribal representative(s). The Tribal resolution must also include a description of the feasibility study or business plan to be developed. An application submitted without a Tribal Resolution will be considered incomplete. The attachments form can also be used to include any other attachments related to the proposal.

Required Grantee Travel and Attendance at a Tribal Tourism Annual Grantee Meeting

Grantees will be required to have two individuals who work directly on the project attend an in-person annual DOI/OIED-sponsored grantee 3-day meeting in Washington, DC, during the year of the grant award. Applicants must include costs in the budget to cover this requirement. Travel costs must not exceed $6,000 per person. Applicants should follow their own travel policies to budget for this 3-day meeting.

Additional funds for these expenses will not be available once grant is awarded. In the event the meeting is converted to a virtual meeting due to timing or COVID related issues, those funds may be repurposed in the grant.

Special Note

Please make sure that the System for Award Management (SAM) number used to apply is active, not expired, with a current Unique Entity Identifier (UEI) number on the SF–424. Please make sure an active Automated Standard Application for Payment (ASAP) number is provided. Applicants must have an ASAP number and be enrolled with the BIA to be eligible. Please list counties where the project is located and congressional district number where the project will be located.

Key Contacts [V2.0]

Applicants must include the Key Contacts information page that includes:

- Please use a descriptive file name that includes tribal name and identifies it is the critical information page (CIP). For example: TTGPICIP.Tribalname.Project;
- Project Manager's contact information including address, email, desk, and cell phone number;
- Please make sure the System for Award Management (SAM) number used to apply is active, not expired, with a current UEI number on the SF–424;
- Please make sure an *active* Automated Standard Application for Payment (ASAP) number is provided. Applicants *must* have an ASAP number for the BIA to be eligible.

Please list the county(ies) where the project is located and congressional district number(s) where the project is located.

X. Incomplete Applications

Incomplete applications will not be accepted. Please ensure that all forms listed in the announcement are completed and submitted in *grants.gov*.

XI. Review and Selection Process

Upon receiving a TTGP application, OIED will determine whether the application is complete and that the proposed project does not duplicate or overlap previous or currently funded OIED tourism projects. Any proposal that is received after the date and time in the **DATES** section of this notice will not be reviewed.

The OIED Review Committee, comprised of OIED staff, staff from other Federal agencies, and subject matter experts, will evaluate the proposals against the ranking criteria. Proposals will be evaluated using the five ranking criteria listed below, with a maximum achievable total of 100 points.

Final award selections will be approved by the Assistant Secretary—Indian Affairs and the Associate Deputy Secretary, U.S. Department of the Interior. Applicants not selected for an award will be notified in writing.

XII. Evaluation Criteria

Proposals (both feasibility or business plans) will be formally evaluated by an OIED review committee using the five criteria listed below. Each criterion provides a percentage of the total maximum rating of 100 points:

- The Project's Economic Benefits: 50 points;
- Project Deliverables: 20 Points;
- Feasibility Process and Analysis: 10 points;
- Costs of Proposal: 10 points;
- Specificity: 10 points.

The Project's Economic Benefits: 50 Points

The reviewers will determine if the proposal's scope of work clearly states the tourism opportunity to be studied. Factors that the reviewers will consider when allocating points are, but not limited to:

- Does the tourism proposal address what is needed to increase tourism capacity?
- Does the proposal describe the benefits that the tourism project would have if implemented?
- Does the proposal describe how the project will address economic development challenges such as unemployment, workforce development, infrastructure needs, and stimulate economic activity within a Native community?
- Does the proposal address sustainability planning, ensuring that the project has long-term benefits for the community?
- Does the proposal identify any partnerships with non-profit or private sector resources that might increase the potential that the tourism project will succeed?

Project Deliverables: 20 Points

The reviewers will determine if the proposal describes in detail applicable proposed deliverables. For example, a mountain biking tour study would include deliverables such as, but not limited to, site analysis, market demographics, marketing strategies, drive-time market, regional competition, market demands, and a financial model that includes investment and return on investment projections.

Project Tasks and Timeline: 10 Points

The reviewers will determine if a comprehensive timeline has been developed to address tasks that are needed to successfully complete the objectives outlined in the scope of work.

Costs of Proposal/Budget: 10 Points

The reviewers will assess the costs listed in the budget to determine if the overall value of the project is competitively priced and in accordance with the goals stated within the proposal/scope of work.

Specificity: 10 Points

In addition, the reviewers understand that applicants may retain consultant(s) that prepare the Tourism proposal to also conduct the feasibility study if the grant is awarded. This does not prejudice an applicant's chances of being selected as a grantee. However, proposals will be viewed unfavorably if they show little evidence of communication between the consultant(s) and the applicant or scant regard for the applicant community's unique circumstances. Facsimile applications prepared by the same consultant(s) and submitted by multiple applicants will receive scrutiny in this regard.

XIII. Transfer of Funds

OIED's obligation under this solicitation is contingent on receipt of congressionally appropriated funds. No liability on the part of the U.S. Government for any payment may arise until funds are made available to the awarding officer for this grant and until the recipient receives notice of such availability, to be confirmed in writing by the grant officer.

All payments under this agreement will be made by electronic funds transfer through the ASAP. All grant recipients are required to have a current and accurate UEI number to receive funds. All payments will be deposited to the banking information designated by the applicant in the System for Award Management (SAM).

XIV. Reporting Requirements for Award Recipients

The applicant must deliver all products and data required by the signed Grant Agreement for the proposed TTGP feasibility study or business plan project to OIED within 30 days of the end of each reporting period and 120 days after completion of the project. The reporting periods will be established in the terms and conditions of the final award.

OIED requires that deliverable products be provided in digital format

and submitted in the GrantSolutions system. Reports can be provided in either Microsoft Word or Adobe Acrobat PDF format. Spreadsheet data can be provided in Microsoft Excel, Microsoft Access, or Adobe PDF formats. All vector figures should be converted to PDF format. Raster images can be provided in PDF, JPEG, TIFF, or any of the Windows metafile formats. The contract between the grantee and the consultant conducting the TTGP funded feasibility study or business plan must include deliverable products and require that the products be prepared in the format described above.

The contract should include budget amounts for all printed and digital copies to be delivered in accordance with the grant agreement. In addition, the contract must specify that all products generated by a consultant belong to the grantee and cannot be released to the public without the grantee's written approval. Products include, but are not limited to, all reports and technical data obtained, maps, status reports, and the final report.

In addition, this funding opportunity and financial assistance award must adhere to the following provisions.

XV. Conflicts of Interest

Applicability

- This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- In the procurement of supplies, equipment, construction, and services by recipients and by sub-recipients, the conflict-of-interest provisions in 2 CFR 200.318 apply.

Requirements

- Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or sub-recipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, awarding, or administration of a grant with respect to that recipient or sub-recipient or in development of the requirement leading to the funding announcement.
- No actual or prospective recipient or sub-recipient may solicit, obtain, or use non-public information regarding the evaluation, grant, administration of a grant to that recipient or sub-recipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or sub-recipient.

Notification

- Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the grant, including those that have been reported by sub-recipients.
- Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.
- Review Procedures. The Financial Assistance Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make the required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR part 180).

Data Availability

- Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third-party evaluation and reproduction of the following:
  - The scientific data relied upon;
  - The analysis relied upon; and
  - The methodology, including models, used to gather and analyze data.

XVI. Questions and Requests for IED Assistance

Technical consultation from OIED may include clarifying application requirements, confirming whether an applicant previously submitted the same or similar proposal, and registration information for SAM or ASAP. Technical assistance will be provided by the OIED contractor, Tribal Tech. The applicant is solely responsible for the preparation of its grant proposal. All eligible applicants will have access to scheduled training and can request assistance from the pre-application phase through the post-award close-out. It is strongly recommended that any assistance be a consolidation of items based off reasonably completed working drafts. Please complete an in-take form at *https://app.smartsheet.com/b/publish?EQBCT=98a8ecfd0f3d452693e589c6a0a678d8* to request assistance with Tribal Tech.

XVII. Paperwork Reduction Act

The information collection requirements contained in this notice have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 4040–0004. The authorization expires on December 31, 2022. An agency may not conduct or sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number.

XVIII. Authority

This is a discretionary grant program authorized under the NATIVE Act (25 U.S.C. 4354(b)). The NATIVE Act authorizes the head of an agency with assets or resources relating to travel,

recreation, or tourism promotion or branding enhancement for which Indian Tribes, Tribal organizations, or Native Hawaiian organizations are eligible may be used: (1) to support the efforts of Indian Tribes, Tribal organizations, and Native Hawaiian organizations to tell the story of Native Americans as the First Peoples of the United States; (2) to use the arts and humanities to help revitalize Native communities, promote economic development, increase livability, and present the uniqueness of the United States to visitors in a way that celebrates the diversity of the United States; and to carry out 25 U.S.C. 4354.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–18242 Filed 8–23–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LAZP04000.L17110000.DU0000.223]

Notice of Intent To Amend the Resource Management Plan for the Sonoran Desert National Monument, Arizona, and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Arizona State Director intends to prepare a Resource Management Plan (RMP) amendment with an associated environmental assessment (EA) concerning recreational target shooting for the Sonoran Desert National Monument (SDNM). By this notice the BLM is announcing the beginning of the scoping period to solicit public comments and identify issues and is providing the planning criteria for public review.

DATES: The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, planning criteria, and identification of relevant information, and studies by September 23, 2022. To afford the BLM the opportunity to consider issues please ensure your comments are received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The date(s) and time(s) of scoping meetings will be announced at least 15 days in advance through local news releases, newspapers, and the BLM Arizona Phoenix District web page, *https://www.blm.gov/office/phoenix-district-office.*

ADDRESSES: You may submit comments on issues and planning criteria related to the SDNM RMP Amendment and EA addressing Recreational Target Shooting availability in the monument by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2019811/510.*
- *Email: BLM_AZ_SDNMtargetshooting@blm.gov.*
- *Mail:* BLM, Sonoran Desert National Monument, Attn.: RMPA EA, 2020 E. Bell Road, Phoenix AZ 85022.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2019811/510* and at the Phoenix District Office, 2020 E. Bell Road, Phoenix, Arizona 85022.

FOR FURTHER INFORMATION CONTACT: Katie White Bull, Acting Field Manager, telephone (480) 739–8721; address 2020 E. Bell Road, Phoenix, Arizona 85022; email *kwhitebull@blm.gov.* Contact Ms. White Bull to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. White Bull. 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: This document provides notice that the BLM Arizona State Director intends to prepare and consider an RMP amendment with an associated EA for recreational target shooting availability in the SDNM, announces the beginning of the scoping process, and seeks public input on issues, preliminary alternatives, and planning criteria. The RMP amendment would change the existing SDNM Record of Decision and Approved Resource Management Plan (BLM 2012), as amended by the 2018 Record of Decision and Approved Resource Management Plan Amendment.

The planning area is located in Maricopa and Pinal Counties, Arizona and encompasses approximately 486,400 acres of public land.

The scope of this land use planning process does not include addressing the evaluation or designation of Areas of Critical Environmental Concern (ACECs), and the BLM is not considering ACEC nominations as part of this process.

Purpose and Need

The purpose of the RMP amendment is to establish management guidance specific to recreational target shooting on public land within the SDNM while ensuring the decisions are consistent with the SDNM proclamation and other resource decisions in the 2012 SDNM Record of Decision and Approved Resource Management Plan. The need for this planning effort is to fulfill requirements of an April 2022 settlement agreement that the BLM entered to resolve litigation concerning the agency's 2018 Record of Decision and Approved Resource Management Plan Amendment for the SDNM.

Preliminary Alternatives

The RMP amendment process will consider whether and where recreational target shooting should be allowed in the SDNM, along with any associated management actions. Preliminary alternatives include the No Action alternative, which reflects the 2018 Record of Decision and approved resource management plan amendment that identified approximately 435,700 acres of public land as available for dispersed recreational target shooting along with a monitoring and mitigation framework to avoid or minimize impacts on monument objects while increasing public safety. In accordance with the April 2022 settlement agreement referenced earlier, the BLM will also analyze an alternative under which several areas in the monument would be unavailable to recreational target shooting, including designated wilderness; lands with wilderness characteristics managed to protect those characteristics; an area in the northwest portion of the monument where the Komatke Trail is suspected to exist, along with a 0.5 mile buffer north of the suspected trail, unless, prior to the completion of the land use planning process, additional field work demonstrates the nonexistence of the trail; the area south of Highway 238 from the western edge of the monument boundary to the western edge of the South Maricopa Mountains Wilderness area boundary, and the area south of I–8 and west of the Table Top Wilderness, known as the Vekol Valley; the portion of the monument that used to be part of the Barry M. Goldwater Air Force Range before it was reconveyed to the BLM; and any area where the BLM's suitability analysis identifies monument objects and determines target shooting is inconsistent with the objects' proper

care and management. This alternative will also include a mitigation and monitoring protocol to protect monument objects where target shooting is allowed. The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives.

Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. Preliminary issues for the planning area have been identified by BLM personnel and from early engagement conducted for this planning effort with Federal, State, and local agencies; Tribes; and other stakeholders. The BLM has identified three preliminary issues for this planning effort's analysis: (1) impacts on monument objects from recreational target shooting, (2) effectiveness of the mitigation and monitoring protocol in protecting monument objects, and (3) public health and safety. The planning criteria are available for public review and comment at the ePlanning website (see **ADDRESSES**).

Public Scoping Process

This notice of intent initiates the scoping period and public review of the planning criteria, which guide the development and analysis of the RMP amendment and EA.

The BLM will be holding a minimum of two virtual public meetings. The specific date(s) and location(s) of these scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the project ePlanning page. You may submit comments to the BLM using one of the methods listed in the **ADDRESSES** section previously.

Dingell Act Recreational Target Shooting Closures

In accordance with the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Dingell Act, Pub. L. 116–9, Section 4103), the BLM is generally required to provide public notice and comment before a final decision is made to close an area to recreational shooting. If the BLM proposes any recreational shooting closures as part of the RMP amendment process, it will provide opportunities for public participation in accordance with 16 U.S.C. 7913.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the plan amendment to consider the variety of resource issues and concerns identified. Specialists with expertise in various disciplines, such as recreation management, National Conservation Lands, wildlife, vegetation, range management and soils, cultural and heritage resources, social and economic conditions and environmental justice, planning and environmental coordination, and Geographic Information Systems will be involved in this planning effort.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed plan amendment and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan amendment or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and it may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA and land use planning processes for this planning effort to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan amendment will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM Manual Section 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Indian Tribal nations and other stakeholders that may be interested in or affected by the proposed plan amendment that the BLM is evaluating are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency. The BLM intends to hold a series of government-to-government consultation meetings. The BLM will send invites to potentially affected Tribal nations prior to the meetings. The BLM will provide additional opportunities for government-to-government consultation during the NEPA process.

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 1501.7 and 43 CFR 1610.2)

Raymond Suazo,

State Director.

[FR Doc. 2022–18254 Filed 8–23–22; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM930000.L14400000.BJ0000.BX0000]

Notice of Filing of Plats of Survey; New Mexico; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described land are scheduled to be officially filed 30 days after the date of this publication in the Bureau of Land Management (BLM), New Mexico Office, Santa Fe, New Mexico. The surveys announced in this notice are necessary for the management of lands administered by the agency indicated.

ADDRESSES: These plats will be available for inspection in the New Mexico Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico, 85004–4427. Protests of a survey should be sent to the New Mexico Director at the above address.

FOR FURTHER INFORMATION CONTACT: Michael J. Purtee, Chief Cadastral Surveyor; (505) 761–8903; *mpurtee@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico

The supplemental plat, Romero Tract, within the Las Trampas Grant, accepted March 16, 2020, for Group 1195, New Mexico.

This supplemental plat was prepared to correct the location of the Romero Tract.

The plat only, in two sheets, representing the dependent resurvey, subdivision of section 21, and metes-and-bounds surveys, Township 8 North, Range 11 West, accepted August 19, 2021, for Group 1208, New Mexico.

This plat was prepared at the request of the Bureau of Land Management, Rio Puerco Field Office.

The plat only, in two sheets, representing the dependent resurvey, metes-and-bounds survey, and survey of a public access easement, Township 20 North, Range 9 East, accepted September 13, 2021, for Group 1209, New Mexico.

This plat was prepared at the request of the Bureau of Land Management, Taos Field Office.

The plat only, in three sheets, representing the dependent resurvey and subdivision of section 9, Township 13 North, Range 3 East, accepted August 18, 2022, for Group 1211, New Mexico.

This plat was prepared at the request of the Bureau of Indian Affairs, Central Office.

Indian Meridian, Oklahoma

The plat, representing the dependent resurvey and survey, Township 5 South, Range 9 West, accepted July 15, 2022, for Group 239, Oklahoma.

This plat was prepared at the request of the Bureau of Land Management, Oklahoma Field Office.

The plat, representing the dependent resurvey and survey, Township 14 North, Range 9 West, accepted August 12, 2021, for Group 244, Oklahoma.

This plat was prepared at the request of the Bureau of Indian Affairs, Southern Plains Regional Office, Oklahoma.

A person or party who wishes to protest against any of these surveys must file a written notice of protest within 30 calendar days from the date of this publication with the New Mexico Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please be aware that your entire protest, 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: 43 U.S.C. Chap. 3.

Michael J. Purtee,

Chief Cadastral Surveyor of New Mexico; and Oklahoma.

[FR Doc. 2022–18198 Filed 8–23–22; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–34388; 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 August 13, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by September 8, 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 August 13, 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:

ARIZONA

Maricopa County

Royale Gardens II, 1904–1944 East Medlock Dr.. Phoenix, SG100008192

Miracle Mile Historic District, 1325–1812 East McDowell Rd., Phoenix, SG100008193

Sands North Townhouses Historic District, 7230–7310 East Joshua Tree Ln., 6802–6650 North 72nd Pl., 7231–7309, East Cactus Wren Rd., and 6811–6839 North 73rd St., Scottsdale, SG100008212

Navajo County

Winslow Municipal Airport Historic District, 701,703,707 Airport Rd., Winslow, SG100008194

ARKANSAS

Ashley County

Yale Camp Historic District, 1141 South Parkway Dr., Crossett, SG100008191

Nevada County

Prescott City Hall, 118 West Elm St., Prescott, SG100008190

IDAHO

Fremont County

Rankin Auto Court, 120 South US 20, Ashton vicinity, SG100008209

IOWA

Muscatine County

St. Mary's Roman Catholic Church, 314 Grand Ave., Nichols, SG100008198

LOUISIANA

Natchitoches Parish

Drake's Salt Works Archaeological District, Address Restricted, Goldonna vicinity, SG100008174

MISSISSIPPI

Hinds County

Upper Midtown Historic District (Boundary Increase), Roughly bounded by Duncan Ave., North West St., Livingston St. and North Mill St., Jackson, SG100008189

MISSOURI

Jackson County

R.J. DeLano School for Crippled Children, (Kansas City, Missouri School District Pre-1970 MPS), 3708 East Linwood Blvd., Kansas City, MP100008203

West Bottoms Historic District (Boundary Increase), (Railroad Related Historic

Commercial and Industrial Resources in Kansas City, Missouri MPS), Bounded by St. Louis Ave., Santa Fe St., West 14th St., Liberty St., North and East Rail lines, Kansas City, MP100008207

Jasper County

Boots Court, (Route 66 in Missouri MPS), 107 South Garrison Ave., Carthage, MP100008202

Nodaway County

Maryville Post Office, 509 North Main St., Maryville, SG100008204
St. Louis Independent City, Baden School, (St. Louis Public Schools of William B. Ittner MPS), 8724 Halls Ferry Rd., Saint Louis, MP100008201
One Bell Center, 909 Chestnut St., St. Louis, SG100008205

NORTH CAROLINA

Columbus County

Westside High School, 801 West Smith St., Chadbourn, SG100008183

OKLAHOMA

Tulsa County

Greenwood Historic District, 100–300 blks. North Greenwood Ave. and 419 North Elgin Ave., Tulsa, SG100008199

PUERTO RICO

San Juan Municipality

Casa Dr. Bailey K. Ashford, Avenida Ashford 1312, San Juan, SG100008175

SOUTH CAROLINA

Chesterfield County

Coulter Memorial Academy Historic District, Roughly bounded by Powe, Front, Second, and Kershaw Sts., Cheraw, SG100008217

Greenville County

Richardson, Lawrence L., House, 326 South Main St., Simpsonville, SG100008218

TEXAS

Milam County

Rancheria Grande Archeological District, (El Camino Real de los Tejas National Historic Trail MPS), Address Restricted, Gause vicinity, MP100008188

Tarrant County

Fort Worth National Bank, 115 West 7th St., Fort Worth, SG100008197

VIRGINIA

Hanover County

Berkleytown Historic District, Bounded by the CSX Railroad, Archie Cannon Dr., US 1/North Washington Hwy., and Smith St., Ashland, SG100008210

Northampton County

Chatham, 9218 Chatham Rd., Machipongo vicinity, SG100008186

WASHINGTON

King County

Chief Sealth High School, 2600 SW Thistle St., Seattle, SG100008187
USCG–11 (united states coast guard patrol vessel), 1801 Fairview Ave. East, Seattle vicinity, SG100008195

WISCONSIN

Milwaukee County

McCullough and Dixon Steam Laundry and Soap Company, 419 West Vliet St., Milwaukee, SG100008208
TOPS Club Inc., 4575 South 5th St., Milwaukee, SG100008211

A request for removal has been made for the following resources:

IOWA

Black Hawk County

Newell, James, Barn, North of Cedar Falls off US 218, Cedar Falls vicinity, OT76000734

Boone County

Squaw Creek Bridge, (Highway Bridges of Iowa MPS), 120th St. and V Ave. over Squaw Cr., Ridgeport vicinity, OT98000763

Chickasaw County

Darrow, George, Round Barn, (Iowa Round Barns: The Sixty Year Experiment TR), Cty. Rd. T76, Alta Vista vicinity, OT86001421

Clayton County

Goedert Meat Market, 322 Main St., McGregor, OT96001159

Jackson County

Chicago, Milwaukee & St. Paul Narrow Gauge Depot-LaMotte, (Advent & Development of Railroads in Iowa MPS), Market St., LaMotte, OT95000105

Ringgold County

Buck, W.J., Polygonal Barn, (Iowa Round Barns: The Sixty Year Experiment TR), Off US 169, Diagonal vicinity, OT86001471
Additional documentation has been received for the following resources:

MISSOURI

Jackson County

West Bottoms Historic District (Additional Documentation), (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) Bounded by St. Louis Ave., Santa Fe St., West 14th St., Liberty St., North and East Rail lines, Kansas City, AD16000771

NORTH CAROLINA

Guilford County

Palmer Memorial Institute Historic District (Additional Documentation), 6124–6146 Burlington Rd., Sedalia, AD88002029

OKLAHOMA

Creek County

Sapulpa Downtown Historic District (Additional Documentation), Roughly bounded by Hobson Ave., Elm St., Lee Ave., and Main St., Sapulpa, AD02000975

SOUTH CAROLINA

Chesterfield County

Cheraw Historic District, North of Church St., south of Hartzell Ave. and Kershaw St., east of Christian St., west of Front St., Cheraw, AD74001844

Authority: Section 60.13 of 36 CFR part 60.

Dated: August 17, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–18302 Filed 8–23–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1194 (Advisory Opinion Proceeding)]

Certain High-Density Fiber Optic Equipment and Components Thereof; Notice of a Commission Determination To Adopt an Initial Advisory Opinion and not To Review an Initial Determination Terminating the Advisory Opinion Proceeding Based on a Joint Stipulation; Termination of the Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt the presiding administrative law judge's (''ALJ'') initial advisory opinion (''IAO'') and not to review the initial determination (''ID'') (Order No. 8), terminating the advisory opinion proceeding based on a joint stipulation. The advisory opinion proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC

(''Corning'') of Charlotte, North Carolina. 85 FR 16653–54 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 (the '' '320 patent''), 10,444,456 (the '' '456 patent''), 10,120,153 (the '' '153 patent''), 8,712,206 (the '' '206 patent''), and 10,094,996 (''the '996 patent''). *Id.* The '996 patent was subsequently terminated from the investigation. *See* Order No. 11 (July 29, 2020), *unreviewed by* Comm'n Notice (Aug. 13, 2020). The Commission's notice of investigation named thirteen respondents including, among others, Panduit of Tinley, Illinois; FS.com Inc. of New Castle, Delaware; Leviton Manufacturing Co., Inc. of Melville, New York; and The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks of Quebec, Canada; and The Siemon Company of Watertown, Connecticut (collectively, ''Respondents''). *See* Comm'n Op. at 3–5 (Aug. 23, 2021). The remaining respondents were either found in default pursuant to Commission Rule 210.16 or terminated from the investigation based on withdrawal of the allegations in the complaint or a settlement agreement. *Id.* The notice of investigation also named the Office of Unfair Import Investigations (''OUII'') as a party. *Id.* at 4.

On March 23, 2021, the ALJ issued a final ID finding a violation of section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent (collectively, ''Asserted Patents'').

On May 24, 2021, the Commission determined to review the final ID in part. 86 FR 28890–93 (May 28, 2021). On August 3, 2021, the Commission determined that Corning established a violation by Respondents of section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent. 86 FR 43564–66 (Aug. 9, 2021). Among other findings, the Commission affirmed with modifications the ID's finding that Panduit induced infringement of the asserted claims of the '320, '456, and '153 patents and adopted the ID's finding that Panduit's accused products did not directly infringe the '206 patent. As a remedy, the Commission determined to issue a general exclusion order (''GEO'') prohibiting the entry of high-density fiber optic equipment and components thereof that infringe one or more asserted claims of the Asserted Patents; and cease and desist orders (''CDOs''), including one directed to Panduit.

On April 18, 2022, Panduit filed a request for an advisory opinion that three new fiber optic equipment designs that it developed do not infringe any asserted claims of the Asserted Patents and are therefore not covered by the GEO and CDO issued in this investigation. Panduit's new designs include: (1) a patch panel design with a density of 192 fiber optic connections in a 1U space; (2) a patch panel design with a density of 144 fiber optic connections in a 1U space; and (3) a new enclosure design with a density of 192 fiber optic connections in a 1U space (collectively, ''New Designs''). On April 28, 2022, Corning and OUII filed responses to Panduit's request.

On May 18, 2022, the Commission determined to institute an advisory opinion proceeding to ascertain whether Panduit's New Designs infringe claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent, and are covered by the remedial orders issued in this investigation. The Commission further determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and the issuance of an IAO at the earliest practicable time, preferably within 120 days of institution but no later than 7 months after institution. The ALJ was directed to set a target date at two months following the date of issuance of the IAO. The following entities were named as parties to the proceeding: (1) Panduit; (2) Corning; and (3) OUII.

On July 18, 2022, Panduit filed a motion requesting entry of an IAO finding that its New Designs are not subject to the remedial orders and termination of the advisory opinion proceeding. Order No. 8 (Jul. 20, 2022) at 2. Corning did not oppose the motion and OUII filed a response supporting the motion. *Id.* The motion included a Joint Stipulation by Corning and Panduit that Panduit's New Designs are not covered by the GEO and the CDO. *Id.* at 2–3.

In view of the private parties' Joint Stipulation and the remedial orders, on July 20, 2022, the ALJ issued an IAO finding that Panduit's New Designs do not infringe claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; claims 9, 16, 23, and 26 of the '153 patent; and claims 22 and 23 of the '206 patent, and that Panduit's New Designs are not covered by the remedial orders issued in this investigation. *Id.* at 3. Accordingly, the ALJ granted the motion to terminate the advisory opinion proceeding as an ID. No submissions were filed regarding the IAO and no petitions for review of Order No. 8 were filed.

The Commission has determined to adopt the IAO as its final advisory opinion and has determined not to review the ID portion of Order No. 8 terminating the proceeding. The advisory opinion proceeding is terminated.

The Commission vote for this determination took place on August 19, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.
Issued: August 19, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–18280 Filed 8–23–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Updating Spending Weights Annually Based on a Single Calendar Year of Data

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of action.

SUMMARY: Effective with the February 2023 release of CPI data for January 2023, BLS will update weights annually for the Consumer Price Index based on a single calendar year of data, using consumer expenditure data from 2021. This change impacts the CPI for urban consumers (CPI–U), wage earners and clerical workers (CPI–W), initial and interim versions of the Chained CPI–U, and CPI research series. This reflects a change from prior practice of updating weights biennially using two years of expenditure data. This shift will result in changes to some documents available from CPI, including the CPI Relative Importance tables Report and CPI Handbook of Methods.

DATES: The transition to annual weights will occur with the release of January 2023 data, scheduled for release Friday, February 10, 2023.

FOR FURTHER INFORMATION CONTACT: Bradley Akin, Information and Analysis Section, Consumer Price Index, Bureau of Labor Statistics, telephone number 202–691–7000 (this is not a toll-free number), or by email to: *cpi_info@bls.gov.*

SUPPLEMENTARY INFORMATION: To improve the accuracy and relevance of the Consumer Price Index (CPI), the Bureau of Labor Statistics (BLS) plans to update spending weights annually based on a single calendar year of data. This change will be effective with the calculation of January 2023 indexes using consumer expenditure data from 2021.

Historically, the BLS updated spending weights every 10 years to reflect spending habits of urban consumers. In 2002, the BLS began updating spending weights every two years to reflect changes in consumer spending more rapidly. Over time, many countries have adopted annual CPI spending weight updates. The BLS produces continuous estimates of consumer spending, enabling an annual weight update methodology.

Recent research conducted by the BLS demonstrates annual spending weight updates increase the overall accuracy of the CPI. As an accurate cost-of-living measure, the CPI should reflect consumers' changing spending habits. The formula the BLS uses to calculate the CPI–U and CPI–W can yield misleading results if spending weights are updated too frequently. The BLS conducted research in 2021 that demonstrates annual spending weight updates more closely reflect consumers' changing spending habits without yielding misleading results. The estimated impact between 2002–2020 is a reduction in the 12-month change of the CPI–U index of 0.036 percentage points, which is a 13% reduction in the impact of upper-level substitution bias. Upper-level substitution bias refers to the impact of using fixed weights even though consumers change (substitute) what they buy.

Annual spending weight updates enable the BLS to maintain relevancy when there are large shifts in consumer spending, as happened during the COVID–19 pandemic. While sudden shifts in spending habits cannot be reflected in an annual update, annual spending changes are an improvement over longer periods. The BLS analyzed annual spending changes and confirmed the spending weight update in January 2022 should use consumer spending from 2019 and 2020. While in past years, the most recent year is typically the most relevant, spending in 2020 was anomalous enough that averaging two years of data produced the most relevant spending weights for indexes in 2022. For 2023, the BLS determined consumer spending data in 2021 would be more relevant than 2019 and 2020. It is expected that moving forward, using the most recent year of data will produce the most relevant spending weights for CPI calculation.

Signed at Washington, DC, on this 16th day of August 2022.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2022–17994 Filed 8–23–22; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at *ACVETEO@dol.gov.* Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at *https://www.dol.gov/agencies/vets/about/advisorycommittee.* This notice also describes the functions of the ACVETEO. Notice of this meeting is required under the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: Tuesday, September 13, 2022 beginning at 9 a.m. and ending at approximately 4:30 p.m. (EDT).

ADDRESSES: The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210, Conference Room N–4437 A, B, C & D. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building. Security Instructions: Meeting participants should use the visitor's entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).

3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.

4. Laptops and other electronic devices may be inspected and logged for identification purposes.

5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

Notice of Intent To Attend the Meeting: All meeting participants should submit a notice of intent to attend by Friday, September 2, 2022, via email to Mr. Gregory Green at *ACVETEO@dol.gov,* subject line ''September 2022 ACVETEO Meeting.''

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, September 2, 2022 by contacting Mr. Gregory Green at *ACVETEO@dol.gov.* Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, *ACVETEO@dol.gov,* (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to

outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9:00 a.m. Welcome and remarks, Margarita Devlin, Deputy Assistant Secretary, Veterans' Employment and Training Service
9:15 a.m. Administrative Business, Gregory Green, Designated Federal Official
9:20 a.m. Briefing on 2021 Employment Situation of Veterans
10:00 a.m. Briefing on Transition Assistance Program
11:00 a.m. Briefing on JVSG and HVRP Grants
11:45 a.m. Lunch
1:00 p.m. Briefing on the Office of Research and Policy
1:45 p.m. Subcommittee Meetings
4:15 p.m. Public Forum, Gregory Green, Designated Federal Official
4:30 p.m. Adjourn

Signed in Washington, DC, this 18th day of August 2022.

James D. Rodriguez,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2022–18169 Filed 8–23–22; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board (NSB) hereby gives notice of the scheduling of two videoconferences for the transaction of National Science Board business, pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Closed videoconference of the Committee on Strategy (CS), to be held Wednesday, August 24, 2022, from 12:00–12:45 p.m. EDT.

Closed videoconference of the National Science Board (NSB), to be held Wednesday, August 24, 2022, at 12:45–1:00 p.m. EDT.

PLACE: These meetings will be held by videoconference organized through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

CS meeting: Chair's remarks; approval of prior minutes; review and discussion of NSF's FY 2024 budget submission to the Office of Management and Budget (OMB) and proposed CS recommendation that the Board vote on the transmittal to OMB of the FY 2024 budget submissions for NSF and OIG.

NSB meeting: Chair's remarks; review and discussion of the NSB's FY 2024 budget submission to OMB; vote on transmittal to OMB of the FY 2024 budget submissions for NSF, NSB and OIG.

CONTACT PERSON FOR MORE INFORMATION

Point of contact for this meeting is: Chris Blair, (703) 292–7000, *cblair@nsf.gov.* You may find meeting information and updates at *https://www.nsf.gov/nsb/meetings/index.jsp.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–18196 Filed 8–23–22; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on Science and Engineering Policy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE:

Monday, August 29, 2022, from 3:00 p.m.–3:30 p.m. EDT.

Tuesday, August 30, 2022, from 12:00 p.m.–12:30 p.m. EDT.

PLACE: This meeting will be held by video conference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The agenda for the August 29 meeting is: Chair's opening remarks; discussion of the narrative outline for the SEI 2024 thematic report on K–12 Education.

The agenda for the August 30 meeting is: Chair's opening remarks; discussion of the narrative outline for the SEI 2024 thematic report on Academic R&D.

CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: (Chris Blair, *cblair@nsf.gov*), 703/292–7000. The link to a You Tube livestream will be available from the meeting notice web page: *https://www.nsf.gov/nsb/meetings/index.jsp.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–18371 Filed 8–22–22; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0107]

Information Collection: NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS)

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).

DATES: Submit comments by October 24, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0107. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0107 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0107.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include NRC–2022–0107 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).

2. *OMB approval number:* 3150–0120.

3. *Type of submission:* Revision.

4. *The form number, if applicable:* NRC Form 313, ''Application for Materials License'' and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).

5. *How often the collection is required or requested:* There is a one-time submittal of the NRC Form 313 (which may include the NRC Form 313A series of forms) with information to receive a license. Once a specific license has been issued, there is a 15-year resubmittal of the NRC Form 313 (which may include the NRC form 313A series of forms) with information for renewal of the license. Amendment requests are submitted as needed by the licensee. There is a one-time submittal for all limited specific medical use applicants of a NRC Form 313A series form to have each new individual identified as a Radiation Safety Officer (RSO) or Associate Radiation Safety Officer (ARSO) [NRC Form 313A (RSO)], authorized medical physicist or ophthalmic physicist [NRC Form 313A (AMP)], authorized nuclear pharmacist [NRC Form 313A (ANP)], or authorized user [NRC Form 313A (AUD), NRC Form 313A (AUS), or NRC Form 313A (AUT)] or a subsequent submittal of additional information for one of these individuals to be identified with a new authorization on a limited specific medical use license. NRC Form 313A (RSO) is also used by medical broad scope licensees when identifying a new individual as an RSO, a new individual as an ARSO, adding an additional RSO authorization, or adding an additional ARSO authorization for the individual. This submittal may occur when applying for a new license, amendment, or renewal. NRC Form 313A (ANP) is also used by commercial nuclear pharmacy licensees when requesting an individual be identified for the first time as ANP. This submittal may occur when applying for a new license, amendment, or renewal.

6. *Who will be required or asked to respond:* All applicants requesting a license, amendment or renewal of a license for byproduct or source material.

7. *The estimated number of annual responses:* 12,222 (1,174 NRC licensees + 10,296 Agreement States licensees + 752 Third Party respondents).

8. *The estimated number of annual respondents:* 12,222 (1,174 NRC licensees + 10,296 Agreement States licensees + 752 Third Party respondents).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 49,359 (5,053 NRC licensee hours + 44,306 Agreement States licensee hours).

10. *Abstract:* Applicants must submit NRC Form 313, which may include the six forms in the 313A series, to obtain a specific license to possess, use, or distribute byproduct or source material. These six forms in the 313A series are: (1) NRC Form 313A (RSO), ''Radiation Safety Officer or Associate Radiation Safety Officer Training, Experience and Preceptor Attestation [10 CFR 35.57, 35.50]''; (2) NRC Form 313A (AMP), ''Authorized Medical Physicist or Ophthalmic Physicist, Training, Experience and Preceptor Attestation [10 CFR 35.51, 35.57(a)(3), and 35.433''; (3) NRC Form 313A (ANP), ''Authorized Nuclear Pharmacist Training, Experience, and Preceptor Attestation 10 CFR 35.55''; (4) NRC Form 313A (AUD), ''Authorized User Training, Experience and Preceptor Attestation (for uses defined under 35.100, 35.200, and 35.500) 10 CFR 35.57, 35.190 35.290, and 35.590''; (5) NRC Form 313A (AUT), ''Authorized User Training, Experience, and Preceptor Attestation (for uses defined under 35.300) 10 CFR 35.57, 35.390, 35.392, 35.394, and 35.396''; and (6) NRC Form 313A (AUS), ''Authorized User Training, Experience and Preceptor Attestation (for uses defined under 35.400 and 35.600) 10 CFR 35.57, 35.490, 35.491, and 35.690.'' The NRC Form 313A series of forms requires preceptor attestations for certain individuals. The preceptor attestation is

provided by a third party and not an applicant or licensee. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety and minimize danger to life or property.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your response.
2. Is the estimate of the burden of the information collection accurate? Please explain your response.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS accession No.
Draft OMB Supporting Statement for NRC Form 313	ML22117A207
NRC Form 313—Application for Materials License	ML22117A197
NRC Form 313A (AMP)—Authorized Medical Physicist or Ophthalmic Medical Physicist	ML22117A198
NRC Form 313A (RSO)—Radiation Safety Officer or Associate Radiation Safety Officer	ML22117A199
NRC Form 313A (ANP)—Authorized Nuclear Pharmacist	ML22117A200
NRC Form 313A (AUD)—Authorized User requesting authorization for diagnostic uses defined under 10 CFR 35.100, 10 CFR 35.200, or 10 CFR 35.500.	ML22117A201
NRC Form 313A (AUS)—Authorized User requesting authorization for use of sealed sources defined under 10 CFR 35.400 or 10 CFR 35.600.	ML22117A202
NRC Form 313A (AUT)—Authorized User requesting authorization for use of unsealed radioactive material for therapy defined under 10 CFR 35.300.	ML22117A203
NRC Form 313 online form	ML22202A526

Dated: August 18, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–18184 Filed 8–23–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service—December 2021

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from December 1, 2021 to December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

14. Department of Commerce (Sch A, 213.3114)

(l) National Telecommunication and Information Administration—

(1) Ninety-one (91) professional positions in grades GS–13 through GS–15.

Schedule B

14. Department of Commerce (Sch B, 213.3214)

(d) National Telecommunication and Information Administration—

(1) Not to exceed 27 positions of GS–0850 Electrical Engineer, GS–0855 Electronics Engineer, or GS–0854 Computer Engineer in grades GS–11 through GS–15. Employment under this authority may not exceed 2 years.

Schedule C

The following Schedule C appointing authorities were approved during December 2021.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Farm Service Agency	State Executive Director—New York.	DA220019	12/09/2021
		State Executive Director—West Virginia.	DA220021	12/9/2021
		State Executive Director—Maine.	DA220032	12/27/2021
		State Executive Director—Illinois.	DA220035	12/27/2021
	Office of Rural Development	State Director—Missouri	DA220025	12/09/2021
		State Director—Maine	DA220026	12/09/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
		State Director—Illinois	DA220029	12/27/2021
		State Director—Delaware	DA220031	12/27/2021
		State Director—Nebraska	DA220030	12/30/2021
DEPARTMENT OF COMMERCE	Office of Public Affairs	Deputy Speechwriter	DC220024	12/06/2021
		Deputy Director of Public Affairs and Press Secretary.	DC220032	12/06/2021
	Office of National Telecommunications and Information Administration.	Senior Advisor	DC220022	12/07/2021
	Office of the Chief of Staff	Director of Scheduling and Advance.	DC220038	12/16/2021
COMMODITY FUTURES TRADING COMMISSION.	Office of Public Affairs	Director	CT220001	12/09/2021
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD220021	12/01/2021
	Office of the Assistant Secretary of Defense (Strategy, Plans and Capabilities).	Special Assistant	DD220019	12/01/2021
	Office of the Under Secretary of Defense (Research and Engineering).	Senior Advisor	DD220027	12/02/2021
	Washington Headquarters Services	Defense Fellow (4)	DD220020	12/01/2021
			DD220024	12/02/2021
			DD220025	12/15/2021
			DD220033	12/21/2021
DEPARTMENT OF THE AIR FORCE	Office of Assistant Secretary Air Force for Acquisition.	Special Assistant	DF220006	12/28/2021
DEPARTMENT OF EDUCATION	Office of the Secretary	Special Assistant	DB220009	12/16/2021
	Office of the Under Secretary	Confidential Assistant	DB220015	12/30/2021
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Regional Intergovernmental and External Affairs Specialist.	DE210184	12/12/2021
FEDERAL ENERGY REGULATORY COMMISSION.	Office of the Commissioner	Economic Advisor	DR220001	12/21/2021
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office for Civil Rights	Deputy Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders.	DH220026	12/02/2021
	Office of the Deputy Secretary	Special Assistant	DH220030	12/13/2021
	Office of Administration for Children and Families.	Senior Advisor for Early Childhood Development.	DH220029	12/22/2021
DEPARTMENT OF HOMELAND SECURITY.	Office for Civil Rights and Civil Liberties.	Senior Advisor	DM220032	12/02/2021
	Office of the General Counsel	Oversight Counsel	DM220039	12/07/2021
	Cybersecurity and Infrastructure Security Agency.	Senior Advisor	DM220031	12/23/2021
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Senior Advisor	DU220015	12/08/2021
	Office of Field Policy and Management	Regional Administrator (2)	DU220010	12/07/2021
			DU220012	12/07/2021
		Regional Administrator Region IV.	DU220003	12/08/2021
	Office of the Secretary	Senior Advisor	DU220014	12/06/2021
DEPARTMENT OF LABOR	Office of Employment and Training Administration.	Senior Policy Advisor	DL220008	12/21/2021
		Policy Advisor	DL220012	12/21/2021
	Office of Congressional and Intergovernmental Affairs.	Legislative Officer	DL220020	12/22/2021
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Senior Advisor (Communications and Speechwriting).	TB220001	12/09/2021
OFFICE OF MANAGEMENT AND BUDGET.	Natural Resource Programs	Confidential Assistant	BO220004	12/17/2021
SMALL BUSINESS ADMINISTRATION	Office of Disaster Assistance	Senior Advisor	SB220010	12/08/2021
	Office of Field Operations	Regional Administrator, Region VI.	SB220011	12/08/2021
		Regional Administrator, Region IX.	SB220015	12/28/2021
DEPARTMENT OF STATE	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Advisor	DS220008	12/06/2021
	Office of the Chief of Protocol	Protocol Officer (Ceremonials).	DS220009	12/06/2021
DEPARTMENT OF TRANSPORTATION.	Immediate Office of the Administrator	Senior Advisor	DT220015	12/16/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Transportation Policy.	Policy Advisor	DT220016	12/16/2021
		Deputy Director of Public Engagement.	DT220014	12/17/2021
DEPARTMENT OF THE TREASURY	Comptroller of the Currency	Deputy Chief of Staff	DY220007	12/02/2021
	Under Secretary for Domestic Finance	Special Assistant	DY220011	12/08/2021
	Secretary of the Treasury	Counselor to the Secretary	DY210128	12/27/2021
DEPARTMENT OF VETERANS AFFAIRS.	Veterans Health Administration	Special Assistant to the Under Secretary for Health.	DV220009	12/8/2021

The following Schedule C appointing authorities were revoked during December 2021.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Health.	Special Advisor to the Surgeon General.	DH210130	12/27/2021

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–18174 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; January 2022

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from January 1, 2022 to January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

14. Department of Commerce (Sch. A, 213.3114)

(m) First Responder Network (FirstNet) Authority—

(1) Not exceed 12 FirstNet Board Member positions. Employment and compensation must be in accordance with 47 U.S.C. 1424. Appointments are time-limited for up to 3 years and FirstNet may reappoint an individual hired under this authority to a second 3-year term. An appointment may be extended beyond the 3-year limit until a successor member has taken office, or until the end of the calendar year in which an appointment expires, whichever is earlier.

Schedule B

No Schedule B Authorities to report during January 2022.

Schedule C

The following Schedule C appointing authorities were approved during January 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Farm Service Agency	State Executive Director—Texas	DA220039	01/01/2022
		State Executive Director—Arkansas.	DA220038	01/01/2022
		State Executive Director—Missouri	DA220024	01/03/2022
		State Executive Director—Kentucky.	DA220042	01/03/2022
		State Executive Director—California.	DA220047	01/14/2022
		State Executive Director, Idaho	DA220048	01/14/2022
		State Executive Director—Nebraska.	DA220049	01/14/2022
		State Executive Director—Virginia	DA220051	01/14/2022
		State Executive Director—Minnesota.	DA220052	01/14/2022
		State Executive Director—Massachusetts.	DA220063	01/31/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
		State Executive Director—Pennsylvania.	DA220064	01/31/2022
		State Executive Director—Maryland.	DA220065	01/31/2022
		State Executive Director—Tennessee.	DA220070	01/31/2022
	Natural Resources Conservation Service.	Confidential Assistant	DA220069	01/31/2022
	Office of the Deputy Secretary	Special Assistant	DA220067	01/31/2022
	Office of the Secretary	Advance Associate	DA220068	01/31/2022
	Office of Under Secretary for Natural Resources and Environment.	Chief of Staff	DA220056	01/14/2022
	Rural Development	State Director—Tennessee	DA220037	01/01/2022
		State Director—New York	DA220028	01/01/2022
		State Director—Washington	DA220040	01/03/2022
		State Director—Montana	DA220041	01/03/2022
		State Director—Vermont	DA220043	01/03/2022
		State Director—Florida	DA220053	01/14/2022
		State Director—Idaho	DA220054	01/14/2022
		State Director—Oregon	DA220066	01/31/2022
APPALACHIAN REGIONAL COMMISSION.	Appalachian Regional Commission	Senior Policy Advisor	AP220001	01/01/2022
ARCTIC RESEARCH COMMISSION.	Arctic Research Commission	Confidential Assistant	AW220002	01/28/2022
DEPARTMENT OF COMMERCE	Bureau of Industry and Security	Special Assistant	DC220047	01/18/2022
	Minority Business Development Agency.	Senior Advisor	DC220052	01/18/2022
	National Oceanic and Atmospheric Administration.	Senior Advisor	DC220049	01/18/2022
		Senior Advisor and Speechwriter	DC220058	01/27/2022
	National Telecommunications and Information Administration.	Special Policy Advisor	DC220061	01/27/2022
	Office of Executive Secretariat	Special Assistant	DC220048	01/18/2022
	Office of the Chief of Staff	Senior Advisor	DC220046	01/18/2022
	Office of the Deputy Secretary	Counselor to the Deputy Secretary	DC220050	01/18/2022
	Office of the Under Secretary	Speechwriter and Policy Advisor	DC220040	01/03/2022
FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL.	Office of Federal Permitting Improvement Steering Council.	Associate Director for Public Engagement.	FF220001	01/24/2022
DEPARTMENT OF DEFENSE	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant	DD220036	01/06/2022
	Washington Headquarters Services	Defense Fellow	DD220035	01/18/2022
	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD220077	01/26/2022
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary Army (Installations, Energy and Environment).	Special Assistant	DW220017	01/07/2022
DEPARTMENT OF EDUCATION	Office for Civil Rights	Confidential Assistant	DB220011	01/06/2022
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB220016	01/06/2022
		Special Assistant	DB220019	01/27/2022
	Office of Communications and Outreach.	Senior Advisor	DB220017	01/19/2022
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Regional Intergovernmental and External Affairs Specialist.	DE220001	01/03/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Water.	Senior Advisor for Technical Assistance and Community Outreach.	EP220021	01/12/2022
	Office of the Chief Financial Officer	Special Advisor for Implementation	EP220024	01/19/2022
	Office of Public Affairs	Writer-Editor (Speechwriter)	EP220025	01/20/2022
GENERAL SERVICES ADMINISTRATION.	Federal Acquisition Service	Program Director, Presidential Innovation Fellows.	GS220011	01/27/2022
	Office of Strategic Communication	Director of Public Engagement	GS220010	01/31/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Press Secretary (2)	DH220034	01/10/2022
			DH220036	01/21/2022
	Office of the Secretary	Policy Advisor	DH220038	01/26/2022
DEPARTMENT OF HOMELAND SECURITY.	Privacy Office	Special Assistant	DM220070	01/12/2022

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Chief Information Officer.	Special Assistant	DU220017	01/05/2022
	Office of the Deputy Secretary	Policy Advisor	DU220020	01/13/2022
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office	Scheduler	DI220013	01/07/2022
		Advisor, Office of Congressional and Legislative Affairs.	DI220038	01/31/2022
DEPARTMENT OF JUSTICE	Office of Public Affairs	Senior Communications Advisor	DJ220023	01/12/2022
DEPARTMENT OF LABOR	Office of the Solicitor	Senior Counsel	DL220022	01/18/2022
	Office of Wage and Hour Division	Senior Policy Advisor	DL220023	01/19/2022
NATIONAL CREDIT UNION ADMINISTRATION.	Office of the Chairman	Director, Office of External Affairs and Communications.	CU220001	01/21/2022
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Senior Advisor	TB220002	01/03/2022
OFFICE OF MANAGEMENT AND BUDGET.	Office of E-Government and Information Technology.	Senior Advisor for Delivery	BO220005	01/24/2022
OFFICE OF PERSONNEL MANAGEMENT.	Congressional, Legislative, and Intergovernmental Affairs.	Senior Advisor	PM220014	01/12/2022
	Human Resource Solutions	Chief of Staff	PM220008	01/20/2022
	Office of the Director	Confidential Assistant	PM220011	01/27/2022
		Senior Advisor for Strategic Initiatives.	PM220012	01/31/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of Legislative and Intergovernmental Affairs.	Legislative Affairs Specialist	SE220006	01/27/2022
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Regional Administrator, Region V	SB220018	01/14/2022
		Regional Administrator, Region VII	SB220019	01/14/2022
DEPARTMENT OF STATE	Bureau of Global Public Affairs	Senior Advisor	DS220013	01/04/2022
	Chief of Protocol	Senior Protocol Officer (Visits)	DS220015	01/04/2022
	Office of Policy Planning	Senior Advisor	DS220016	01/28/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Transportation Policy.	Special Assistant for Policy	DT220024	01/14/2022
		Special Assistant for Transportation Policy and Implementation.	DT220022	01/27/2022
	Office of the Secretary	Special Assistant for Scheduling and Advance.	DT220025	01/27/2022
DEPARTMENT OF THE TREASURY.	Office of the Secretary of the Treasury.	Scheduling and Advance Associate	DY220051	01/28/2022

The following Schedule C appointing authorities were revoked during January 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF EDUCATION	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB210049	01/21/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Special Assistant to the Director	PM210038	01/30/2022
		Policy Advisor	PM210076	01/29/2022
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD210189	01/15/2022
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Regional Administrator, Region IV	SB220008	01/01/2022
		Regional Administrator, Region III	SB210054	01/01/2022
		Regional Administrator, Region I	SB220005	01/01/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–18177 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; May 2020

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from May 1, 2020 to May 31, 2020.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during May 2020.

Schedule B

No Schedule B Authorities to report during May 2020.

Schedule C

The following Schedule C appointing authorities were approved during May 2020.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Rural Housing Service	State Director—New Mexico	DA200079	05/08/2020
DEPARTMENT OF COMMERCE	Bureau of Industry and Security	Legislative Affairs Specialist	DC200095	05/04/2020
	International Trade Administration	Advisor	DC200118	05/07/2020
		Senior Advisor	DC200108	05/11/2020
	Minority Business Development Agency.	Confidential Assistant	DC200120	05/19/2020
	Office of Advance, Scheduling and Protocol.	Advance Assistant	DC200111	05/07/2020
	Office of Policy and Strategic Planning.	Senior Advisor	DC200113	05/14/2020
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Special Assistant	DC200072	05/06/2020
DEPARTMENT OF DEFENSE	Washington Headquarters Services	Special Advisor	DD200167	05/06/2020
	Office of the Secretary	Protocol Officer (2)	DD200185	05/27/2020
			DD200186	05/30/2020
DEPARTMENT OF THE AIR FORCE.	Office of the Secretary	Special Assistant	DF200008	05/08/2020
DEPARTMENT OF THE NAVY	Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs).	Special Assistant (Manpower and Reserve Affairs).	DN200024	05/11/2020
			DN200027	05/27/2020
	Department of the Navy	Special Assistant		
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Director of Outreach	DB200052	05/04/2020
		Confidential Assistant	DB200053	05/04/2020
	Office of Special Education and Rehabilitative Services.	Confidential Assistant	DB200055	05/07/2020
		Special Assistant	DB200054	05/11/2020
	Office of the Secretary	Confidential Assistant	DB200056	05/15/2020
DEPARTMENT OF ENERGY	Office of Advanced Research Projects Agency—Energy.	Senior Advisor	DE200120	05/08/2020
	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Senior Advisor	DE200165	05/19/2020
	Office of the Assistant Secretary for Environmental Management.	Senior Advisor	DE200086	05/19/2020
	Office of Public Affairs	Writer-Editor (Speechwriter) (2)	DE200103	05/04/2020
			DE200119	05/18/2020
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for Policy.	Policy Assistant	EP200069	05/13/2020
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office for Civil Rights	Senior Advisor for Conscience and Religious Freedom.	DH200107	05/05/2020
	Office of the Assistant Secretary for Public Affairs.		DH200109	05/04/2020
		Senior Advisor	DH200120	05/28/2020
		Special Assistant		
	Office of the Secretary	Advisor	DH200111	05/13/2020
		Special Assistant	DH200112	05/13/2020
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Senior Advisor (2)	DM200262	05/29/2020
			DM200210	05/30/2020
	Office of the Assistant Secretary for Policy.	Policy Advisor	DM200248	05/01/2020
	United States Immigration and Customs Enforcement.	Senior Advisor, Oversight	DM200246	05/05/2020
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Community Planning and Development.	Special Assistant	DU200094	05/05/2020
		Senior Advisor	DU200097	05/12/2020
	Office of the Chief Financial Officer			
DEPARTMENT OF JUSTICE	Office on Violence Against Women	Special Advisor	DJ200106	05/07/2020
DEPARTMENT OF LABOR	Office of Public Liaison	Senior Advisor	DL200124	05/28/2020
	Office of the Assistant Secretary for Policy.	Special Assistant	DL200111	05/05/2020
	Office of the Chief Financial Officer	Chief of Staff	DL200099	05/15/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Secretary	Director, Office of the White House Liaison.	DL200122	05/01/2020
			DL200131	05/15/2020
		Deputy White House Liaison	DL200110	05/27/2020
		Special Assistant		
	Wage and Hour Division	Policy Advisor	DL200090	05/21/2020
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of the Board Members	Special Assistant	TB200006	05/05/2020
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Office of the Commissioners	Counsel	SH200002	05/21/2020
OFFICE OF MANAGEMENT AND BUDGET.	Office of General Government Programs.	Confidential Assistant	BO200026	05/01/2020
		Deputy for Communication	BO200027	05/18/2020
	Office of Communications	Deputy Press Secretary	BO200028	05/30/2020
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Legislative Affairs	Public Affairs Specialist	QQ200006	05/07/2020
OFFICE OF PERSONNEL MANAGEMENT.	Office of Congressional, Legislative, and Intergovernmental Affairs.	Deputy Director, Congressional, Legislative and Intergovernmental Affairs.	PM200051	05/08/2020
	Office of Employee Services	Executive Assistant	PM200058	05/18/2020
	Office of the Director	Special Assistant	PM200050	05/04/2020
	President's Commission on White House Fellowships.	Associate Director	PM200056	05/30/2020
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Confidential Assistant	TS200004	05/20/2020
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Deputy White House Liaison	SB200023	05/08/2020
		Special Assistant	SB200016	05/19/2020
	Office of Entrepreneurial Development.	Senior Advisor	SB200024	05/28/2020
DEPARTMENT OF STATE	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Senior Advisor	DS200063	05/06/2020
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Governmental Affairs.	Senior Governmental Affairs Officer.	DT200107	05/05/2020
		Special Assistant	DT200116	05/27/2020
	Office of the Chief Information Officer.	Associate Director for Strategic ITInitiatives.	DT200110	05/08/2020
	Office of Public Affairs	Senior Media Affairs Coordinator	DT200115	05/27/2020
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Public Affairs).	Public Affairs Specialist	DY200090	05/13/2020
		Special Assistant for Public Affairs	DY200091	05/13/2020
	Office of the Assistant Secretary (Tax Policy).	Senior Advisor for Tax Policy	DY200094	05/13/2020
	Office of the Assistant Secretary for Financial Institutions.	Senior Advisor for Financial Institutions.	DY200101	05/31/2020
	Office of the Assistant Secretary for Financial Markets.	Special Advisor for Financial Markets.	DY200093	05/13/2020
DEPARTMENT OF VETERANS AFFAIRS.	Board of Veterans' Appeals	Senior Advisor	DV200060	05/12/2020

The following Schedule C appointing authorities were revoked during May 2020.

Agency name	Organization name	Position title	Request No.	Date vacated
COMMISSION ON CIVIL RIGHTS	Office of Commissioners	Special Assistant	CC090004	05/01/2020
DEPARTMENT OF AGRICULTURE	Office of the Assistant Secretary for Congressional Relations.	Director of Intergovernmental Affairs.	DA200042	05/01/2020
	Natural Resources Conservations Service.	Staff Assistant	DA200012	05/23/2020
	Office of the Under Secretary for Rural Development.	Policy Coordinator	DA200039	05/23/2020
DEPARTMENT OF COMMERCE	Office of Executive Secretariat	Confidential Assistant	DC190135	05/09/2020
	Patent and Trademark Office	Special Advisor for Communications.	DC190021	05/09/2020
	Office of Public Affairs	Press Assistant	DC190122	05/23/2020
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Deputy Under Secretary for Policy.	Special Assistant	DD190130	05/02/2020
		Special Assistant	DD190188	05/09/2020
	Office of the Assistant Secretary of Defense (Legislative Affairs).			
	Office of the Under Secretary of Defense (Policy).	Special Assistant	DD190060	05/09/2020

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF EDUCATION ...	Office of the General Counsel	Attorney Advisor (Deputy Special Counsel).	DB190132	05/30/2020
DEPARTMENT OF ENERGY	Office of Public Affairs	Content Creator	DE190172	05/09/2020
	Office of Policy	Director of National Laboratory Operations Board and Senior Advisor.	DE200073	05/16/2020
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	Regional Director, Dallas, Texas, Region VI.	DH190022	05/08/2020
	Office of the Secretary	Deputy White House Liaison	DH200046	05/09/2020
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Executive Assistant	DU190085	05/09/2020
DEPARTMENT OF JUSTICE	Office of Public Affairs	Senior Advisor	DJ190185	05/09/2020
		Public Affairs Specialist	DJ190034	05/23/2020
DEPARTMENT OF STATE	Bureau of Public Affairs	Deputy Assistant Secretary for Media Strategy.	DS190069	05/09/2020
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Special Assistant	DS190142	05/16/2020
	Bureau of Political and Military Affairs.	Special Assistant	DS180065	05/23/2020
	Bureau of Economic and Business Affairs.	Special Assistant	DS190039	05/30/2020
	Bureau of Legislative Affairs	Legislative Management Officer	DS190129	05/31/2020
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Indian Affairs.	Special Assistant	DI190005	05/30/2020
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary—Public Affairs.	Special Assistant	DY190073	05/02/2020
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Senior Deputy White House Liaison.	EP190110	05/09/2020
		White House Liaison	EP190045	05/09/2020
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Advisor	EP190042	05/09/2020
EXPORT–IMPORT BANK	Office of Communications	Press Secretary	EB190010	05/08/2020
FEDERAL COMMUNICATIONS COMMISSION.	Office of Media Relations	Public Affairs Specialist	FC170009	05/08/2020
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of the Chief Financial Officer	Policy Advisor	NN190051	05/23/2020
NATIONAL CREDIT UNION ADMINISTRATION.	Office of the Board	Director, Office of External Affairs and Communications/Deputy Chief of Staff.	CU200002	05/21/2020
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of the Board Members	Confidential Assistant	TB200003	05/23/2020
OFFICE OF MANAGEMENT AND BUDGET.	Office of Communications	Press Secretary	BO190032	05/23/2020
	Office of Government Programs	Confidential Assistant	BO190024	05/23/2020
	Office of the Director	Deputy Chief of Staff	BO190021	05/23/2020
OFFICE OF PERSONNEL MANAGEMENT.	Congressional, Legislative, and Intergovernmental Affairs.	Legislative Analyst	PM200012	05/09/2020
OFFICE OF SPECIAL COUNSEL ..	Headquarters, Office of Special Counsel.	Deputy Special Counsel for Congressional Affairs.	SC190004	05/22/2020
SMALL BUSINESS ADMINISTRATION.	Office of Investment and Innovation.	Senior Advisor	SB200006	05/16/2020

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–18185 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0254, Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an expiring information collection without change, Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123.

DATES: Comments are encouraged and will be accepted until September 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *http://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.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0254) was previously published in the **Federal Register** on March 10, 2022 at 87 FR 13777, allowing for a 60-day public comment period. OPM received no comments in response to its request for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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 submissions of responses.

RI 20–123 will be available to annuitants and survivor annuitants on the OPM website by the end of 2022. It is used by retirees who have retired under disability annuity provisions and who have performed service as law enforcement officers, firefighters, nuclear materials carriers, air traffic controllers, Congressional employees, Members of Congress, Capitol and Supreme Court police, or Custom and Border protection officers (and their survivors or beneficiaries), to request that Retirement Operations review the computations of the retiree's disability annuities. Upon receipt of this form, OPM will ensure it has computed the disability annuity in accordance with applicable statues. These provisions require OPM to compute the disability annuities of affected retirees using the higher annuity amount computed under the disability annuity computation provisions or the enhanced immediate retirement computation provisions specifically applicable to these special employee populations. When OPM receives form RI 20–123 from an annuitant, survivor or beneficiary it will take action to review the retiree's annuity computation and, if the retiree is entitled to an increased benefit, or if a survivor or beneficiary is entitled to amounts accrued but unpaid to a deceased retiree, OPM will process accordingly.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request for Case Review for Enhanced Disability Annuity Benefit.

OMB Number: 3206–0254.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 100.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 8.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–18183 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

2021 Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This provides the consolidated notice of all agency specific excepted authorities, approved by the Office of Personnel Management (OPM), under Schedule A, B, and C, as of June 30, 2021, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the U.S. Office of Personnel Management (OPM) to publish notice of exceptions granted under Schedule A, B, and C. Under 5 CFR 213.103(a) it is required that all Schedule A, B, and C appointing authorities available for use by all agencies to be published as regulations in the **Federal Register** (FR) and the Code of Federal Regulations (CFR). Excepted appointing authorities established solely for use by one specific agency do not meet the standard of general applicability prescribed by the **Federal Register** Act for regulations published in either the FR or the CFR. Therefore, 5 CFR 213.103(b) requires monthly publication, in the Notices section of the **Federal Register**, of any Schedule A, B, and C appointing authorities applicable to a single agency. Under 5 CFR 213.103(c) it is required that a consolidated listing of all Schedule A, B, and C authorities, current as of June 30 of each year, be published annually in the Notices section of the **Federal Register** at *www.federalregister.gov/agencies/personnel-management-office*. That notice follows. Governmentwide authorities codified in the CFR are not printed in this notice.

When making appointments under an agency-specific authority, agencies should first list the appropriate Schedule A, B, or C, followed by the applicable number, for example: Schedule A, 213.3104(x)(x). Agencies are reminded that all excepted authorities are subject to the provisions of 5 CFR part 302 unless specifically exempted by OPM at the time of approval.

OPM maintains continuing information on the status of all Schedule A, B, and C appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Senior Executive Resource Services, Office of Personnel Management, 1900 E Street NW, Room 7412, Washington, DC 20415, or by calling (202) 606–2246.

The following exceptions are current as of June 30, 2021.

Schedule A

03. Executive Office of the President (Sch. A, 213.3103)

(a) Office of Administration—

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget—

(1) Not to exceed 20 positions at grades GS–5/15.

(2) Not to Exceed 34 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of

Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–14 to 15 level. No new appointments may be made under this authority after September 30, 2017.

(c) Council on Environmental Quality—

(1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved)

(g) National Security Council—

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy—

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy—

(1) Not to exceed 18 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

04. Department of State (Sch. A, 213.3104)

(a) Office of the Secretary—

(1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) (Reserved)

(b)–(f) (Reserved)

(g) Bureau of Population, Refugees, and Migration—

(1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) Bureau of Administration—

(1) (Reserved)

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) (Reserved)

05. Department of the Treasury (Sch. A, 213.3105)

(a) Office of the Secretary—

(1) Not to exceed 20 positions at the equivalent of GS–13 through GS–15 or Senior Level (SL) to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Covering no more than 100 positions supplementing permanent staff studying domestic economic and financial policy, with employment not to exceed 4 years.

(3) Not to exceed 100 positions in the Office of the Under Secretary for Terrorism and Financial Intelligence.

(4) Up to 35 temporary or time-limited positions at the GS–9 through 15 grade levels to support the organization, design, and stand-up activities for the Consumer Financial Protection Bureau (CFPB), as mandated by Public Law 111–203. This authority may be used for the following series: GS–201, GS–501, GS–560, GS–1035, GS–1102, GS–1150, GS–1720, GS–1801, and GS–2210. No new appointments may be made under this authority after July 21, 2011, the designated transfer date of the CFPB.

(b)–(d) (Reserved)

(e) Internal Revenue Service—

(1) Twenty positions of investigator for special assignments.

(f) (Reserved)

(g) (Reserved, moved to DOJ)

(h) Office of Financial Stability—

(1) Positions needed to perform investment, risk, financial, compliance, and asset management requiring unique qualifications currently not established by OPM. Positions will be in the Office of Financial Stability and the General Schedule (GS) grade levels 12–15 or Senior Level (SL), for initial employment not to exceed 4 years. No new appointments may be made under this authority after December 31, 2012.

(i) Office of the Special Inspector General for Pandemic Recovery—Temporary or time-limited positions at the GS level in the Office of the Special Inspector General for Pandemic Recovery. This authority may be used for the following occupational series: GS–1811 Special Agent, GS–18100 Investigator, GS–1805 Investigative Research/Analyst, GS–1801 Inspection/Investigative Analyst, GS–511 Auditor, GS–510 Accounting, GS–201 Human Resource Specialist, GS–343 Management Analyst, GS–301 Miscellaneous Administrative and Program, GS–2210 Information Technology, GS–1102 Contracting, GS–560 Budget Analyst, GS–1035 Public Affairs at the GS–9 through GS–15 levels. No new appointments may be made under this authority after December 14, 2025 or the termination of the SIGPR, whichever occurs first.

06. Department of Defense (Sch. A, 213.3106)

(a) Office of the Secretary—

(1)–(5) (Reserved)

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force) —

(1) Dependent School Systems overseas—Professional positions in Military Dependent School systems overseas.

(2) Positions in Attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided that

(i) A school employee may be permitted to complete the school year; and

(ii) An employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to

1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) (Reserved)

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after September 30, 2014.

(11) Not to exceed 3,000 positions that require unique cyber security skills and knowledge to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, investigation, investigative analysis and cyber-related infrastructure inter-dependency analysis. This authority may be used to make permanent, time-limited and temporary appointments in the following occupational series: Security (GS–0080), computer engineers (GS–0854), electronic engineers (GS–0855), computer scientists (GS–1550), operations research (GS–1515), criminal investigators (GS–1811), telecommunications (GS–0391), and IT specialists (GS–2210). Within the scope of this authority, the U.S. Cyber Command is also authorized to hire miscellaneous administrative and program (GS–0301) series when those positions require unique cyber security skills and knowledge. All positions will be at the General Schedule (GS) grade levels 09–15 or equivalent. No new appointments may be made under this authority after December 31, 2017

(c) (Reserved)

(d) General—

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical, or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences—

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University—

(1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency—

(1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisition University—

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany—

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii—

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

(k) Business Transformation Agency—

(1) Fifty temporary or time-limited (not to exceed four years) positions, at grades GS–11 through GS–15. The authority will be used to appoint persons in the following series: Management and Program Analysis, GS–343: Logistics Management, GS–346; Financial Management Programs, GS–501; Accounting, GS–510; Computer Engineering, GS–854; Business and Industry, GS–1101; Operations Research, GS–1515; Computer Science, GS–1550; General Supply, GS–2001; Supply Program Management, GS–2003; Inventory Management, GS–2010; and Information Technology, GS–2210.

(l) Special Inspector General for Afghanistan—

(1) Positions needed to establish the Special Inspector General for Afghanistan Reconstruction. These positions provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated and otherwise made available for the reconstruction of Afghanistan. These positions are established at General Schedule (GS) grade levels for initial employment not to exceed 3 years and may, with prior approval of OPM, be extended for an additional period of 2 years. No new appointments may be made under this authority after January 31, 2011.

07. Department of the Army (Sch. A, 213.3107)

(a)–(c) (Reserved)

(d) U.S. Military Academy, West Point, New York—

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist

and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and Librarian when filled by an officer of the Regular Army retired from active service, and the Military Secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved)

(g) Defense Language Institute—

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA—

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved)

(j) U.S. Military Academy Preparatory School, West Point, New York—

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas—

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

08. Department of the Navy (Sch. A, 213.3108)

(a) General—

(1)–(14) (Reserved)

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College—

(1) Professors, Instructors, and Teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and Social Counselors at the Naval Academy.

(c) Chief of Naval Operations—

(1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command

(1) All positions on vessels operated by the Military Sealift Command.

(e)–(f) (Reserved)

(g) Office of Naval Research—

(1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

09. Department of the Air Force (Sch. A, 213.3109)

(a) Office of the Secretary—

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General—

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Two hundred positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Norton and McClellan Air Force Bases, California—

(1) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado—

(1) (Reserved)

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved)

(f) Air Force Office of Special Investigations—

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Wright-Patterson Air Force Base, Ohio—

(1) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama—

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio—

(1) Civilian deans and professors.

(j) Air Force Logistics Command—

(1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) Wright-Patterson AFB, Ohio—

(1) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) Air National Guard Readiness Center—

(1) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

10. Department of Justice (Sch. A, 213.3110)

(a) General—

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved)

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in 1-year increments for the duration of the in-country program.

(7) Positions necessary throughout DOJ, for the excepted service transfer of NDIC employees hired under Schedule A, 213.3110(d). Authority expires September 30, 2012.

(b) (Reserved)

(c) Drug Enforcement Administration—

(1) (Reserved)

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent).

New appointments may be made under this authority only at grades GS–7/11.

(d) (Reserved, moved to Justice)

(e) Bureau of Alcohol, Tobacco, and Firearms—

(1) One hundred positions of Criminal Investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

11. Department of Homeland Security (Sch. A, 213.3111)

(a) (Revoked 11/19/2009)

(b) Law Enforcement Policy—

(1) Ten positions for oversight policy and direction of sensitive law enforcement activities.

(c) Homeland Security Labor Relations Board/Homeland Security Mandatory Removal Board—

(1) Up to 15 Senior Level and General Schedule (or equivalent) positions.

(d) General—

(1) Not to exceed 800 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be in the following occupations: security (series 0080), intelligence analysis (series 0132), investigative analyst (series 1805), investigator (series 1810), and criminal investigator (series 1811) at the GS–9 through GS–15 grade levels. No new appointments may be made under this authority after January 5, 2022 or the effective date of the completion of regulations implementing the Border Patrol Agency Pay Reform Act of 2014, whichever comes first.

(e) Papago Indian Agency—Not to exceed 25 positions of Immigration and Customs Enforcement (ICE) Tactical Officers (Shadow Wolves) in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood. (Formerly 213.3105(b)(9))

(f) U.S. Citizenship and Immigration Services

(1) Reserved. (Formerly 213.3110(b)(1))

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9. (Formerly 213.3110(b)(2))

(3) Reserved. (Formerly 213.3110(b)(3))

(g) U.S. Immigration and Customs Enforcement—

(1) Not to exceed 200 staff positions, GS–15 and below for an emergency staff to provide health related services to foreign entrants. (Formerly 213.3116(b)(16))

(h) Federal Emergency Management Agency—

(1) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort. (Formerly 213.3195(a))

(2) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority. (Formerly 213.3195(b))

(3) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS). (Formerly 213.3195(c))

(i) U.S. Coast Guard—

(1) Reserved. (Formerly 213.3194(a))

(2) Lamplighters. (Formerly 213.3194(b))

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut. (Formerly 213.3194(c))

12. Department of the Interior (Sch. A, 213.3112)

(a) General—

(1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators, and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved)

(c) Indian Arts and Crafts Board—

(1) The Executive Director

(d) (Reserved)

(e) Office of the Assistant Secretary, Territorial and International Affairs—

(1) (Reserved)

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved)

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service—

(1) (Reserved)

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation—

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: Provided, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs—

(1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

13. Department of Agriculture (Sch. A, 213.3113)

(a) General—

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved)

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of Sec. 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved)

(b)–(c) (Reserved)

(d) Farm Service Agency—

(1) (Reserved)

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development—

(1) (Reserved)

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved)

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service—

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, peanut, and processed and fresh fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively,

Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved)

(l) Food Safety and Inspection Service—

(1)–(2) (Reserved)

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS–11 and below and non-Veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration—

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation—

(1) Executive Director

14. Department of Commerce (Sch. A, 213.3114)

(a) General—

(1)–(2) (Reserved)

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved)

(d) Bureau of the Census—

(1) Positions in support of decennial operations (including decennial pre-tests). Appointments may be made on a time limited basis that lasts the duration of decennial operations but may not exceed 7 years. Extensions beyond 7 years may be requested on a case-by-case basis.

(2) Positions of clerk, field representative, field leader, and field supervisor in support of data collection operations (non-decennial operations). Appointments may be made on a permanent or a time-limited basis. Appointments made on a time limited basis may not exceed 4 years. Extensions beyond 4 years may be requested on a case-by-case basis.

(e)–(h) (Reserved)

(i) Office of the Under Secretary for International Trade—

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved)

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period not to exceed 2 years and may, with prior OPM approval, be extended for an additional 2 years.

(j) National Oceanic and Atmospheric Administration—

(1)–(2) (Reserved)

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved)

(l) National Telecommunication and Information Administration—

(1) Thirty-eight professional positions in grades GS–13 through GS–15.

15. Department of Labor (Sch. A, 213.3115)

(a) Office of the Secretary—

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved)

(d) Employment and Training Administration—

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

16. Department of Health and Human Services (Sch. A, 213.3116)

(a) General—

(1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service—

(1) (Reserved)

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved)

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved)

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved)

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(15) (Reserved)

(c)–(e) (Reserved)

(f) Reserved

17. Department of Education (Sch. A, 213.3117)

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

18. Environmental Protection Agency (sch. A, 213.3118)

24. Board of Governors, Federal Reserve System (Sch. A, 213.3124)

(a) All positions

27. Department of Veterans Affairs (Sch. A, 213.3127)

(a) Construction Division—

(1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Alcoholism Treatment Units and Drug Dependence Treatment Centers—

(1) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals—

(1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Vietnam Era Veterans Readjustment Counseling Service—

(1) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

(e) Not to Exceed 75 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to non-supervisory Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–15 level. No new appointments may be made under this authority after September 30, 2017.

32. Small Business Administration (Sch. A, 213.3132)

(a) When the President under 42 U.S.C. 5170–5189, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 7 years. Exception to this time limit may only be made with prior U.S. Office of Personnel Management approval. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

33. Federal Deposit Insurance Corporation (Sch. A, 213.3133)

(a)–(b) (Reserved)

(c) Temporary or time-limited positions that are directly related with resolving failing insured depository institutions; financial companies; or brokers and dealers; covered by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including but not limited to, the marketing and sale of institutions and any associated assets; paying insured depositors; and managing receivership estates and all associated receivership management activities, up to termination. Time limited appointments under this authority may not exceed 7 years.

36. U.S. Soldiers' and Airmen's Home (Sch. A, 213.3136)

(a) (Reserved)

(b) Positions when filled by member-residents of the Home.

37. General Services Administration (Sch. A, 213.3137)

(a) Not to Exceed 203 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used nationwide to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–11 to 15 level. No new appointments may be made under this authority after September 30, 2017.

46. Selective Service System (Sch. A, 213.3146)

(a) State Directors

48. National Aeronautics and Space Administration (Sch. A, 213.3148)

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

55. Social Security Administration (Sch. A, 213.3155)

(a) Arizona District Offices—

(1) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) New Mexico—

(1) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Alaska—

(1) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

62. The President's Crime Prevention Council (Sch. A, 213.3162)

(a) (Reserved)

65. Chemical Safety and Hazard Investigation Board (Sch. A, 213.3165)

(a) (Reserved)

(b) (Reserved)

66. Court Services and Offender Supervision Agency of the District of Columbia (Sch. A, 213.3166)

(a) (Reserved, expired 3/31/2004)

70. Millennium Challenge Corporation (MCC) (Sch. A, 213.3170)

(a) (Reserved, expired 9/30/2007)

(b)

(1) Positions of Resident Country Director and Deputy Resident Country Director, Threshold Director and Deputy Threshold Director. The length of appointments will correspond to the length or term of the compact agreements made between the MCC and the country in which the MCC will work, plus one additional year to cover pre- and post-compact agreement related activities.

74. Smithsonian Institution (Sch. A, 213.3174)

(a) (Reserved)

(b) Smithsonian Tropical Research Institute—All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) National Museum of the American Indian—Positions at GS–15 and below requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

75. Woodrow Wilson International Center for Scholars (Sch. A, 213.3175)

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, four Social Science Program Administrators, one Middle East Studies Program Administrator, one African Studies Program Administrator, one Global Sustainability and Resilience Program Administrator, one Canadian Studies Program Administrator; one China Studies Program Administrator, one Science, Technology and Innovation Program Administrator, and one Mexico Studies Program Administrator.

78. Community Development Financial Institutions Fund (Sch. A, 213.3178)

(a) (Reserved, expired 9/23/1998)

80. Utah Reclamation and Conservation Commission (Sch. A, 213.3180)

(a) Executive Director

82. National Foundation on the Arts and the Humanities (Sch. A, 213.3182)

(a) National Endowment for the Arts—

(1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy, or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

90. African Development Foundation (Sch. A, 213.3190)

(a) One Enterprise Development Fund Manager. Appointment is limited to four years unless extended by OPM.

91. Office of Personnel Management (Sch. A, 213.3191)

(a)–(c) (Reserved)

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

94. Department of Transportation (Sch. A, 213.3194)

(a)–(d) (Reserved)

(e) Maritime Administration—

(1)–(2) (Reserved)

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved)

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

(f) Up to 40 positions at the GS–13 through 15 grade levels and within authorized SL allocations necessary to support the following credit agency programs of the Department: the Federal Highway Administration's Transportation Infrastructure Finance and Innovation Act Program, the Federal Railroad Administration's Railroad Rehabilitation and Improvement Financing Program, the Federal Maritime Administration's Title XI Program, and the Office of the Secretary's Office of Budget and Programs Credit Staff. This authority may be used to make temporary, time-limited, or permanent appointments, as the DOT deems appropriate, in the following occupational series: Director or Deputy Director SL–301/340, Origination Team Lead SL–301, Deputy Director/Senior Financial Analyst GS–1160, Origination Financial Policy Advisor GS–301, Credit Budgeting Team Lead GS–1160, Credit Budgeting Financial Analysts GS–1160, Portfolio Monitoring Lead SL–1160, Portfolio Monitoring Financial Analyst GS–1160, Financial Analyst GS–1160. No new appointments may be made under this authority after December 31, 2014.

95. (Reserved)

Schedule B

03. Executive Office of the President (Sch. B, 213.3203)

(a) (Reserved)

(b) Office of the Special Representative for Trade Negotiations—

(1) Seventeen positions of economist at grades GS–12 through GS–15.

04. Department of State (Sch. B, 213.3204)

(a) (1) One non-permanent senior level position to serve as Science and Technology Advisor to the Secretary.

(b)–(c) (Reserved)

(d) Seventeen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved)

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

(g) Not to exceed 100 positions in the Bureau of Intelligence and Research (INR) at the GS–5 through GS–15 levels in the following occupational series GS–0080 Security Administration, GS–0110 Economics, GS–0130 Foreign Affairs, GS–0132 Intelligence, GS–0150 Geography, GS–0343 Management and Program Analysis, GS–1083 Technical Writing and Editing, GS–1370 Cartography, and GS–1530 Statistics. This authority may be used to make time-limited appointments of up to 48 months. No new appointments may be

made after March 31, 2023 or when INR transitions to appointments under 50 U.S.C. 3024(v) whichever comes first.

05. Department of the Treasury (Sch. B, 213.3205)

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved)

(d) (Reserved) Transferred to 213.3211(b)

(e) (Reserved) Transferred to 213.3210(f)

(f) (Reserved)

(g) (Reserved, moved to DOJ)

(h) Office of Financial Stability—

(1) Positions needed to perform investment, risk, financial, compliance, and asset management requiring unique qualifications currently not established by OPM. Positions will be in the Office of Financial Stability and the General Schedule (GS) grade levels 12–15 or Senior Level (SL), for initial employment not to exceed 4 years. No new appointments may be made under this authority after December 31, 2012.

(i) Office of the Special Inspector General for Pandemic Recovery

Temporary or time-limited positions at the GS level in the Office of the Special Inspector General for Pandemic Recovery. This authority may be used for the following occupational series: GS–1811 Special Agent, GS–18100 Investigator, GS–1805 Investigative Research/Analyst, GS–1801 Inspection/Investigative Analyst, GS–511 Auditor, GS–510 Accounting, GS–201 Human Resource Specialist, GS–343 Management Analyst, GS–301 Miscellaneous Administrative and Program, GS–2210 Information Technology, GS–1102 Contracting, GS–560 Budget Analyst, GS–1035 Public Affairs at the GS–9 through GS–15 levels. No new appointments may be made under this authority after December 14, 2025 or the termination of the SIGPR, whichever occurs first.

06. Department of Defense (Sch. B, 213.3206)

(a) Office of the Secretary—

(1) (Reserved)

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved)

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities—

(1) Seven positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University—

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General—

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General—

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama—

(1) One Director, GM–15.

(g) Defense Security Assistance Agency—

All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

07. Department of the Army (Sch. B, 213.3207)

(a) U.S. Army Command and General Staff College—

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

08. Department of the Navy (Sch. B, 213.3208)

(a) Naval Underwater Systems Center, New London, Connecticut—

(1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) Armed Forces Staff College, Norfolk, Virginia—All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) Defense Personnel Security Research and Education Center—One Director and four Research Psychologists at the professor or GS–15 level.

(d) Marine Corps Command and Staff College—All civilian professor positions.

(e) Executive Dining facilities at the Pentagon—One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) (Reserved)

09. Department of the Air Force (Sch. B, 213.3209)

(a) Air Research Institute at the Air University, Maxwell Air Force Base, Alabama—Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1-, 2-, or 3- years indefinitely thereafter.

(b)–(c) (Reserved)

(d) Air University—Positions of Instructor or professional academic staff at the Air University associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) U.S. Air Force Academy, Colorado—One position of Director of Development and Alumni Programs, GS–301–13.

10. Department of Justice (Sch. B, 213.3210)

(a) Drug Enforcement Administration—

Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this

authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved)

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved)

(e) United States Trustees—Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

(f) Bureau of Alcohol, Tobacco, and Firearms

(1) Positions, grades GS–5 through GS–12 (or equivalent), of Criminal Investigator. Service under this authority may not exceed 3 years and 120 days.

11. Department of Homeland Security (Sch. B, 213.3211)

(a) Coast Guard.

(1) (Reserved)

(b) Secret Service—Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed:

(1) a total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203.

13. Department of Agriculture (Sch. B, 213.3213)

(a) Foreign Agricultural Service—

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General—

(1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

14. Department of Commerce (Sch. B, 213.3214)

(a) Bureau of the Census—

(1) (Reserved)

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through 12.

(b)–(c) (Reserved)

(d) National Telecommunications and Information Administration—

(1) Not to exceed 10 Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

15. Department of Labor (Sch. B, 213.3215)

(a) Administrative Review Board—Chair and a maximum of four additional Members.

(b) (Reserved)

(c) Bureau of International Labor Affairs—

(1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

17. Department of Education (Sch. B, 213.3217)

(a) Seventy-five positions, not to exceed GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

27. Department of Veterans Affairs (Sch. B, 213.3227)

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration (VA) supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

28. Broadcasting Board of Governors (Sch. B, 213.3228)

(a) International Broadcasting Bureau—

(1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

36. U.S. Soldiers' and Airmen's Home (Sch. B, 213.3236)

(a) (Reserved)

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

40. National Archives and Records Administration (Sch. B, 213.3240)

(a) Executive Director, National Historical Publications and Records Commission.

48. National Aeronautics and Space Administration (Sch. B, 213.3248)

(a) Not to exceed 40 positions of Astronaut Candidates at grades GS–11 through 15. Employment under this authority may not exceed 3 years.

50. Consumer Financial Protection Bureau (Sch. B, 213.3250)

(a) One position of Deputy Director; and one position of Associate Director of the Division of Supervision, Enforcement, and Fair Lending.

55. Social Security Administration (Sch. B, 213.3255)

(a) (Reserved)

74. Smithsonian Institution (Sch. B, 213.3274)

(a) (Reserved)

(b) Freer Gallery of Art—

(1) Not to exceed four Oriental Art Restoration Specialists at grades GS–9 through GS–15.

76. Appalachian Regional Commission (Sch. B, 213.3276)

(a) Two Program Coordinators.

78. Armed Forces Retirement Home (Sch. B, 213.3278)

(a) Naval Home, Gulfport, Mississippi—

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

82. National Foundation on the Arts and the Humanities (Sch. B, 213.3282)

(a) (Reserved)

(b) National Endowment for the Humanities—

(1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

91. Office of Personnel Management (Sch. B, 213.3291)

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Center for Leadership Development—No more than 72 positions of faculty members at grades GS–13 through GS–15. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1, 2, or 3 year increments.

Schedule C

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Rural Housing Service	Special Assistant	DA200027	07/06/2020
	Agricultural Marketing Service	Chief of Staff	DA200081	08/22/2020
		Senior Advisor for Fair and Competitive Markets.	DA210086	02/12/2021
	Farm Service Agency	State Executive Director—Georgia.	DA200096	07/27/2020
		Senior Policy Advisor	DA210079	02/04/2021
	Food and Nutrition Service	Senior Advisor for Technology and Delivery.	DA210061	01/20/2021
	Foreign Agricultural Service	Policy Advisor	DA210089	02/23/2021
	Natural Resources Conservation Service.	Chief of Staff	DA210108	05/06/2021
		Senior Advisor	DA210114	05/27/2021
	Office of Communications	Confidential Assistant	DA210060	01/20/2021
		Deputy Director of Communications.	DA210071	01/29/2021
		Director of Scheduling and Advance.	DA210059	01/20/2021
		Press Assistant	DA210123	06/23/2021
		Press Secretary	DA210101	04/23/2021
		Scheduler	DA210063	01/20/2021
		Speechwriter	DA210122	06/23/2021
	Office of Small and Disadvantaged Business Utilization.	Director	DA160124	03/18/2021
	Office of the Assistant Secretary for Administration.	Senior Advisor	DA210085	02/12/2021
	Office of the Assistant Secretary for Congressional Relations.	Confidential Assistant (2)	DA210047	01/20/2021
			DA210048	01/20/2021
		Legislative Director	DA210064	01/20/2021
		Legislative Analyst	DA210070	02/01/2021
		Legislative Advisor (2)	DA210104	04/29/2021
			DA210105	05/03/2021
	Office of the Chief Financial Officer	Confidential Assistant	DA200125	09/11/2020
	Office of the Chief Information Officer.	Senior Advisor for Data and Technology.	DA210112	05/14/2021
	Office of the Deputy Secretary	Special Assistant	DA210109	05/06/2021
	Office of the Secretary	Advance Lead	DA210113	05/27/2021
		Deputy Director of Scheduling and Advance.	DA210110	05/06/2021
		Deputy White House Liaison (2).	DA200154	10/20/2020
			DA210065	01/20/2021
		Senior Advisor (2)	DA210056	01/20/2021
			DA210057	01/20/2021
		White House Liaison	DA210041	01/20/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Under Secretary for Farm Production and Conservation.	Confidential Assistant	DA210046	01/20/2021
		Senior Advisor	DA210055	01/20/2021
	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Confidential Assistant	DA210120	06/11/2021
	Office of the Under Secretary for Rural Development.	Senior Advisor	DA210058	01/20/2021
	Rural Business Service	Chief of Staff	DA210062	01/20/2021
	Rural Development	Special Assistant	DA210124	06/23/2021
	Rural Housing Service	Chief of Staff	DA210067	01/20/2021
	Rural Utilities Service	Senior Policy Advisor	DA210080	02/04/2021
APPALACHIAN REGIONAL COMMISSION.	Appalachian Regional Commission	Executive Assistant	AP210001	06/30/2021
UNITED STATES AGENCY FOR GLOBAL MEDIA.	United States Agency for Global Media.	Special Assistant and Director of Executive Office Operations.	IB200007	09/02/2020
		Principal Director of Public Affairs.	IB200004	09/11/2020
		Principal Director Office of Contracts.	IB200009	09/29/2020
DEPARTMENT OF COMMERCE	Bureau of Industry and Security	Chief of Staff	DC210070	01/26/2021
		Congressional Affairs Specialist.	DC210066	01/20/2021
		Deputy Chief of Staff	DC200082	12/09/2020
		Senior Advisor	DC210040	01/20/2021
		Special Advisor	DC200104	08/12/2020
	Bureau of the Census	Chief of Congressional Affairs.	DC210061	01/20/2021
	Office of the Assistant Secretary for United States Field.	Senior Advisor	DC200156	07/28/2020
	Office of Economic Development Administration.	Director of Public Affairs	DC210045	01/20/2021
	Immediate Office	Senior Advisor to the Chief of Staff.	DC200135	07/31/2020
		Executive Assistant to the Secretary and Director of the Office of the Secretary.	DC210081	02/05/2021
		Senior Advisor (Upskilling and Broadband).	DC210076	02/10/2021
	International Trade Administration	Senior Advisor	DC200137	07/15/2020
		Press Secretary	DC200181	09/21/2020
	Minority Business Development Agency.	Advisor	DC200151	10/29/2020
		Senior Advisor (2)	DC200155	07/20/2020
			DC210020	12/07/2020
			DC210130	05/20/2021
	National Oceanic and Atmospheric Administration.	Deputy Assistant Secretary.	DC200175	09/03/2020
		Special Assistant	DC210047	01/20/2021
	National Telecommunications and Information Administration.	Senior Advisor	DC210145	06/03/2021
	Office of Advance, Scheduling and Protocol.	Scheduler	DC210079	02/05/2021
		Deputy Director of Advance.	DC210146	06/11/2021
	Office of Business Liaison	Special Assistant	DC210093	03/26/2021
		Deputy Director	DC210102	04/09/2021
	Office of Executive Secretariat	Associate Director	DC210021	12/07/2020
	Office of Legislative and Intergovernmental Affairs.	Confidential Assistant (2)	DC210013	11/20/2020
			DC210048	01/20/2021
		Director for Oversight	DC210057	01/26/2021
		Director of Legislative and Intergovernmental Affairs (2).	DC210067	01/26/2021
			DC210088	03/09/2021
		Special Assistant	DC210155	06/23/2021
	Office of Policy and Strategic Planning.	Deputy Director	DC210086	02/10/2021
		Policy Advisor (2)	DC210049	01/20/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
			DC210083	02/05/2021
		Senior Advisor	DC210087	02/25/2021
		Senior Policy Advisor	DC210157	06/23/2021
		Special Assistant	DC210114	05/06/2021
	Office of Public Affairs	Deputy Director of Public Affairs and Director of Digital Strategy and Engagement.	DC210069	01/26/2021
		Deputy Director of Public Affairs and Director of Speechwriting.	DC210106	04/29/2021
		Deputy Director of Public Affairs and Press Secretary.	DC210051	01/20/2021
		Deputy Speech Writer	DC210001	10/05/2020
		Director of the Office of Public Affairs.	DC210065	01/20/2021
		Press Assistant	DC210050	01/20/2021
	Office of the Assistant Secretary for Economic Development.	Chief of Staff for Economic Development.	DC210103	04/02/2021
		Special Advisor	DC210113	05/06/2021
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Confidential Assistant	DC200147	09/11/2020
		Special Assistant	DC200187	09/21/2020
	Office of the Chief of Staff	Confidential Assistant	DC210096	03/26/2021
		Director of Scheduling and Advance.	DC210092	03/18/2021
		Director, Center for Faith and Opportunity Initiatives.	DC200129	10/13/2020
		Senior Advisor (2)	DC210117	05/06/2021
			DC210129	05/20/2021
		Special Assistant (2)	DC210109	04/26/2021
			DC210104	04/09/2021
	Office of the Deputy Secretary	Advisor	DC200153	01/08/2021
		Special Assistant (2)	DC210080	02/05/2021
			DC210094	03/26/2021
		Senior Advisor	DC210110	04/29/2021
	Office of the Director	Senior Advisor	DC210063	01/20/2021
	Office of the General Counsel	Senior Counsel	DC200128	07/23/2020
		Special Assistant	DC210052	01/20/2021
		Deputy General Counsel for Strategic Initiatives.	DC210100	04/02/2021
	Office of the Secretary	Special Assistant (2)	DC210091	03/18/2021
			DC210115	05/20/2021
	Office of the Under Secretary	Special Assistant	DC210046	01/20/2021
		Senior Advisor (2)	DC210058	01/26/2021
			DC210056	01/20/2021
	Office of the White House Liaison	Senior Advisor to the Secretary (Covid).	DC210041	01/20/2021
		Senior Advisor to the Secretary (Delivery).	DC210060	01/20/2021
		Deputy White House Liaison.	DC210071	01/29/2021
		Special Assistant	DC210128	05/20/2021
COMMISSION ON CIVIL RIGHTS	Office of Staff Members	Special Assistant to the Commissioner.	CC200001	08/07/2020
	Office of Commissioners	Special Assistant (2)	CC200002	08/07/2020
			CC200003	09/11/2020
	Commission on Civil Rights	Special Assistant to the Commissioner.	CC210001	04/09/2021
CONSUMER FINANCIAL PROTECTION BUREAU.	Office of the Director	Deputy Director	FP210002	07/07/2020
CONSUMER PRODUCT SAFETY COMMISSION.	Office of Commissioners	Special Assistant (Legal)	PS210001	05/17/2021
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Scheduler	EQ210001	01/22/2021
		Special Assistant (2)	EQ200001	09/09/2020
			EQ210002	01/26/2021
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (8)	DD200222	08/31/2020
			DD200240	09/03/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
			DD200268	11/24/2020
			DD210132	01/23/2021
			DD210148	01/28/2021
			DD210191	02/12/2021
			DD210193	02/12/2021
			DD210236	06/08/2021
	Office of the Assistant to the Secretary of Defense (Public Affairs).	Chief of Staff	DD210133	01/23/2021
		Speechwriter (3)	DD210175	02/02/2021
			DD210205	02/25/2021
			DD210159	01/28/2021
		Director of Digital Media	DD210173	02/02/2021
		Deputy Director of Speechwriting.	DD210241	06/17/2021
		Deputy Press Secretary	DD210204	02/18/2021
		Research Assistant	DD210199	02/18/2021
	Department of Defense Chief Information Officer.	Director, Chief Information Officer Action Group.	DD210239	06/08/2021
	Office of the Secretary	Advance Officer	DD200202	07/02/2020
	Office of the Secretary of Defense	Advance Officer	DD210158	01/28/2021
		Confidential Assistant	DD210152	01/28/2021
		Defense Fellow	DD210028	12/11/2020
		Deputy Director of Protocol.	DD210194	02/12/2021
		Deputy White House Liaison (2).	DD210003	10/13/2020
			DD210210	03/10/2021
		Director, Travel Operations.	DD210219	04/02/2021
		Protocol Officer (2)	DD210151	01/27/2021
			DD210147	01/28/2021
		Special Assistant (6)	DD210112	01/23/2021
			DD210155	01/28/2021
			DD210178	02/02/2021
			DD210186	02/12/2021
			DD210200	02/18/2021
			DD210201	05/11/2021
	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant (7)	DD200218	08/06/2020
			DD200231	08/25/2020
			DD200271	09/26/2020
			DD210170	02/02/2021
			DD210174	02/02/2021
			DD210189	02/12/2021
			DD210192	02/12/2021
	Office of the Under Secretary of Defense (Comptroller).	Special Assistant	DD200266	09/29/2020
	Office of the Under Secretary of Defense (Personnel and Readiness).	Director of Communications to the Under Secretary of Defense for Personnel and Readiness.	DD200196	07/10/2020
		Special Assistant (3)	DD200247	09/11/2020
			DD210177	02/02/2021
			DD210185	05/27/2021
	Office of the Under Secretary of Defense (Policy).	Chief of Staff for Assistant Secretary of Defense (Special Operations/ Low-Intensity Conflict).	DD210237	06/08/2021
		Senior Advisor to the Assistant Secretary of Defense (Strategy, Plans and Capabilities) (Climate).	DD210234	05/25/2021
		Special Assistant (18)	DD200206	07/27/2020
			DD200245	08/25/2020
			DD200255	09/10/2020
			DD200260	09/11/2020
			DD210019	11/20/2020
			DD210039	12/16/2020
			DD210129	01/23/2021
			DD210116	01/24/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
			DD210163	01/28/2021
			DD210164	01/28/2021
			DD210172	02/02/2021
			DD210180	02/02/2021
			DD210202	02/18/2021
			DD210222	04/09/2021
			DD210228	05/10/2021
			DD210227	05/11/2021
			DD210240	06/13/2021
			DD210243	06/30/2021
	Office of the Under Secretary of Defense (Research and Engineering).	Special Assistant	DD210149	01/27/2021
	Washington Headquarters Services	Defense Fellow (3)	DD200229	08/14/2020
			DD200228	08/20/2020
			DD200269	09/21/2020
		Senior Director (2)	DD210134	04/15/2021
			DD210198	04/15/2021
		Chief of Staff	DD210229	05/19/2021
DEPARTMENT OF THE AIR FORCE.	Office of Assistant Secretary Air Force, Installations, Environment, and Energy.	Special Assistant (2)	DF200014	09/19/2020
			DF200017	09/30/2020
	Office of the General Counsel	Special Assistant	DF200016	09/18/2020
		Attorney Advisor/Special Assistant.	DF210007	02/16/2021
	Office of the Secretary	Special Assistant (2)	DF210005	12/16/2020
			DF210008	02/16/2021
	Office of the Under Secretary	Special Assistant	DF210009	02/16/2021
DEPARTMENT OF THE ARMY	Office Assistant Secretary Army (Acquisition, Logistics and Technology).	Special Assistant to the Deputy Assistant Secretary of the Army (Strategy and Acquisition Reform).	DW200042	07/15/2020
	Office Assistant Secretary Army (Civil Works).	Special Assistant to the Principal Deputy Assistant Secretary of the Army (Civil Works).	DW200035	08/06/2020
		Special Assistant to the Assistant Secretary of the Army (Civil Works).	DW210010	02/11/2021
	Office Assistant Secretary Army (Manpower and Reserve Affairs).	Special Assistant to the Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affair).	DW200047	12/19/2020
	Office Deputy Under Secretary of Army.	Special Assistant to the Deputy Under Secretary of the Army.	DW200046	10/13/2020
	Office of the General Counsel	Attorney Advisor to the Army General Counsel.	DW210009	02/11/2021
	Office of the Secretary	Special Assistant to the Chief of Staff, Secretary of the Army.	DW210011	02/11/2021
DEPARTMENT OF THE NAVY	Office of the General Counsel	Attorney-Advisor (General)	DN210011	01/20/2021
	Office of the Secretary of the Navy	Deputy Chief of Staff	DN200057	09/16/2020
		Special Assistant (2)	DN210014	01/20/2021
			DN210016	02/05/2021
	Office of the Under Secretary of the Navy.	Special Assistant	DN200032	07/02/2020
		Residential Manager and Social Secretary for the Vice President.	DN210012	01/28/2021
DEPARTMENT OF EDUCATION	Office for Civil Rights	Chief of Staff	DB210042	01/22/2021
		Confidential Assistant	DB210086	04/16/2021
		Senior Counsel (2)	DB210025	01/20/2021
			DB210097	05/13/2021
	Office of Career Technical and Adult Education.	Special Assistant (2)	DB210101	05/24/2021
			DB210108	06/02/2021
	Office of Communications and Outreach.	Chief of Staff	DB210103	06/08/2021
		Confidential Assistant (3)	DB200065	07/02/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
			DB210076	03/25/2021
			DB210077	03/31/2021
		Managing Writer	DB210098	06/01/2021
		Press Secretary	DB210061	02/11/2021
		Senior Director of Digital Strategy.	DB210063	02/16/2021
		Special Assistant (4)	DB210006	11/15/2020
			DB210046	01/29/2021
			DB210056	02/11/2021
			DB210099	05/24/2021
	Office of Elementary and Secondary Education.	Chief of Staff	DB210055	02/04/2021
		Confidential Assistant	DB210092	04/27/2021
		Special Assistant (2)	DB210066	02/23/2021
			DB210104	06/07/2021
	Office of Legislation and Congressional Affairs.	Chief of Staff	DB210035	02/04/2021
		Confidential Assistant	DB210088	04/16/2021
		Senior Advisor	DB200071	09/24/2020
		Special Assistant (3)	DB210026	01/20/2021
			DB210089	04/28/2021
			DB210094	04/29/2021
	Office of Planning, Evaluation and Policy Development.	Chief of Staff	DB210058	02/19/2021
		Confidential Assistant	DB210087	04/16/2021
		Deputy Director, Office of Educational Technology.	DB200068	08/17/2020
		Special Assistant (3)	DB210047	01/29/2021
			DB210049	01/29/2021
			DB210054	02/04/2021
	Office of Postsecondary Education	Chief of Staff	DB210027	01/20/2021
		Special Assistant	DB210030	01/20/2021
		Senior Advisor	DB210106	06/07/2021
	Office of Special Education and Rehabilitative Services.	Special Assistant	DB210073	02/18/2021
	Office of the General Counsel	Deputy General Counsel	DB200069	08/14/2020
		Confidential Assistant	DB210001	10/09/2020
		Senior Counsel (5)	DB210034	01/20/2021
			DB210044	01/29/2021
			DB210045	01/30/2021
			DB210096	05/06/2021
			DB210112	06/25/2021
	Office of the Secretary	Confidential Assistant (3)	DB210052	02/01/2021
			DB210070	02/18/2021
			DB210074	02/26/2021
		Deputy Chief of Staff (2)	DB210060	02/12/2021
			DB210072	02/18/2021
		Deputy Director of Scheduling.	DB210093	04/28/2021
		Deputy White House Liaison.	DB210051	02/01/2021
		Director of Advance	DB210071	02/18/2021
		Director of Scheduling	DB210095	05/03/2021
		Director, White House Liaison.	DB210022	01/20/2021
		Senior Advisor (3)	DB210081	04/02/2021
			DB210105	06/07/2021
			DB210111	06/15/2021
		Senior Advisor to the Chief of Staff.	DB210033	01/20/2021
		Special Assistant (2)	DB210082	04/13/2021
			DB210083	04/13/2021
	Office of the Under Secretary	Chief of Staff	DB210041	01/22/2021
		Confidential Assistant (2)	DB210059	02/11/2021
			DB210084	04/16/2021
		Special Assistant	DB210085	04/16/2021
DEPARTMENT OF ENERGY	Office of the Advanced Research Projects Agency—Energy.	Deputy Chief of Staff	DE200191	09/26/2020
		Special Assistant	DE210108	06/03/2021
	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Associate Deputy Assistant Secretary for House Affairs.	DE200149	12/16/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
		Associate Deputy Assistant Secretary for Intergovernmental and External Affairs.	DE200146	08/22/2020
		Deputy Assistant Secretary for House Affairs.	DE210090	03/22/2021
		Deputy Assistant Secretary for Intergovernmental Affairs.	DE210098	04/23/2021
		Deputy Assistant Secretary for Senate Affairs.	DE200112	08/06/2020
		Legislative Affairs Advisor (3).	DE210137	05/09/2021
			DE200137	11/20/2020
			DE200147	11/20/2020
		Legislative Affairs Assistant.	DE200139	07/06/2020
		Special Advisor	DE200148	11/20/2020
		Special Assistant	DE210149	05/19/2021
	Office of the Assistant Secretary for Electricity.	Chief of Staff	DE210138	05/12/2021
	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Chief of Staff	DE210119	06/03/2021
		Deputy Chief of Staff (2)	DE200204	10/05/2020
			DE210152	05/20/2021
		Program Manager	DE200179	08/07/2020
		Senior Advisor	DE210113	06/03/2021
		Special Assistant	DE210120	05/19/2021
	Office of the Assistant Secretary for Environmental Management.	Special Advisor for Communications (2).	DE200128	09/19/2020
			DE210003	09/19/2020
	Office of the Assistant Secretary for Fossil Energy.	Special Assistant	DE210107	05/19/2021
		Chief of Staff	DE210105	06/03/2021
	Office of the Assistant Secretary for International Affairs.	Chief of Staff	DE210148	05/13/2021
		Deputy Chief of Staff	DE200151	12/19/2020
		Senior Advisor	DE200200	09/29/2020
		Special Advisor	DE200150	08/07/2020
		Special Assistant	DE210121	05/19/2021
	Office of the Assistant Secretary for Nuclear Energy.	Special Advisor	DE200134	11/20/2020
	Office of Artificial Intelligence and Technology.	Chief of Staff	DE200145	09/19/2020
	Office of Cybersecurity, Energy Security and Emergency Response.	Senior Advisor	DE200183	08/22/2020
		Chief of Staff	DE200197	09/24/2020
	Office of Economic Impact and Diversity.	Senior Advisor for Small Business.	DE210016	11/25/2020
	Office of General Counsel	Attorney-Advisor	DE200162	07/02/2020
		Legal Advisor	DE210104	06/03/2021
	Office of Management	Advance Lead	DE200133	08/06/2020
		Deputy Director of Operations for Advance.	DE200172	01/14/2021
		Director of External Operations.	DE200173	01/14/2021
		Director of Operations for Public Engagement.	DE200174	12/19/2020
		Scheduler	DE210145	05/19/2021
		Senior Advisor	DE200195	10/02/2020
		Special Assistant (2)	DE200202	09/30/2020
			DE210124	05/19/2021
	Office of Policy	Special Assistant	DE210139	05/20/2021
	Office of Public Affairs	Copy Editor	DE200152	11/20/2020
		Deputy Director	DE210147	05/13/2021
		Deputy Press Secretary	DE210099	04/27/2021
		Press Assistant	DE200140	07/31/2020
		Press Secretary (2)	DE200129	09/24/2020
			DE210128	05/19/2021
		Principal Deputy Press Secretary.	DE200131	12/16/2020
		Speechwriter (2)	DE210091	03/10/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
			DE210144	05/12/2021
		Writer-Editor (Senior Speechwriter).	DE200084	07/02/2020
	Office of Science	Chief of Staff	DE200144	12/16/2020
	Office of Strategic Planning and Policy.	Special Assistant	DE200135	12/19/2020
	Office of Technology Transition	Senior Advisor	DE200136	11/20/2020
	Office of the Deputy Secretary	Special Assistant	DE210125	06/03/2021
	Office of the Secretary	Deputy Chief of Staff	DE210092	03/12/2021
		Deputy White House Liaison(2).	DE210002	10/05/2020
			DE210115	05/19/2021
		Special Advisor	DE200108	08/07/2020
		Special Assistant to the Secretary.	DE210111	05/19/2021
		Special Assistant to the White House Liaison.	DE200196	09/24/2020
		White House Liaison(2)	DE200198	09/24/2020
			DE210101	05/19/2021
	Office of the Secretary of Energy Advisory Board.	Deputy Director	DE200171	09/19/2020
	Office of the Under Secretary for Science.	Special Assistant	DE210129	05/19/2021
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Deputy Associate Administrator for Policy.	EP200109	10/17/2020
		Press Assistant	EP200089	08/22/2020
		Public Affairs Specialist (2)	EP210084	02/10/2021
			EP210089	05/16/2021
		Special Advisor for Digital Media.	EP200100	09/24/2020
		Special Advisor for Digital Strategy.	EP210086	03/24/2021
		Writer-Editor (Speechwriter).	EP210074	02/26/2021
	Office of Public Engagement and Environmental Education.	Deputy Associate Administrator for Public Engagement and Environmental Education (2).	EP210093	06/08/2021
			EP200114	09/24/2020
		Senior Advisor for the Office of Public Engagement and Environmental Education.	EP210009	01/05/2021
		Special Assistant	EP210077	02/25/2021
	Office of the Administrator	Advance Specialist	EP210076	02/04/2021
		Deputy Chief of Staff for Operations.	EP210049	02/03/2021
		Deputy Director for Scheduling and Advance.	EP210088	04/27/2021
		Deputy White House Liaison.	EP210051	02/03/2021
		Director of Scheduling and Advance.	EP210050	02/03/2021
		Senior Advisor to the Administrator.	EP200102	10/02/2020
		Senior Assistant to the Deputy Administrator.	EP210010	01/05/2021
		Special Advisor	EP200095	09/11/2020
		Special Advisor for Logistics.	EP200066	09/16/2020
		Special Advisor to the Chief of Staff.	EP210007	12/09/2020
		Special Assistant	EP210073	02/04/2021
		Special Assistant to the Administrator.	EP210024	02/01/2021
		White House Liaison (2)	EP210001	10/02/2020
			EP210013	02/01/2021
	Office of the Assistant Administrator for Administration and Resources Management.	Deputy Assistant Administrator for the Office of Mission Support.	EP200085	08/06/2020
	Office of the Assistant Administrator for Air and Radiation.	Senior Advisor to the Administrator on Transportation and Air Quality.	EP200099	08/06/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
		Special Assistant	EP210072	02/04/2021
	Office of the Assistant Administrator for Chemical Safety and Pollution Prevention.	Public Liaison	EP200086	07/31/2020
		Deputy Assistant Administrator for Pesticide Programs.	EP210091	06/07/2021
	Office of the Assistant Administrator for Land and Emergency Management.	Senior Policy Advisor	EP200110	09/26/2020
		Special Assistant	EP210075	02/04/2021
	Office of the Assistant Administrator for Mission Support.	Senior Advisor	EP200119	10/09/2020
	Office of the Assistant Administrator for Research and Development.	Policy Assistant	EP200077	01/08/2021
	Office of the Assistant Administrator for Water.	Special Assistant	EP210083	02/04/2021
		Senior Advisor	EP210092	06/08/2021
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Assistant Deputy Associate Administrator for Senate Affairs.	EP200090	10/02/2020
		Congressional Relations Specialist.	EP200080	08/22/2020
		Deputy Associate Administrator for Congressional Affairs.	EP210016	01/30/2021
		Deputy Associate Administrator for Intergovernmental Affairs.	EP210014	02/01/2021
		Special Advisor for Senate Affairs.	EP200082	01/05/2021
		Special Advisor to the Office of Congressional and Intergovernmental Relations.	EP200068	09/24/2020
	Office of the Associate Administrator for Policy.	Policy Advisor	EP200083	07/31/2020
		Special Assistant	EP210070	02/04/2021
		Deputy Associate Administrator for Policy.	EP210090	05/17/2021
	Office of the Executive Secretariat	Director	EP210087	04/27/2021
	Office of the General Counsel	Special Advisor	EP200116	10/02/2020
		Attorney-Advisor (General)	EP210094	06/08/2021
	Region VI—Dallas, Texas	Special Assistant	EP200094	08/22/2020
EXPORT–IMPORT BANK	Office of Congressional and Intergovernmental Affairs.	Senior Vice President, Congressional and Intergovernmental Affairs.	EB210004	01/20/2021
	Office of the Chairman	Director of Scheduling	EB210006	01/20/2021
		Executive Secretary	EB210007	01/20/2021
FEDERAL COMMUNICATIONS COMMISSION.	Office of Media Relations	Press Secretary	FC210005	03/25/2021
FEDERAL ENDERGY REGULATORY COMMISSION.	Federal Energy Regulatory Commission.	Confidential Assistant	DR210001	12/29/2020
	Office of the Commissioner	Confidential Assistant	DR210005	04/02/2021
		Attorney Advisor	DR210006	04/07/2021
	Office of External Affairs	Senior Public Affairs Specialist.	DR210007	04/30/2021
FEDERAL HOUSING FINANCE AGENCY.	Office of Director	Special Advisor	HA200004	08/13/2020
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.	Federal Mine Safety and Health Review Commission.	Confidential Assistant	FR210001	05/18/2021
	Office of the Chairman	Confidential Assistant	FR210002	05/28/2021
FEDERAL TRADE COMMISSION	Office of the Chair	Director, Office of Public Affairs.	FT210007	03/15/2021
GENERAL SERVICES ADMINISTRATION.	National Capital Region	Confidential Assistant to the Regional Administrator.	GS200041	07/27/2020
	Office of Congressional and Intergovernmental Affairs.	Congressional Policy Analyst.	GS200040	08/07/2020
		Policy Advisor (2)	GS210028	02/01/2021
			GS210030	02/12/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Strategic Communication	Director of Public Engagement.	GS210023	01/20/2021
		Press Secretary	GS210036	06/16/2021
	Office of the Administrator	Deputy White House Liaison and Senior Advisor to the Deputy Administrator.	GS200045	09/29/2020
		Executive Assistant to the Deputy Administrator.	GS210002	11/20/2020
		Senior Advisor to the Administrator.	GS210026	01/25/2021
		Senior Advisor to the Administrator (Climate).	GS210022	01/20/2021
		Senior Advisor to the Administrator (Equity).	GS210033	05/14/2021
		Senior Advisor to the Administrator (Technology).	GS210024	01/20/2021
		Senior Advisor to the Deputy Administrator.	GS210031	02/12/2021
		Special Assistant	GS210035	06/09/2021
		White House Liaison	GS210032	02/12/2021
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Senior Advisor	DH210158	04/05/2021
	Centers for Disease Control and Prevention.	Special Assistant	DH200173	08/31/2020
		Senior Advisor	DH210153	04/01/2021
	Centers for Medicare and Medicaid Services.	Policy Advisor	DH210195	06/22/2021
	Office of Health Resources and Services Administration.	Special Assistant	DH210174	05/04/2021
	Office of Indian Health Service	Senior Advisor to the Director.	DH210073	02/02/2021
	Office for Civil Rights	Senior Advisor	DH210125	02/17/2021
		Executive Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Island.	DH210193	06/22/2021
		Special Assistant	DH210197	06/22/2021
	Office of Global Affairs	Chief of Staff	DH200186	10/16/2020
		Special Assistant to the Director.	DH210076	02/02/2021
		Senior Advisor, Human Rights and Gender Equity.	DH210141	03/03/2021
	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH210106	02/12/2021
		Director of External Affairs	DH210157	04/08/2021
		External Affairs Specialist	DH200164	08/22/2020
		Senior Advisor, Center for Faith-Based and Neighborhood Partnerships.	DH200136	07/19/2020
		Senior Advisor, Equity Taskforce.	DH210124	02/17/2021
		Special Assistant	DH210176	05/04/2021
	Office of Refugee Resettlement/Office of the Director.	Chief of Staff	DH210112	02/12/2021
		Confidential Assistant	DH210004	10/17/2020
		Special Assistant (2)	DH210003	10/17/2020
			DH210105	02/12/2021
	Office of the Assistant Secretary for Administration.	Special Assistant	DH210097	02/05/2021
	Office of the Assistant Secretary for Health.	Deputy Chief of Staff	DH200142	07/02/2020
		Policy Advisor	DH200184	10/09/2020
		Senior Advisor and Director of Scheduling and Advance.	DH210114	02/12/2021
		Special Advisor to the Surgeon General.	DH210130	02/17/2021
		Senior Advisor for Health Equity and Climate (2).	DH210159	04/05/2021
			DH210161	04/08/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Legislation.	Advisor (2)	DH210027	12/16/2020
			DH210028	12/16/2020
		Deputy Assistant Secretary for Legislation, Discretionary Health.	DH210029	12/16/2020
		Director of Congressional Liaison.	DH210025	12/17/2020
		Special Assistant	DH210108	02/12/2021
		Senior Advisor and Congressional Liaison.	DH210177	05/04/2021
	Office of the Assistant Secretary for Preparedness and Response.	Confidential Assistant	DH200151	07/27/2020
		Special Assistant	DH200150	07/31/2020
		Special Assistant Covid Response (2).	DH210121	02/17/2021
			DH210142	03/03/2021
		Senior Policy Advisor, Covid Response.	DH210148	03/04/2021
	Office of the Assistant Secretary for Public Affairs.	Chief Communications Officer.	DH210031	12/16/2020
		Deputy Director for Strategic Communications.	DH210032	12/16/2020
		Deputy Speechwriter	DH210139	03/03/2021
		Director of Digital Engagement.	DH210160	04/05/2021
		Director of Speechwriting	DH210175	05/06/2021
		National Press Secretary (Covid).	DH210116	02/12/2021
		Press Assistant	DH210095	02/05/2021
		Press Secretary (2)	DH210026	12/16/2020
			DH210096	02/05/2021
	Office of the Commissioner	Advisor	DH210014	11/23/2020
	Office of the Deputy Secretary	Deputy Chief of Staff	DH200091	07/19/2020
		Special Assistant	DH200127	08/07/2020
	Office of the National Coordinator for Health Information Technology.	Special Assistant	DH210074	02/02/2021
	Office of the Secretary	Advance Representative (3).	DH200134	07/02/2020
			DH210178	05/06/2021
			DH210179	05/06/2021
		Advisor	DH210030	12/16/2020
		Deputy Chief of Staff, Covid Response.	DH210075	02/02/2021
		Deputy White House Liaison.	DH210100	02/12/2021
		Director of Scheduling	DH200188	12/07/2020
		Director of Scheduling and Advance.	DH210150	03/16/2021
		Director of Strategic Advance.	DH210018	12/11/2020
		Executive Assistant and Briefing Book Coordinator.	DH210102	02/12/2021
		Policy Advisor	DH210182	05/28/2021
		Senior Advisor to the Executive Secretary.	DH210109	02/12/2021
		Senior Policy Advisor	DH210196	06/22/2021
		Special Assistant (2)	DH200129	07/06/2020
			DH200175	09/19/2020
		Special Assistant for Scheduling.	DH210099	02/08/2021
		Special Assistant to the Secretary.	DH210162	04/09/2021
		White House Liaison (2)	DH210059	02/02/2021
			DH210015	11/20/2020
	Substance Abuse and Mental Health Services Administration.	Senior Advisor	DH210143	03/02/2021
DEPARTMENT OF HOMELAND SECURITY.	Countering Weapons of Mass Destruction Office.	Special Assistant	DM200307	07/22/2020
		Senior Advisor	DM200353	09/17/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
	Cybersecurity and Infrastructure Security Agency.	Senior Advisor for Public Affairs.	DM210209	03/11/2021
		Special Advisor to the Executive Assistant Director for Infrastructure Security.	DM210319	05/13/2021
		Director of Public Affairs ...	DM210337	05/14/2021
		Senior Advisor	DM210378	06/11/2021
		Policy Advisor	DM210380	06/16/2021
	Federal Emergency Management Agency.	Director of Congressional and Intergovernmental Affairs.	DM200319	07/27/2020
		Senior Advisor	DM210042	11/20/2020
		Special Assistant Chief of Staff.	DM210258	03/30/2021
		Legislative Correspondent	DM210292	04/27/2021
	Office of Management Directorate ..	Communications Specialist	DM210009	10/13/2020
		Senior Advisor	DM210360	06/21/2021
	Office for Civil Rights and Civil Liberties.	Advisor	DM210170	02/26/2021
	Office of Legislative Affairs	Director of Legislative Affairs.	DM210157	02/17/2021
		Legislative Affairs Director	DM210213	03/16/2021
		Director of Legislative Affairs, Oversight.	DM210342	05/17/2021
	Office of Partnership and Engagement.	Executive Director, Homeland Security Advisory Council.	DM210214	03/10/2021
		Intergovernmental Affairs Coordinator (2).	DM210260	04/05/2021
			DM210370	06/11/2021
	Office of Public Affairs	Assistant Press Secretary (2).	DM210274	04/05/2021
			DM210272	04/13/2021
		Communications Director	DM210173	02/26/2021
		Deputy Press Secretary ...	DM210270	04/05/2021
		Digital Director	DM200323	07/28/2020
		Director of Strategic Communications (2).	DM210073	01/14/2021
			DM210223	03/30/2021
		Director of Strategic Engagement.	DM210226	04/12/2021
		Social Media Director (2) ..	DM210295	04/23/2021
			DM210323	05/04/2021
	Office of Strategy, Policy, and Plans.	Policy Advisor	DM210211	03/16/2021
		Policy Advisor (Counter Terrorism and Threat Prevention)(2).	DM210336	05/14/2021
			DM210335	05/13/2021
		Senior Advisor	DM200334	07/28/2020
		Senior Advisor, National and Transnational Threats.	DM200381	09/30/2020
		Special Assistant	DM210014	10/19/2020
		Special Assistant to the Assistant Secretary (2).	DM210386	06/17/2021
			DM210330	05/13/2021
		Special Assistant to the Chief of Staff (2).	DM210273	04/05/2021
			DM210312	04/23/2021
	Office of the General Counsel	Oversight Counsel	DM190073	10/17/2020
		Senior Counsel	DM210051	12/18/2020
		Special Assistant to the Chief of Staff.	DM210321	05/05/2021
	Office of the Secretary	Counselor for (Immigration).	DM210228	04/12/2021
		Counselor for Regulations	DM210294	05/06/2021
		Counselor to the Chief of Staff.	DM210267	04/02/2021
		Deputy Director of Scheduling and Advance.	DM210385	06/25/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
		Deputy Secretary and Briefing Book Coordinator.	DM210256	03/30/2021
		Deputy White House Liaison.	DM210181	03/11/2021
		Director of Legislative Affairs.	DM210224	03/11/2021
		Director of Trips and Advance.	DM210225	03/12/2021
		Scheduler to the Secretary	DM210352	05/26/2021
		Secretary and Briefing Book Coordinator.	DM210259	03/30/2021
		Senior Advance Officer (2)	DM210353	05/26/2021
			DM210358	06/07/2021
		Special Assistant	DM210316	05/11/2021
		Special Assistant to the Secretary.	DM210334	05/13/2021
		Special Assistant, White House Liaison.	DM210253	03/30/2021
		Special Projects Coordinator.	DM210327	05/14/2021
	United States Citizenship and Immigration Services.	Deputy Chief of Staff	DM200328	08/23/2020
		Counselor (Special Projects).	DM210172	02/12/2021
		Senior Advisor, External Affairs.	DM210240	03/22/2021
		Special Assistant to the Chief of Staff.	DM210262	04/09/2021
	United States Customs and Border Protection.	Deputy Chief of Staff, Policy.	DM200313	07/22/2020
		Deputy Press Secretary ...	DM200396	09/25/2020
		Senior Advisor to Commissioner.	DM210220	03/08/2021
		Advisor to the Chief of Staff.	DM210239	03/22/2021
		Deputy Chief of Staff, Programs.	DM210357	06/03/2021
	United States Immigration and Customs Enforcement.	Assistant Director of Congressional Relations.	DM210351	05/28/2021
		Assistant Director, Office of Public Affairs.	DM210179	03/10/2021
		Deputy Chief of Staff	DM210175	03/12/2021
		Press Assistant	DM210004	10/13/2020
		Senior Advisor (2)	DM200320	07/20/2020
			DM200397	11/03/2020
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Community Planning and Development.	Special Assistant	DU210080	06/03/2021
	Office of Congressional and Intergovernmental Relations.	Congressional Relations Specialist (4).	DU200133	10/29/2020
			DU210031	01/27/2021
			DU210059	04/16/2021
			DU210085	06/17/2021
		Deputy Assistant Secretary for Intergovernmental Relations.	DU210058	04/16/2021
		Deputy Assistant Secretary for Congressional Relations.	DU210030	01/27/2021
		Senior Advisor for Intergovernmental Relations.	DU210064	04/27/2021
	Office of Fair Housing and Equal Opportunity.	Special Assistant to the Deputy Secretary.	DU210049	02/03/2021
	Office of Faith-Based and Community Initiatives.	Director of Faith Based	DU210065	04/27/2021
	Office of Field Policy and Management.	Special Policy Advisor	DU210037	01/22/2021
	Office of Housing	Special Advisor	DU200147	08/22/2020
		Special Assistant	DU210035	01/27/2021
	Office of Policy Development and Research.	Special Assistant for Special Projects.	DU210044	01/26/2021
		Special Advisor to the Assistant Secretary.	DU210029	01/27/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Public Affairs	Special Assistant	DU210009	10/29/2020
		Deputy Assistant Secretary for Intergovernmental Relations.	DU210041	01/22/2021
		Press Secretary	DU210022	01/27/2021
		Deputy Assistant Secretary for Public Affairs.	DU210028	01/27/2021
		Director of Speechwriting	DU210054	03/18/2021
		Director of Strategic Communications.	DU210082	06/03/2021
		Assistant Press Secretary	DU210084	06/22/2021
	Office of Public and Indian Housing	Special Assistant	DU210040	01/22/2021
		Special Policy Advisor	DU210072	05/14/2021
	Office of the Administration	Director of Advance	DU210032	01/27/2021
		Director of Executive Scheduling and Operations.	DU210057	04/16/2021
		Director of Scheduling	DU210063	04/23/2021
		Special Assistant	DU210081	06/03/2021
	Office of the Chief Financial Officer	Special Assistant	DU200126	07/10/2020
		Senior Advisor	DU200117	07/16/2020
	Office of the Deputy Secretary	Special Assistant	DU200153	09/03/2020
		Deputy White House Liaison.	DU210047	01/27/2021
	Office of the General Counsel	Senior Counsel	DU210024	01/27/2021
	Office of the Secretary	Briefing Book Coordinator	DU210061	04/23/2021
		Executive Assistant to the Secretary.	DU210025	01/27/2021
		Senior Advisor	DU210086	06/29/2021
		Special Assistant	DU200116	07/16/2020
		Special Assistant for Housing and Services.	DU210062	04/23/2021
		White House Liaison	DU210020	01/27/2021
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Fish and Wildlife and Parks.	Special Assistant, Fish and Wildlife and Parks.	DI210098	02/12/2021
	Office of the Assistant Secretary—Indian Affairs.	Assistant	DI200115	09/15/2020
		Senior Advisor	DI210114	04/20/2021
	Office of the Assistant Secretary—Land and Minerals Management.	Special Assistant	DI210069	02/12/2021
	Office of the Assistant Secretary—Policy, Management and Budget.	Senior Advisor	DI200099	10/26/2020
		Special Assistant	DI210094	02/13/2021
	Bureau of Land Management	Senior Advisor to the Director, Bureau of Land Management.	DI200062	09/15/2020
		Special Assistant	DI210091	02/13/2021
	Bureau of Ocean Energy Management.	Advisor	DI210086	02/12/2021
	Bureau of Reclamation	Special Assistant	DI210093	02/13/2021
	National Park Service	Special Assistant	DI210092	02/13/2021
	Office of Congressional and Legislative Affairs.	Senior Advisor (2)	DI190078	09/03/2020
			DI200102	10/26/2020
	Office of the Deputy Secretary	Advisor	DI200057	09/14/2020
	Secretary's Immediate Office	Advance Representative (3).	DI200058	09/03/2020
			DI200118	09/25/2020
			DI210096	02/13/2021
		Advisor	DI210120	04/22/2021
		Advisor to the Deputy Secretary of the Interior.	DI210113	04/20/2021
		Deputy Director of Congressional Affairs—House.	DI210085	02/11/2021
		Deputy Director of Congressional Affairs—Senate.	DI210068	02/11/2021
		Deputy Director, Intergovernmental Affairs.	DI210119	04/20/2021
		Deputy Director, Office of Scheduling and Advance.	DI210121	06/01/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
		Deputy Press Secretary ...	DI210108	03/26/2021
		Deputy White House Liaison (2).	DI210004	12/01/2020
			DI210095	02/13/2021
		Digital Director	DI210036	02/25/2021
		Director of Scheduling and Advance.	DI210104	02/17/2021
		Director, Intergovernmental and External Affairs.	DI210100	02/16/2021
		Press Assistant	DI200114	09/15/2020
		Press Secretary	DI210066	02/11/2021
		Senior Advisor to the Secretary.	DI210008	12/21/2020
		Special Assistant	DI200116	09/14/2020
		Special Assistant to the Deputy Secretary's Chief of Staff.	DI210063	02/26/2021
		Special Assistant to the Secretary.	DI210048	02/26/2021
		Special Assistant to the Secretary's Chief of Staff.	DI210097	02/13/2021
		Speechwriter	DI210046	03/11/2021
		White House Liaison	DI200122	10/05/2020
			DI210065	02/12/2021
		Writer	DI200097	07/28/2020
	United States Fish and Wildlife Service.	Senior Advisor	DI200059	09/03/2020
		Special Assistant	DI210070	02/16/2021
DEPARTMENT OF JUSTICE	Office of Civil Division	Senior Counsel (2)	DJ200137	08/26/2020
			DJ210022	12/08/2020
	Office of Civil Rights Division	Senior Counsel (2)	DJ200135	08/07/2020
			DJ200148	09/10/2020
	Environment and Natural Resources Division.	Senior Counsel	DJ210024	01/08/2021
	Executive Office for United States Attorneys.	Secretary (Office Automation).	DJ200120	07/27/2020
	National Security Division	Senior Counsel (2)	DJ210133	05/06/2021
			DJ210126	06/03/2021
	Office of Justice Programs	Senior Advisor	DJ200107	07/02/2020
		Special Assistant	DJ200150	08/26/2020
		Policy Advisor	DJ200130	09/25/2020
		Advisor for Research and Statistics.	DJ200157	10/09/2020
	Office of Legal Policy	Advisor	DJ210121	04/20/2021
		Senior Counsel (2)	DJ210049	01/20/2021
			DJ210141	05/24/2021
	Office of Legislative Affairs	Attorney Advisor (3)	DJ210037	01/20/2021
			DJ210038	01/20/2021
			DJ210039	01/20/2021
		Confidential Assistant	DJ210135	05/11/2021
		Chief of Staff and Senior Counsel.	DJ210136	05/13/2021
	Office of Public Affairs	Press Assistant	DJ210043	01/20/2021
		Public Affairs Specialist	DJ210140	05/24/2021
	Office of the Associate Attorney General.	Chief of Staff	DJ210132	05/05/2021
	Office of the Attorney General	Advisor to the Attorney General.	DJ200171	10/20/2020
		Deputy White House Liaison and Advisor to the Attorney General.	DJ210002	10/20/2020
		Director of Scheduling and Advisor to the Attorney General.	DJ210005	12/16/2020
		Confidential Assistant	DJ210097	03/03/2021
		Special Assistant	DJ210098	03/03/2021
	Office of the Deputy Attorney General.	Senior Advisor	DJ200119	07/02/2020
		Special Assistant	DJ210077	02/02/2021
DEPARTMENT OF LABOR	Bureau of International Labor Affairs.	Senior Counselor	DL200168	08/17/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
		Chief of Staff	DL210080	04/13/2021
	Employee Benefits Security Administration.	Economist	DL200165	08/13/2020
		Senior Policy Advisor	DL200096	07/02/2020
		Director of Special Projects.	DL200109	07/08/2020
		Deputy Chief of Staff	DL200125	07/30/2020
		Chief of Staff	DL210049	01/20/2021
		Senior Policy Advisor for Unemployment Insurance.	DL210060	01/29/2021
		Senior Policy Advisor	DL210082	04/28/2021
		Special Assistant	DL210087	05/19/2021
	Mine Safety and Health Administration.	Chief of Staff (2)	DL200173	09/10/2020
			DL210083	04/14/2021
		Special Assistant	DL210089	05/20/2021
	Occupational Safety and Health Administration.	Chief of Staff	DL210044	01/20/2021
		Special Assistant	DL210093	06/03/2021
	Office of Congressional and Intergovernmental Affairs.	Chief of Staff	DL210033	01/20/2021
		Deputy Director of Intergovernmental Affairs.	DL210017	01/20/2021
		Legislative Assistant (2)	DL200154	07/09/2020
			DL210007	01/14/2021
		Legislative Officer (2)	DL200150	08/01/2020
			DL210054	02/08/2021
		Regional Representative	DL200153	07/27/2020
		Senior Counsel	DL210036	01/20/2021
		Senior Legislative Officer (2).	DL200160	10/09/2020
			DL210043	01/20/2021
			DL210099	06/15/2021
	Office of Federal Contract Compliance Programs.	Chief of Staff	DL210029	01/20/2021
	Office of Labor-Management Standards.	Special Assistant	DL200048	12/19/2020
		Senior Advisor	DL210101	06/23/2021
	Office of Public Affairs	Press Secretary	DL210042	01/20/2021
		Digital Engagement Director.	DL210061	01/27/2021
		Director of Digital Strategy	DL210057	01/28/2021
		Speechwriter	DL210077	03/24/2021
	Office of the Assistant Secretary for Administration and Management.	Special Advisor	DL210018	01/20/2021
	Office of the Assistant Secretary for Policy.	Chief of Staff	DL210027	01/20/2021
	Office of the Deputy Secretary	Counselor to the Deputy Secretary.	DL210059	01/27/2021
	Office of the Secretary	Advisor for Private Sector Engagement.	DL210076	03/24/2021
		Advisor for Worker Voice Engagement.	DL210063	01/29/2021
		Counselor to the Secretary (2).	DL210039	01/20/2021
			DL210051	01/21/2021
		Deputy Chief of Staff	DL200106	07/06/2020
		Deputy Director of Scheduling and Advance.	DL210097	06/17/2021
		Deputy White House Liaison.	DL210041	01/20/2021
		Director of Scheduling and Advance.	DL210071	02/04/2021
		Executive Assistant to the Secretary.	DL210062	01/27/2021
		Executive Secretary	DL210096	06/23/2021
		Policy Advisor	DL210048	01/21/2021
		Senior Advisor	DL200130	07/27/2020
		Special Assistant (4)	DL200156	07/20/2020
			DL210072	02/04/2021
			DL210073	02/04/2021
			DL210091	05/19/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
		Special Assistant for Scheduling.	DL200148	07/20/2020
		White House Liaison	DL210016	01/20/2021
	Office of the Solicitor	Counsel	DL200164	09/03/2020
		Senior Counsel	DL210032	01/20/2021
		Senior Advisor	DL210038	01/20/2021
	Office of Workers Compensation Programs.	Chief of Staff	DL210034	01/20/2021
		Special Assistant	DL210086	05/24/2021
	Office of Veterans Employment and Training Service.	Chief of Staff and Policy Advisor.	DL200127	07/30/2020
		Senior Advisor	DL200159	07/31/2020
		Chief of Staff	DL210058	01/29/2021
	Office of Wage and Hour Division	Chief of Staff	DL210064	01/28/2021
		Policy Advisor	DL200190	10/17/2020
		Special Assistant (2)	DL200175	09/10/2020
			DL210095	06/16/2021
	Office of Women's Bureau	Chief of Staff	DL210094	05/27/2021
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Communication Specialist	NN200040	10/01/2020
		Media Relations Specialist	NN210033	05/10/2021
		Deputy Press Secretary	NN210040	06/09/2021
		Press Secretary	NN210042	06/22/2021
	Office of Legislative and Intergovernmental Affairs.	Special Assistant	NN210020	01/22/2021
	Office of the Administrator	Special Assistant (2)	NN210041	06/17/2021
			NN210043	06/29/2021
NATIONAL CREDIT UNION ADMINISTRATION.	Office of External Affairs and Communications.	Deputy Director, Office of External Affairs and Communications.	CU210007	03/22/2021
	Office of the Board		CU210001	12/07/2020
		Senior Policy Advisor (2)	CU210004	03/03/2021
		Special Assistant and Advisor.	CU210002	01/05/2021
		Staff Assistant	CU200004	03/03/2021
	Office of the Chairman	Chief of Staff	CU210003	03/03/2021
		Confidential Assistant	CU210005	03/03/2021
		Director, Office of External Affairs and Communications/Deputy Chief of Staff.	CU210006	03/09/2021
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Deputy Director of Public Affairs.	NA210003	01/08/2021
		Director of Congressional Affairs.	NA210010	01/21/2021
		Director of Strategic Communications and Public Affairs.	NA210007	01/20/2021
		Director of Strategic Priorities and Projects.	NA210011	05/04/2021
		White House Liaison and Senior Advisor to the Chief of Staff.	NA210009	01/20/2021
NATIONAL ENDOWMENT FOR THE HUMANITIES.	National Endowment for the Humanities.	Chief of Staff	NH210002	02/08/2021
		Congressional Affairs Specialist.	NH200005	08/13/2020
		Strategic Advisor to the Senior Deputy Chairman.	NH200004	08/17/2020
		Supervisory Public Affairs Specialist.	NH210004	02/08/2021
		White House Liaison and Chairman's Strategic Scheduler.	NH210003	02/08/2021
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Director Congressional and Public Affairs Officer.	NL210002	03/02/2021
		Press Secretary	NL210003	03/02/2021
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Special Assistant	TB200008	07/02/2020
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Occupational Safety and Health Review Commission.	Confidential Assistant to the Chairman.	SH210002	01/13/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Commissioners	Counsel to A Commissioner.	SH210003	02/10/2021
OFFICE OF MANAGEMENT AND BUDGET.	Office of Communications	Confidential Assistant	BO210052	01/29/2021
		Deputy Associate Director for Communications.	BO210022	02/02/2021
		Deputy Associate Director for Communications.	BO210064	04/12/2021
	Office of Education, Income Maintenance and Labor Programs.	Confidential Assistant	BO210020	01/29/2021
	Office of the General Counsel	Confidential Assistant (2)	BO200045	08/28/2020
			BO210051	01/29/2021
		Associate Deputy General Counsel.	BO210058	01/29/2021
	Office of General Government Programs.	Confidential Assistant (2)	BO210018	01/29/2021
			BO210025	01/29/2021
	Office of Health Division	Special Assistant	BO200046	10/09/2020
	Office of Legislative Affairs	Deputy to the Associate Director.	BO210023	01/29/2021
			BO210031	01/29/2021
	Office of National Security Programs.	Confidential Assistant	BO210029	01/29/2021
	Office of Natural Resource Programs.	Confidential Assistant (2)	BO210002	10/29/2020
			BO210019	01/29/2021
	Office of E-Government and Information Technology.	Confidential Assistant	BO210072	06/07/2021
		Senior Advisor for Delivery (United States Digital Service)(3).	BO210070	05/13/2021
			BO210071	05/13/2021
			BO210074	06/11/2021
		Senior Advisor for Technology and Delivery (Cybersecurity).	BO210062	03/02/2021
	Office of Federal Financial Management.	Special Assistant	BO210005	12/07/2020
	Office of Information and Regulatory Affairs.	Confidential Assistant	BO210030	01/29/2021
	Office of the Director	Advisor	BO210046	01/29/2021
		Assistant to the Director	BO210014	01/21/2021
		Confidential Assistant (2)	BO210003	12/07/2020
			BO210056	02/01/2021
		Special Assistant (3)	BO200036	10/09/2020
			BO210069	05/04/2021
			BO210068	05/06/2021
	Staff Offices	Associate Director for Communications.	BO210053	01/29/2021
		Confidential Assistant	BO210057	01/29/2021
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Legislative Affairs	Deputy Assistant Director	QQ210001	12/07/2020
		Public Affairs Specialist	QQ210002	12/07/2020
		Associate Director Office of Legislative Affairs.	QQ210004	01/21/2021
	Office of Public Affairs	Public Affairs Specialist (Press Secretary).	QQ210009	05/20/2021
	Office of the Director	Special Advisor	QQ200009	09/24/2020
		White House Liaison and Advisor to the Director.	QQ200010	09/30/2020
OFFICE OF PERSONNEL MANAGEMENT.	Office of Congressional, Legislative, and Intergovernmental Affairs.	Deputy Director	PM210048	03/23/2021
	Office of Communications	Public Affairs Specialist (2)	PM200057	07/14/2020
			PM210014	12/04/2020
		Deputy Director, Office of Communications.	PM210044	03/09/2021
	Office of the Director	Advisor to the Director	PM200091	09/11/2020
		Deputy Chief of Staff (2)	PM200082	08/01/2020
			PM210055	04/30/2021
		Press Secretary	PM210040	02/16/2021

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Agency name	Organization name	Position title	Authorization No.	Effective date
		Senior Advisor to the Chief of Staff.	PM210053	04/19/2021
		Special Assistant to the Director.	PM210038	02/16/2021
		White House Liaison	PM210041	02/23/2021
	Presidents Commission on White House Fellowships.	Special Assistant	PM200021	07/31/2020
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Legislative Affairs Director	TS210002	01/22/2021
		Special Assistant	TS210003	01/22/2021
		Director of Communications.	TS210005	03/02/2021
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of Congressional Affairs	Assistant United States Trade Representative for Congressional Affairs.	TN210008	01/27/2021
		Director for Congressional Affairs.	TN210010	01/27/2021
	Office of Intergovernmental Affairs and Public Liaison.	Assistant United States Trade Representative for Public Engagement.	TN210009	01/27/2021
		Assistant United States Trade Representative for Intergovernmental Affairs.	TN210012	01/29/2021
	Office of Public and Media Affairs	Digital Media Director	TN210004	01/26/2021
		Assistant United States Trade Representative for Public and Media Affairs.	TN210013	01/29/2021
UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION.	Overseas Private Investment Corporation.	Deputy Chief of Staff	PQ210002	01/20/2021
		Special Assistant (4)	PQ210001	08/31/2020
			PQ210006	01/25/2021
			PQ210010	05/03/2021
			PQ210011	04/27/2021
SECURITIES AND EXCHANGE COMMISSION.	Office of Public Affairs	Writer-Editor	SE210017	05/19/2021
		Supervisory Public Affairs Specialist.	SE210019	05/19/2021
	Office of the Chairman	Confidential Assistant	SE210018	05/19/2021
SMALL BUSINESS ADMINISTRATION.	Office of Capital Access	Special Assistant	SB210008	01/28/2021
		Senior Advisor	SB210030	05/06/2021
	Office of Communications and Public Liaison.	Deputy Associate Administrator for Communication and Public Liaison.	SB210017	02/08/2021
		Director of Communications.	SB210031	05/06/2021
		Press Assistant (2)	SB200031	07/07/2020
			SB210028	04/23/2021
		Senior Advisor	SB200038	07/31/2020
		Senior Speechwriter	SB210034	05/28/2021
	Office of Congressional and Legislative Affairs.	Deputy Associate Administrator (House)(2).	SB210036	05/28/2021
			SB210038	06/29/2021
		Deputy Associate Administrator (Senate).	SB210035	05/28/2021
		Legislative Assistant	SB200033	07/06/2020
		Legislative Policy Advisor	SB210006	01/28/2021
	Office of Field Operations	Senior Advisor	SB210002	10/17/2020
	Office of Government Contracting and Business Development.	Senior Advisor	SB210039	06/11/2021
		Special Assistant	SB210044	06/30/2021
	Office of Investment and Innovation	Senior Advisor (2)	SB210001	10/09/2020
			SB210043	06/25/2021
	Office of the Administrator	Confidential Assistant (2)	SB210023	02/18/2021
			SB210040	06/23/2021
		Deputy Chief of Staff (External).	SB210026	04/05/2021
		Director of Scheduling	SB210029	05/04/2021
		Policy Advisor	SB210033	06/03/2021
		Senior Advisor (2)	SB210011	01/28/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
			SB210027	04/16/2021
		Special Advisor (2)	SB210009	02/04/2021
			SB210024	02/22/2021
		Special Assistant (2)	SB210032	05/19/2021
			SB210042	06/23/2021
		White House Liaison (2)	SB200043	09/26/2020
			SB210005	01/28/2021
	Office of the General Counsel	Deputy General Counsel (2).	SB200034	07/11/2020
			SB210037	06/07/2021
SOCIAL SECURITY ADMINISTRATION.	Office of the Commissioner	Senior Advisor	SZ210021	02/23/2021
DEPARTMENT OF STATE	Bureau of African Affairs	Senior Advisor	DS210188	04/16/2021
		Deputy Assistant Secretary.	DS210211	04/23/2021
	Bureau of Arms Control, Verification, and Compliance.	Deputy Assistant Secretary.	DS210214	04/27/2021
		Senior Advisor	DS210237	05/14/2021
	Bureau of Counterterrorism	Special Advisor	DS210015	11/09/2020
	Bureau of Democracy, Human Rights and Labor.	Special Assistant	DS210189	04/16/2021
		Senior Advisor	DS210213	04/23/2021
	Bureau of East Asian and Pacific Affairs.	Senior Advisor	DS210191	04/22/2021
	Bureau of Economic and Business Affairs.	General Counsel	DS200085	08/01/2020
		Senior Advisor	DS210212	04/23/2021
	Bureau of Energy Resources	Deputy Assistant Secretary.	DS210192	04/16/2021
	Bureau of European and Eurasian Affairs.	Senior Advisor	DS210193	04/16/2021
	Bureau of Global Public Affairs	Deputy Assistant Secretary.	DS210174	04/14/2021
		Principal Deputy Spokesperson.	DS210185	04/14/2021
		Public Affairs Specialist	DS210206	04/23/2021
		Senior Advisor	DS210165	04/08/2021
		Special Advisor	DS210226	05/06/2021
		Spokesperson	DS210248	06/24/2021
		Supervisory Public Affairs Specialist.	DS210183	04/14/2021
	Bureau of International Narcotics and Law Enforcement Affairs.	Senior Advisor	DS210176	04/12/2021
	Bureau of International Organizational Affairs.	Senior Advisor	DS210177	04/12/2021
		Deputy Assistant Secretary.	DS210235	05/06/2021
	Bureau of Legislative Affairs	Deputy Assistant Secretary (House).	DS210195	04/20/2021
		Deputy Assistant Secretary (Senate).	DS210194	04/22/2021
		Legislative Management Officer (2).	DS210233	05/11/2021
			DS210245	06/24/2021
	Bureau of Population, Refugees and Migration.	Senior Advisor (2)	DS210224	05/04/2021
			DS210227	05/04/2021
	Bureau of South and Central Asian Affairs.	Senior Advisor	DS210181	04/12/2021
	Bureau of Western Hemisphere Affairs.	Senior Advisor	DS210204	04/23/2021
		Deputy Assistant Secretary.	DS210205	04/23/2021
	Office of Global Women's Issues	Senior Advisor	DS210196	04/23/2021
		Special Assistant	DS210202	04/23/2021
	Office of Policy Planning	Senior Advisor (4)	DS210180	04/12/2021
			DS210198	04/23/2021
			DS210199	04/28/2021
			DS210222	05/04/2021
		Special Assistant (2)	DS210197	04/23/2021
			DS210221	05/04/2021
	Office of the Chief of Protocol	Assistant Chief of Protocol (Ceremonials).	DS210218	05/04/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
		Assistant Chief of Protocol (Diplomatic Partnerships).	DS210145	03/16/2021
		Deputy Chief of Protocol (2).	DS210219	05/04/2021
			DS210220	05/10/2021
	Senior Protocol Officer (Ceremonials).	.....	DS210249	06/24/2021
		Senior Protocol Officer (Visits).	DS210247	06/24/2021
	Office of the Counselor	Senior Advisor	DS200055	07/21/2020
		Special Assistant	DS210215	05/04/2021
	Office of the Deputy Secretary	Senior Advisor (2)	DS210186	04/19/2021
			DS210238	05/14/2021
	Office of the Deputy Secretary for Management and Resources.	Senior Advisor	DS210216	05/04/2021
		Staff Assistant	DS210232	05/11/2021
	Office of the Secretary	Special Assistant (3)	DS200068	07/08/2020
			DS200064	07/15/2020
			DS200075	07/27/2020
		Staff Assistant (3)	DS210208	04/23/2021
			DS210230	05/07/2021
			DS210240	05/14/2021
	Office of the Under Secretary for Arms Control and International Security Affairs.	Senior Advisor (2)	DS210200	04/20/2021
			DS210228	05/06/2021
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Senior Advisor	DS200086	07/27/2020
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Senior Advisor	DS210190	04/23/2021
	Office of the Under Secretary for Management.	Deputy White House Liaison.	DS210229	05/06/2021
		White House Liaison	DS210243	05/25/2021
TRADE AND DEVELOPMENT AGENCY.	Office of the Director	Chief of Staff	TD210002	05/20/2021
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Governmental Affairs.	Deputy Assistant Secretary for Congressional Affairs (House).	DT210034	01/20/2021
		Deputy Assistant Secretary for Intergovernmental Affairs.	DT210035	01/20/2021
		Deputy Assistant Secretary for Tribal Affairs.	DT210053	01/28/2021
		Governmental Affairs Officer.	DT200134	09/26/2020
		Principal Deputy Assistant Secretary for Congressional Affairs (Senate).	DT210009	01/20/2021
		Senior Advisor for Intergovernmental Affairs.	DT200148	09/24/2020
		Special Assistant for Governmental Affairs.	DT210042	01/20/2021
			DT210078	05/17/2021
	Office of the Assistant Secretary for Research and Technology.	Economic Advisor	DT200145	10/07/2020
	Office of the Assistant Secretary for Transportation Policy.	Public Liaison	DT200149	09/24/2020
		Special Assistant for Policy (2).	DT210043	01/20/2021
			DT210045	01/20/2021
	Office of the Executive Secretariat	Director, Executive Secretariat.	DT210033	01/20/2021
		Special Assistant	DT210062	03/04/2021
	Federal Highway Administration	Special Assistant	DT210041	01/20/2021
	Federal Motor Carrier Safety Administration.	Director of External Affairs	DT210089	06/25/2021
	Federal Transit Administration	Associate Administrator for Communications and Legislative Affairs.	DT210080	05/17/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
	General Counsel	Special Assistant to the General Counsel.	DT210037	01/20/2021
	Immediate Office of the Administrator.	Senior Advisor to the Administrator.	DT210032	01/20/2021
	Office of Civil Rights	Senior Advisor	DT210085	06/25/2021
	Office of Public Affairs	Deputy Director for Public Affairs (2).	DT210063	03/04/2021
			DT210057	01/29/2021
		Digital Communications Manager.	DT210059	01/29/2021
		Press Secretary	DT210092	06/25/2021
		Press Secretary and Senior Public Affairs Advisor.	DT200133	10/07/2020
		Speechwriter (2)	DT210065	03/25/2021
			DT210066	03/31/2021
	Office of the Deputy Secretary	Advisor to the Deputy Secretary.	DT210068	04/09/2021
		Special Assistant	DT210071	04/23/2021
		Special Assistant for Advance Operations.	DT200130	09/24/2020
		Special Assistant for Scheduling.	DT210067	03/31/2021
	Office of the Secretary	Director of Scheduling and Advance.	DT210044	01/20/2021
	Office of the Under Secretary of Transportation for Policy.	Senior Advisor for Innovation.	DT210073	05/04/2021
	Pipeline and Hazardous Materials Safety Administration.	Special Assistant	DT210040	01/20/2021
	Office of the Secretary	Deputy Chief of Staff for Operations.	DT210036	01/20/2021
		Deputy White House Liaison.	DT210060	01/29/2021
		Director of Advance	DT210064	03/12/2021
		Special Assistant for Advance (2).	DT210056	01/29/2021
			DT210088	06/25/2021
		Special Assistant for Scheduling.	DT210081	05/17/2021
		Special Assistant to the Secretary.	DT210061	01/29/2021
		White House Liaison (2)	DT200151	09/26/2020
			DT210031	01/20/2021
	Small and Disadvantaged Business Utilization.	Special Assistant	DT200124	07/27/2020
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Legislative Affairs).	Special Assistant (2)	DY210078	03/12/2021
			DY210086	05/10/2021
	Office of the Assistant Secretary (Public Affairs).	Director, Public Affairs	DY200126	08/03/2020
		Digital Strategy Specialist	DY210096	05/19/2021
		Senior Spokesperson	DY210106	06/23/2021
	Secretary of the Treasury	Associate Director of Scheduling and Advance.	DY200123	10/09/2020
		Chief Speech Writer and Senior Advisor.	DY210093	05/19/2021
		Deputy Director of Scheduling and Advance.	DY210107	06/14/2021
		Deputy Executive Secretary.	DY210102	06/01/2021
		Deputy White House Liaison.	DY210064	02/12/2021
		Director of Scheduling and Advance (2).	DY210027	01/13/2021
			DY210094	06/30/2021
		Policy Advisor	DY210100	05/19/2021
		Senior Advisor	DY210092	05/19/2021
		Senior Advisor to the Deputy Secretary.	DY210076	03/12/2021
		Special Advisor to the Executive Secretary.	DY200124	08/26/2020
		Special Assistant (3)	DY200111	07/11/2020
			DY210097	05/19/2021

Agency name	Organization name	Position title	Authorization No.	Effective date
			DY210098	05/19/2021
		Special Assistant to the Executive Secretary.	DY200108	07/02/2020
		Spokesperson	DY210095	05/19/2021
		White House Liaison	DY210051	01/20/2021
	Office of the Under Secretary for Domestic Finance.	Senior Advisor	DY210090	05/19/2021
		Counselor	DY210108	06/21/2021
	Office of the Under Secretary for International Affairs.	Senior Advisor to the Under Secretary International Affairs.	DY200125	10/09/2020
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of Commissioner Stayin	Staff Assistant (Legal)(2)	TC200008	10/01/2020
			TC210004	04/07/2021
DEPARTMENT OF VETERANS AFFAIRS.	Office of Intergovernmental Affairs	Special Assistant	DV200105	10/01/2020
	Office of Public Affairs	Press Secretary	DV200095	09/29/2020
	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant (3)	DV200089	07/28/2020
			DV200097	10/17/2020
			DV210034	02/05/2021
	Office of the Assistant Secretary for Enterprise Integration.	Special Assistant	DV210067	05/28/2021
	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Assistant	DV210023	01/20/2021
		Press Secretary	DV210024	01/20/2021
	Office of the General Counsel	Special Assistant (Attorney Advisor).	DV200104	09/30/2020
		Special Assistant (Attorney).	DV210066	06/04/2021
	Office of the Secretary and Deputy	Chief Speechwriter	DV210060	05/03/2021
		Director of Mission Operations.	DV210022	01/20/2021
		Special Assistant	DV210035	02/04/2021
		Special Assistant to the Deputy Chief of Staff/ White House Liaison.	DV210056	03/23/2021
		White House Liaison	DV210028	01/20/2021

Authority:

5 U.S.C. 3301 and 3302; E.O.10577, 3 CFR, 1954–1958 Comp., p.218.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–18175 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Application for Death Benefits Under the Federal Employees Retirement System (SF 3104); and Documentation & Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death (SF 3104B)

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an expiring information collection request (ICR), Application for Death Benefits under the Federal Employees Retirement System (SF 3104); and Documentation & Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death (SF 3104B).

DATES: Comments are encouraged and will be accepted until September 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *http://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.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0160) was previously published in the **Federal Register** on February 18, 2022 at 87 FR 9397, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

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 submissions of responses.

Standard Form 3104, Application for Death Benefits under the Federal Employees Retirement System, is needed to collect information so that OPM can pay death benefits to the survivor of Federal employees and annuitants. SF 3104B, Documentation in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death, is needed for deaths in service so that survivors can make the needed elections regarding health benefits, military service and payment of the death benefit.

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Application for Death Benefits under the Federal Employees Retirement System and Documentation & Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death.

OMB Number: 3206–0172.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 3104 = 12,734 and SF 3104B = 4,017.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 16,751 hours.

Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–18182 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; March 2022

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from March 1, 2022, to March 31, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

75. Woodrow Wilson International Center for Scholars (Sch. A, 213.3175)

(a) One Asian Studies Program Administrator, one Global European Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, four Social Science Program Administrators, one Middle East Studies Program Administrator, one African Studies Program Administrator, one Polar Studies Program Administrator, one Canadian Studies Program Administrator; one China Studies Program Administrator, one Science, Technology and Innovation Program Administrator, and one Mexico Studies Program Administrator.

Schedule B

No Schedule B Authorities to report during March 2022.

Schedule C

The following Schedule C appointing authorities were approved during March 2022.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF AGRICUTURE	Office of Rural Development	State Director—Oklahoma	DA220088	03/11/2022
		State Director—Nevada	DA220099	03/27/2022
		State Director—South Dakota	DA220100	03/27/2022
		State Director—Louisiana	DA220101	03/27/2022
		State Director—North Dakota	DA220102	03/27/2022
		State Director—West Virginia	DA220103	03/27/2022
		State Director—Utah	DA220104	03/27/2022
	Farm Service Agency	State Executive Director—New Hampshire.	DA220105	03/27/2022
	Office of Food and Nutrition Service.	Senior Policy Advisor	DA220106	03/27/2022
		Senior Advisor for External Engagement.	DA220108	03/27/2022
	Office of Communications	Press Secretary	DA220109	03/28/2022
	Office of the Assistant Secretary for Congressional Relations.	Confidential Assistant	DA220107	03/27/2022
	Office of the Secretary	Scheduler	DA220110	03/27/2022
DEPARTMENT OF COMMERCE	Office of International Trade Administration.	Scheduler and Special Assistant	DC220079	03/10/2022
	Office of National Telecommunications and Information Administration.	Director of Intergovernmental Affairs.	DC220077	03/10/2022
		Director of Public Engagement	DC220093	03/25/2022

Agency name	Organization name	Position title	Authorization number	Effective date
		Senior Advisor	DC220098	03/28/2022
	Office of Business Liaison	Director of Faith Based and Neighborhood Partnerships.	DC220092	03/25/2022
	Office of Policy and Strategic Planning.	Counselor to the Secretary	DC220085	03/28/2022
	Office of the Assistant Secretary for Economic Development.	Special Policy Advisor to the Assistant Secretary.	DC220088	03/14/2022
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Chief of Staff to the Chief Financial Officer and Assistant Secretary for Administration.	DC220076	03/10/2022
		Special Assistant	DC220084	03/25/2022
	Office of the Deputy Secretary	Special Assistant	DC220096	03/25/2022
	Office of the Secretary	Special Assistant to the Secretary	DC220087	03/14/2022
	Office of the Under Secretary	Policy Advisor (2)	DC220089	03/17/2022
			DC220091	03/18/2022
DEPARTMENT OF DEFENSE	Office of the Assistant to the Secretary of Defense (Public Affairs).	Director, Integrated Campaigns	DD220114	03/14/2022
DEPARTMENT OF THE AIR FORCE.	Office of Assistant Secretary Air Force for Acquisition.	Special Assistant	DF220009	03/02/2022
DEPARTMENT OF EDUCATION	Office of the General Counsel	Senior Counsel	DB220036	03/04/2022
	Office of Communications and Outreach.	Confidential Assistant	DB220037	03/04/2022
	Office of Elementary and Secondary Education.	Confidential Assistant	DB220035	03/10/2022
	Office of the Secretary	Senior Advisor	DB220039	03/10/2022
		Confidential Assistant	DB220040	03/15/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Scheduler	EP220037	03/08/2022
		Attorney-Advisor (General)	EP220039	03/11/2022
	Office of the Assistant Administrator for Water.	Senior Advisor for Implementation	EP220038	03/11/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Refugee Resettlement/Office of the Director.	Chief of Staff	DH220049	03/01/2022
	Office of the Assistant Secretary for Legislation.	Chief of Staff	DH220050	03/16/2022
	Office of Intergovernmental and External Affairs.	Regional Director, Atlanta, Georgia, Region IV.	DH220052	03/24/2022
	Office of the Secretary	Advance Representative	DH220059	03/24/2022
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Counselor to the Administrator (Technology, Strategy, and Delivery).	DM220090	03/01/2022
	Office of Strategy, Policy, and Plans.	Special Assistant	DM220089	03/23/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Public Affairs	Senior Press Secretary	DU220033	03/01/2022
		Director of Speechwriting	DU220034	03/17/2022
	Office of Community Planning and Development.	Special Assistant to the Assistant Secretary.	DU220035	03/22/2022
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Indian Affairs.	Senior Advisor to the Assistant Secretary—Indian Affairs.	DI220052	03/24/2022
	Secretary's Immediate Office	Alaska Coordinator	DI220056	03/24/2022
		Deputy Communications Director	DI220057	03/25/2022
DEPARTMENT OF JUSTICE	Office of Civil Rights Division	Senior Counsel	DJ220046	03/23/2022
		Counsel	DJ220052	03/23/2022
	Office of Legal Counsel	Senior Counselor	DJ220053	03/23/2022
DEPARTMENT OF LABOR	Office of Employment and Training Administration.	Senior Policy Advisor	DL220038	03/10/2022
	Office of Congressional and Intergovernmental Affairs.	Tribal Liaison	DL220030	03/10/2022
	Office of the Secretary	White House Liaison	DL220032	03/10/2022
		Policy Advisor	DL220037	03/23/2022
		Deputy White House Liaison	DL220039	03/23/2022
	Women's Bureau	Senior Advisor	DL220036	03/16/2022
NATIONAL CREDIT UNION ADMINISTRATION.	Office of the Board	Special Assistant and Advisor	CU220002	03/27/2022
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Confidential Assistant	TB220004	03/18/2022
OFFICE OF MANAGEMENT AND BUDGET.	Office of Information and Regulatory Affairs.	Counselor	BO220006	03/07/2022
	Office of E-Government and Information Technology.	Confidential Assistant	BO220007	03/07/2022
	Office of the Director	Confidential Assistant	BO220010	03/17/2022
	Office of Communications	Press Assistant	BO220009	03/23/2022

Agency name	Organization name	Position title	Authorization number	Effective date
	Office of Legislative Affairs	Deputy to the Associate Director	BO220012	03/31/2022
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of State, Local and Tribal Affairs.	Policy Analyst (State, Local, and Tribal Affairs)(2).	QQ220002	03/05/2022
			QQ220003	03/15/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of Communications	Special Assistant	PM220022	03/09/2022
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Senior Advisor	SE220005	03/04/2022
	Office of Legislative and Intergovernmental Affairs.	Legislative Affairs Specialist	SE220009	03/24/2022
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Regional Administrator, Region VIII	SB220025	03/31/2022
	Office of the Administrator	Senior Advisor	SB220023	03/10/2022
		White House Liaison	SB220027	03/31/2022
SOCIAL SECURITY ADMINISTRATION.	Office of the Commissioner	Senior Advisor	SZ220003	03/16/2022
DEPARTMENT OF STATE	Office of the Assistant Secretary Bureau of Democracy Human Rights and Labor.	Senior Advisor	DS220029	03/25/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Under Secretary of Transportation for Policy.	Associate Director of Bipartisan Infrastructure Law Implementation.	DT220048	03/08/2022
DEPARTMENT OF THE TREASURY.	Secretary of the Treasury	Senior Advisor	DY220071	03/17/2022
	Department of the Treasury	Special Advisor	DY220073	03/17/2022
DEPARTMENT OF VETERANS AFFAIRS.	Veterans Experience Office	Advisor to Chief Veterans Experience Officer.	DV220030	03/18/2022
	Office of the Secretary and Deputy	Advisor to Chief of Staff	DV220031	03/18/2022

The following Schedule C appointing authorities were revoked during March 2022.

Agency name	Organization name	Position title	Request number	Vacate date
DEPARTMENT OF AGRICULTURE	Office of the Secretary	Confidential Assistant	DA210131	03/26/2022
DEPARTMENT OF COMMERCE	Office of Executive Secretariat	Deputy Director	DC220014	03/26/2022
	Office of Legislative and Intergovernmental Affairs.	Director of Legislative Affairs	DC210202	03/12/2022
	Office of the Assistant Secretary for Economic Development.	Special Advisor	DC210113	03/27/2022
DEPARTMENT OF EDUCATION	Office of the Secretary	Senior Advisor to the Chief of Staff	DB210033	03/26/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office for Civil Rights	Senior Advisor	DH210125	03/12/2022
	Office of Refugee Resettlement/Office of the Director.	Chief of Staff	DH210112	03/12/2022
	Office of the Assistant Secretary for Legislation.	Special Assistant	DH210108	03/26/2022
	Office of the Assistant Secretary for Public Affairs.	National Press Secretary (Covid)	DH210116	03/31/2022
	Office of the Secretary	Special Assistant and Briefing Book Coordinator.	DH210102	03/26/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Fair Housing and Equal Opportunity.	Special Assistant to the Deputy Secretary.	DU210049	03/26/2022
	Office of Public Affairs	Press Secretary	DU210022	03/12/2022
		Deputy Press Secretary	DU210087	03/11/2022
DEPARTMENT OF JUSTICE	Office of Legal Counsel	Senior Counselor	DJ210158	03/26/2022
DEPARTMENT OF THE TREASURY.	Secretary of the Treasury	Special Assistant	DY210098	03/26/2022
		Policy Advisor	DY210100	03/26/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Deputy Secretary	Advisor to the Deputy Secretary	DT210068	03/26/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Engagement and Environmental Education.	Special Assistant	EP210077	03/12/2022
	Office of the Assistant Administrator for Chemical Safety and Pollution Prevention.	Special Assistant	EP210073	03/12/2022
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Legislative Affairs Director	TS210002	03/26/2022
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (3)	DD210148	03/12/2022

Agency name	Organization name	Position title	Request number	Vacate date
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	White House Liaison	DD210191 DD210269 SB210005	03/12/2022 03/12/2022 03/26/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–18176 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; April 2022

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from April 1, 2022, to April 30, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during April 2022.

Schedule B

No Schedule B Authorities to report during April 2022.

Schedule C

The following Schedule C appointing authorities were approved during April 2022.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Farm Service Agency	State Executive Director—Oregon	DA220111	04/08/2022
		State Executive Director—South Dakota.	DA220113	04/08/2022
			DA220114	04/08/2022
		State Executive Director—Indiana	DA220118	04/22/2022
		State Executive Director—Ohio	DA220120	04/22/2022
		State Executive Director—Rhode Island.		
	Office of the General Counsel	Senior Counselor	DA220115	04/08/2022
	Office of the Secretary	Director of Scheduling and Advance.	DA220116	04/08/2022
	Office of Rural Development	State Director—Kentucky	DA220119	04/22/2022
	Office of the Assistant Secretary for Congressional Relations.	Legislative Advisor	DA220121	04/22/2022
DEPARTMENT OF COMMERCE	National Telecommunications and Information Administration.	Advisor for Intergovernmental Affairs.	DC220080	04/08/2022
			DC220103	04/08/2022
		Project Management Specialist	DC220104	04/08/2022
		Public Engagement Advisor		
	Office of the Assistant Secretary for Economic Development.	Director of External Affairs	DC220100	04/08/2022
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Readiness).	Special Assistant	DD220125	04/07/2022
	Office of the Secretary of Defense	Advance Officer	DD220128	04/19/2022
DEPARTMENT OF THE ARMY	Office Assistant Secretary Army (Manpower and Reserve Affairs).	Special Assistant to the Assistant Secretary of the Army (Manpower and Reserve Affairs).	DW220028	04/21/2022
DEPARTMENT OF EDUCATION	Office of the Under Secretary	Confidential Assistant	DB220043	04/06/2022
	Office of the General Counsel	Confidential Assistant	DB220047	04/26/2022
DEPARTMENT OF ENERGY	Office of the Secretary	Deputy Chief of Staff	DE220042	04/04/2022
	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Deputy Assistant Secretary, Public Engagement.	DE220036	04/14/2022
	Office of the Assistant Secretary for Nuclear Energy.	Chief of Staff	DE220051	04/14/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Deputy White House Liaison	EP220043	04/26/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Center for Medicaid and Chip Services.	Policy Advisor	DH220078	04/28/2022
		Policy Advisor	DH220077	04/28/2022
	Center for Medicare	Senior Advisor	DH220067	04/07/2022
	Office for Civil Rights			

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Intergovernmental and External Affairs.	Regional Director, Chicago, Illinois-Region V.	DH220058	04/04/2022
		Regional Director, Philadelphia Region III.	DH220072	04/13/2022
	Office of the Assistant Secretary for Public Affairs.	Advisor, Public Education Campaign.	DH220079	04/28/2022
		Press Secretary	DH220080	04/28/2022
	Office of the Secretary	Special Assistant and Briefing Book Coordinator.	DH220066	04/04/2022
		Senior Advisor, Boards and Commissions.	DH220068	04/07/2022
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Deputy Director of Public Affairs	DM220129	04/14/2022
		Chief of Staff	DM220135	04/27/2022
	Office for Civil Rights and Civil Liberties.	Oversight Counsel	DM220138	04/26/2022
	Office of the General Counsel			
	Office of the Secretary	Deputy White House Liaison	DM220142	04/20/2022
	Transportation Security Administration.	Special Assistant	DM220145	04/25/2022
	Office of United States Immigration and Customs Enforcement.	Counselor to the Director	DM220131	04/28/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Field Policy and Management.	Senior Advisor	DU220039	04/22/2022
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Fish and Wildlife and Parks.	Senior Advisor	DI220063	04/26/2022
	Office of the Solicitor	Advisor to the Solicitor (Attorney Advisor).	DI220058	04/20/2022
	Secretary's Immediate Office	Senior Communications Advisor for Infrastructure.	DI220059	04/19/2022
DEPARTMENT OF JUSTICE	Office of Legal Policy	Senior Counsel	DJ210102	04/13/2022
	Office of the Deputy Attorney General.	Counsel	DJ210103	04/13/2022
	Office of Public Affairs	Deputy Speechwriter	DJ220055	04/21/2022
	Office of Antitrust Division	Senior Counsel	DJ220069	04/21/2022
DEPARTMENT OF LABOR	Office of Disability Employment Policy.	Chief of Staff	DL220043	04/13/2022
	Office of the Assistant Secretary for Policy.	Good Jobs Initiative Policy Advisor	DL220044	04/13/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Congressional, Legislative, and Intergovernmental Affairs.	Deputy Director	PM220024	04/05/2022
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Director for Legislative Affairs	TS220004	04/27/2022
SOCIAL SECURITY ADMINISTRATION.	Office of the Commissioner	Senior Advisor	SZ220004	04/08/2022
DEPARTMENT OF STATE	Office of Global Food Security	Special Envoy for Global Food Security.	DS220030	04/05/2022
	Bureau of Counterterrorism	Deputy Coordinator	DS220031	04/05/2022
	Bureau of Overseas Buildings Operations.	Supervisory Museum Curator (Arts)	DS220032	04/05/2022
TRADE AND DEVELOPMENT AGENCY.	Office of the Director	Congressional Affairs Director	TD220005	04/14/2022
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Governmental Affairs.	Principal Deputy Assistant Secretary for Congressional Affairs (Senate).	DT220074	04/26/2022
	Office of the Assistant Secretary for Transportation Policy.	Strategic Advisor for Technical Assistance and Community Solutions.	DT220065	04/19/2022
	Office of the Deputy Secretary	Advisor to the Deputy Secretary	DT220070	04/13/2022
	Office of the General Counsel	Special Counsel	DT220069	04/12/2022
	Office of the Secretary	Special Assistant for Advance	DT220067	04/07/2022
DEPARTMENT OF THE TREASURY.	Office of the General Counsel	Policy Advisor	DY220096	04/12/2022
	Secretary of the Treasury	Special Assistant (2)	DY220095	04/12/2022
		Special Advisor	DY220097	04/12/2022
			DY220101	04/20/2022

The following Schedule C appointing authorities were revoked during April 2022.

Agency name	Organization name	Position title	Request No.	Vacate date
DEPARTMENT OF EDUCATION	Office of the Under Secretary	Confidential Assistant	DB220043	04/12/2022
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Special Assistant	DE210197	04/23/2022
	Office of the Assistant Secretary for Electricity.	Special Assistant	DE210196	04/04/2022
	Office of the Assistant Secretary for International Affairs.	Special Assistant	DE210195	04/23/2022
	Office of the Assistant Secretary for Nuclear Energy.	Special Assistant	DE210158	04/23/2022
	Office of Economic Impact and Diversity.	Special Assistant	DE210163	04/23/2022
	Office of Management	Special Assistant for Advance	DE210124	04/23/2022
		Special Assistant	DE210166	04/23/2022
	Office of Policy	Special Assistant	DE210192	04/23/2022
	Office of Public Affairs	Deputy Director	DE210147	04/23/2022
		Special Assistant	DE210201	04/09/2022
Office of Science	Special Assistant	DE210188	04/23/2022	
	Office of the Secretary	Special Assistant to the Deputy Chief of Staff.	DE210155	04/23/2022
		Special Assistant to the Chief of Staff.	DE210190	04/23/2022
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	White House Liaison	DH210059	04/10/2022
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Deputy Secretary	Deputy White House Liaison	DU210047	04/23/2022
DEPARTMENT OF THE TREASURY.	Secretary of the Treasury	Senior Advisor	DY210092	04/02/2022
		Senior Advisor for Technology and Delivery.	DY210099	04/01/2022
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Advisor for Congressional and Legislative Affairs.	DV210034	04/09/2022
	Office of the Assistant Secretary for Enterprise Integration.	Strategic Advisor	DV210067	04/23/2022
	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Strategic Communications Advisor	DV210023	04/09/2022
	Office of the General Counsel	Attorney Advisor to General Counsel.	DV210066	04/09/2022
	Office of the Secretary and Deputy	Policy Advisor	DV210115	04/24/2022
	Veterans Benefits Administration	Benefits Advisor to the Under Secretary for Benefits.	DV210112	04/24/2022
	Veterans Experience Office	Strategic Advisor to Chief Veterans Experience Officer.	DV210056	04/23/2022
	Veterans Health Administration	Health Advisor to the Under Secretary for Health.	DV220009	04/24/2022
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Engagement and Environmental Education.	Public Engagement Specialist	EP220034	04/01/2022
	Office of the Administrator	Deputy White House Liaison	EP210100	04/09/2022
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Deputy Associate Administrator for Intergovernmental Affairs.	EP210014	04/15/2022
		Senior Advisor for Congressional Affairs.	EP220027	04/09/2022
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Communications Specialist	NL210003	04/23/2022
OFFICE OF PERSONNEL MANAGEMENT.	Office of the General Counsel	Senior Counsel	PM210077	04/23/2022
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Assistant to the Secretary of Defense (Public Affairs).	Chief of Staff	DD210133	04/30/2022
	Office of the Secretary of Defense	Protocol Officer	DD210151	04/10/2022
	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD210174	04/09/2022
	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant	DD210176	04/23/2022
	Office of the Under Secretary of Defense (Policy).	Special Assistant	DD210202	04/05/2022
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Special Assistant	SB210042	04/02/2022

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–18180 Filed 8–23–22; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–99 and CP2022–103; MC2022–100 and CP2022–104]

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:* August 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).:* MC2022–99 and CP2022–103; *Filing Title:* USPS Request to Add Priority Mail Express Contract 97 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 18, 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:* August 26, 2022.

2. *Docket No(s).:* MC2022–100 and CP2022–104; *Filing Title:* USPS Request to Add Priority Mail Contract 757 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 18, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 26, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–18269 Filed 8–23–22; 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

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 755 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–96, CP2022–100.

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–18294 Filed 8–23–22; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Sunshine Act Meetings, 87 FR 48212 (August 8, 2022).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., August 17, 2022.

CHANGES IN THE MEETING: On August 16, 2022, the Board voted unanimously to approve the following addition to the August 17, 2022 public meeting agenda:

4. Update to the GSA repurposing study and implementation of the GSA financial study.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Dated: August 22, 2022.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2022–18317 Filed 8–22–22; 4:15 pm]

BILLING CODE 7905–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Federal Evidence Agenda on LGBTQI+ Equity

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information.

SUMMARY: In this notice, the White House Office of Science and Technology Policy (OSTP) requests input from the public to help inform the development of the Federal Evidence Agenda on LGBTQI+ Equity. Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals (June 15, 2022) required the co-chairs of the Interagency Working Group on Equitable Data to establish a subcommittee on sexual orientation, gender identity, and variations in sex characteristics (SOGI) data. That body, now part of the National Science and Technology Council (NSTC) Subcommittee on Equitable Data, is tasked with the development and release of a Federal Evidence Agenda on LGBTQI+ Equity, which will improve the Federal government's ability to make data-informed policy decisions that advance equity for the LGBTQI+ community.

DATES: Responses must be received by October 3 to be considered.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: equitabledata@ostp.eop.gov,* include ''Federal Evidence Agenda on LGBTQI+ Equity RFI'' in the subject line of the message. Email submissions should be machine-readable [PDF, Word] and should not be copy-protected. Submissions received after the deadline may not be taken into consideration.
- *Mail:* Attn: NSTC Subcommittee on Equitable Data, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW, Washington, DC 20504.

Instructions: Response to this RFI is voluntary. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response. Electronic responses must be provided as attachments to an email. It is recommended that attachments do not exceed a file size of 25MB to ensure message delivery. Please identify your answers by responding to a specific question or topic if possible. Respondents may answer as many or as few questions as they wish. Comments of seven pages or fewer (3,500 words) are strongly recommended. We encourage all members of the public who are interested in this initiative to submit their comments. OSTP and the Subcommittee on SOGI Data will consider each comment thoughtfully, whether it contains personal narrative and experience with Federal programs, or more technical legal, research, or scientific content.

OSTP will not respond to individual submissions. This RFI is not accepting applications for financial assistance or financial incentives. Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). Responses to this RFI may be posted without change online. OSTP therefore requests that no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the United States Government will not pay for response preparation, or for the use of any information contained in a response.

In accordance with FAR 15–202(3), responses to this notice are not offers and cannot be accepted by the U.S. Government to form a binding contract. Additionally, the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Meghan Maury, Senior Advisor for Data Policy at (202–456–6121) or by email at *equitabledata@ostp.eop.gov.* Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Interagency Working Group on Equitable Data was established on January 20, 2021, by Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, requires the co-chairs of the Interagency Working Group on Equitable Data to establish a subcommittee on sexual orientation, gender identity, and variations in sex characteristics (SOGI) data. That body, now part of the NSTC Subcommittee on Equitable Data, is tasked with the development and release of a Federal Evidence Agenda on LGBTQI+ Equity, which will improve the Federal government's ability to make data-informed policy decisions that advance equity for the LGBTQI+ community.

The Federal Evidence Agenda on LGBTQI+ Equity described in Executive Order 14075 must:

i. Describe disparities faced by LGBTQI+ individuals that could be better understood through Federal statistics and data collection;

ii. Identify, in coordination with agency Statistical Officials, Chief Science Officers, Chief Data Officers, and Evaluation Officers, Federal data collections where improved SOGI data collection may be important for advancing the Federal Government's ability to measure disparities facing LGBTQI+ individuals; and

iii. Identify practices for all agencies engaging in SOGI data collection to follow in order to safeguard privacy, security, and civil rights, including with regard to appropriate and robust practices of consent for the collection of this data and restrictions on its use or transfer.

We invite members of the public to share perspectives on how requirements in the Federal Evidence Agenda on LGBTQI+ Equity should be addressed by the Subcommittee on SOGI Data. OSTP seeks responses to one, some, or all of the questions that follow.

Describing Disparities

Section 11 of the Executive Order states that ''Advancing equity and full inclusion for LGBTQI+ individuals requires that the Federal Government use evidence and data to measure and address the disparities that LGBTQI+ individuals, families, and households face.'' With that charge in mind, OSTP seeks response to the following questions:

1. What disparities faced by LGBTQI+ people are not well-understood through existing Federal statistics and data collection? Are there disparities faced by LGBTQI+ people that Federal statistics and other data collections are currently not well-positioned to help the Government understand?

2. Are there community-based or non-Federal statistics or data collection that could help inform the creation of the Federal Evidence Agenda on LGBTQI+ Equity? Are there disparities that are better understood through community-based research than through Federal statistics and/or other data collection?

3. Community-based research has indicated that LGBTQI+ people experience disparities in a broad range of areas. What factors or criteria should the Subcommittee on SOGI Data consider when reflecting on policy research priorities?

Informing Data Collections

Ultimately, individual agencies decide what data to collect and publish through their forms and surveys, taking into account considerations like informed consent, privacy risk, statistical rigor, intended use of the data, budget, burden to respondents, and more. With that in mind, OSTP seeks response to the following questions about where potentially useful data is lacking:

1. In some instances, there are multiple surveys or data collections that could be used to generate evidence about a particular disparity faced by the LGBTQI+ community. In addition to factors like sample size, timeliness of the data, and geographic specificity of related data publications, what other factors should be considered when determining which survey would best generate the relevant evidence? Are there data collections that would be uniquely valuable in improving the Federal Government's ability to make data-informed decisions that advance equity for the LGBTQI+ community?

2. To protect privacy and maintain statistical rigor, sometimes publicly-released data must combine sexual and gender minority respondents into a single category. While this approach can provide valuable evidence, it can also obscure important details and differences. Please tell us about the usefulness of combined data, and under what circumstances more detailed data may be necessary.

3. Are there any Federal surveys or administrative data collections for which you would recommend the Federal Government *should not* explore collecting SOGI data due to privacy risk, the creation of barriers to participation in Federal programs, or other reasons? Which collections or type of collections are they, and why would you make this recommendation?

4. How can Federal agencies best communicate with the public about methodological constraints to collecting or publishing SOGI data? Additionally, how can agencies encourage public response to questions about sexual orientation and gender identity in order to improve sample sizes and population coverage?

5. Data collection on vulnerable populations is often incomplete, creating challenges for creating data-informed decisions to advance equity for those populations. How can statistical techniques help identify missing SOGI data, and make statistically rigorous estimates for that missing data? How should qualitative information help agencies analyze what SOGI data might be missing?

Privacy, Security, and Civil Rights

The Executive Order calls on the interagency SOGI data body to identify privacy, confidentiality, and civil rights practices agencies should follow when collecting SOGI data. Though members have expertise in how privacy, confidentiality, and civil rights practices apply to other marginalized groups, OSTP seeks input on privacy, confidentiality, and civil rights considerations that are unique to the LGBTQI+ community and/or are experienced differently by LGBTQI+ people, including in intersection with other marginalized experiences. Accordingly, OSTP seeks response to the following questions:

1. While the confidentiality of data collected by the statistical system is protected by statute, OMB and other agency policies, and experience in protecting the confidentiality of respondents through data governance, privacy-preserving technology, and disclosure limitation practices, a wide range of privacy protections apply to data collected for programmatic purposes, such as applications for Federal programs or benefits, compliance forms, human resources data, and other data used to manage and operate Federal programs. What specific privacy and confidentiality considerations should the Subcommittee on SOGI Data keep in mind when determining promising practices for the collection of this data and restrictions on its use or transfer, especially in the context of government forms and other collections of data for programmatic use?

2. Unique risks may exist when collecting SOGI data in the context of both surveys and administrative forms. Please tell us about specific risks Federal agencies should think about when considering whether to collect these data in surveys or administrative contexts.

3. Once SOGI data have been collected for administrative or statistical purposes, are there considerations that Federal agencies should be aware of concerning retention of these data? Please tell us how privacy or confidentiality protections could mitigate or change these concerns.

4. Where programmatic data is used to enforce civil rights protections, such as in employment, credit applications, or education settings, what considerations should the Subcommittee on SOGI Data keep in mind when determining promising practices for the collection of this data and restrictions on its use or transfer?

Dated: August 19, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022–18219 Filed 8–23–22; 8:45 am]

BILLING CODE 3270–F2–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95551; File No. SR–CboeEDGX–2022–036]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

August 18, 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 August 9, 2022, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 13.8 to introduce a new data product to be known as the Short Volume Report. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 13.8 to adopt paragraph 13.8(h), which introduces a new data product, the Short Volume Report. A description of each market data product offered by the Exchange is provided in Exchange Rule 13.8 and proposed Rule 13.8(h) provides that the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, and includes trade date,[3] total volume,[4] sell short volume,[5] and sell short exempt volume,[6] by symbol.[7] The Short Volume Report will be available for purchase to both EDGX Members (''Members'') [8] as well as non-Members.[9]

The Exchange notes that the data fields included in the Short Volume Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file.[10] Specifically, the NYSE Daily Short Volume file also includes trade date,[11] symbol,[12] short exempt volume,[13] short volume,[14] and total volume.[15] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file [16] which includes, date,[17] symbol,[18] short volume,[19] total volume,[20] and market center.[21] The Short Volume Report will be available for purchase [22] by both Members and non-Members on a monthly subscription basis, and subscribers will receive a daily end-of-day file. Additionally, like NYSE, the Exchange will offer historical daily Short Volume Reports. Historical daily Short Volume Reports will be available for purchase dating back to January 2, 2015,[23] and will include the same data fields as the daily end-of-day files.[24]

The Exchange anticipates that a wide variety of market participants will purchase the proposed Short Volume Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Short Volume Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed Short Volume Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

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.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [26] 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) [27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that

[3] ''Trade date'' is the date of the trading activity.

[4] ''Total volume'' is the total share volume of all order executions.

[5] ''Sell Short volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt).

[6] ''Short exempt volume'' is the total share volume of all short exempt order executions.

[7] Symbol refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Exchange Rule 1.5(n), definition of ''Member''.

[9] The Exchange intends to submit a separate filing to establish fees for the Short Volume Report.

[10] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.* The NYSE Daily Short Volume includes trade date, symbol, short exempt volume, short volume, and total volume. Unlike NYSE, the proposed Short Volume Report will not include the trading exchange, as the proposed report includes short sale volume only for transactions executed on EDGX. Additionally, NYSE's Daily Short Volume file specifies that short volume is comprised of the sum of, (sell short volume + sell short exempt volume + sell short with slide). While the Exchange does not specifically flag sell short with slide transactions, such transactions are recognized simply as sell short or sell short exempt and are thus included in the Exchange's sell short and sell short exempt volume totals.

[11] NYSE ''Trade date'' is the date of trading session activity.

[12] NYSE ''Symbol'' is defined in the NYSE Symbology Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Clien_Spec_v1.3.pdf.*

[13] NYSE ''Short Exempt Volume'' is the total share volume of all Short Exempt order executions.

[14] NYSE ''Short Volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt + Sell Short with Slide).

[15] NYSE ''Total Volume'' is the total share volume of all order executions.

[16] *See* Specifications for Daily Short Sale Volume file, available at: *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf.* The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume on EDGX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

[17] Nasdaq ''Date'' is the trade date (YYYMMDD).

[18] Nasdaq ''Symbol'' is the Trading Symbol.

[19] Nasdaq ''Short Volume'' is the aggregate reported share volume of executed short sales during regular trading hours.

[20] Nasdaq ''Total Volume'' is the aggregate reported share volume of all executed trades during regular trading hours.

[21] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ for NASDAQ file, B = Boston for Boston file, X = PSX).

[22] The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of this proposal.

[23] Historical Short Volume Reports will be available for purchase on an ad hoc basis.

[24] The Exchange notes that NYSE also offers historical daily short sale files. *See https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume data. The proposed rule change would benefit investors by providing access to the Short Volume Report data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, NYSE offers a Daily Short Volume file which provides data that is essentially identical to that currently proposed by the Exchange—trade date, symbol, short volume, short exempt volume, and total volume.[28] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file which includes, date, symbol, short volume, total volume, and market center.[29] Accordingly, the proposed Short Volume Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

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. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the same data offered by other competitor equities exchanges. Additionally, the Short Volume Report will be available equally to Members and non-Members. Market participants are not required to purchase the Short Volume Report, and the Exchange is not required to make the Short Volume Report available to investors. Rather, the Exchange is voluntarily making the Short Volume Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6)[32] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative prior to 30 days after the date of the filing. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed Short Volume Report is nearly identical to the currently available NYSE Daily Short Volume file and Nasdaq Daily Short Volume file and would permit the Exchange to immediately make the Short Volume Report available to subscribers as an alternative to similar products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[34]

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 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–CboeEDGX–2022–036 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–2022–036. 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,

[28] *Supra* note 10.

[29] *Supra* note 16.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 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.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2022–036 and should be submitted on or before September 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18188 Filed 8–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95548; File No. SR–CboeBYX–2022–019]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

August 18, 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 August 9, 2022, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 11.22 to adopt paragraph 11.22(f), which introduces a new data product, the Short Volume Report. A description of each market data product offered by the Exchange is provided in Exchange Rule 11.22 and proposed Rule 11.22(f) provides that the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, and includes trade date,[3] total volume,[4] sell short volume,[5] and sell short exempt volume,[6] by symbol.[7] The Short Volume Report will be available for purchase to both BYX Members (''Members'')[8] as well as non-Members.[9]

The Exchange notes that the data fields included in the Short Volume Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file.[10] Specifically, the NYSE Daily Short Volume file also includes trade date,[11] symbol,[12] short exempt volume,[13] short volume,[14] and total volume.[15] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file[16] which includes, date,[17] symbol,[18] short

[35] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Trade date'' is the date of the trading activity.

[4] ''Total volume'' is the total share volume of all order executions.

[5] ''Sell Short volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt).

[6] ''Short exempt volume'' is the total share volume of all short exempt order executions.

[7] Symbol refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. *See* Exchange Rule 1.5(n), definition of ''Member''.

[9] The Exchange intends to submit a separate filing to establish fees for the Short Volume Report.

[10] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.* The NYSE Daily Short Volume includes trade date, symbol, short exempt volume, short volume, and total volume. Unlike NYSE, the proposed Short Volume Report will not include the trading exchange, as the proposed report includes short sale volume only for transactions executed on BYX. Additionally, NYSE's Daily Short Volume file specifies that short volume is comprised of the sum of, (sell short volume + sell short exempt volume + sell short with slide). While the Exchange does not specifically flag sell short with slide transactions, such transactions are recognized simply as sell short or sell short exempt and are thus included in the Exchange's sell short and sell short exempt volume.

[11] NYSE ''Trade date'' is the date of trading session activity.

[12] NYSE ''Symbol'' is defined in the NYSE Symbology Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.*

[13] NYSE ''Short Exempt Volume'' is the total share volume of all Short Exempt order executions.

[14] NYSE ''Short Volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt + Sell Short with Slide).

[15] NYSE ''Total Volume'' is the total share volume of all order executions.

[16] *See* Specifications for Daily Short Sale Volume file, available at: *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf.* The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume File, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume on BYX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

[17] Nasdaq ''Date'' is the trade date (YYYMMDD).

[18] Nasdaq ''Symbol'' is the Trading Symbol.

volume,[19] total volume,[20] and market center.[21] The Short Volume Report will be available for purchase [22] by both Members and non-Members on a monthly subscription basis, and subscribers will receive a daily end-of-day file. Additionally, like NYSE, the Exchange will offer historical daily Short Volume Reports. Historical daily Short Volume Reports will be available for purchase dating back to January 2, 2015,[23] and will include the same data fields as the daily end-of-day files.[24]

The Exchange anticipates that a wide variety of market participants will purchase the proposed Short Volume Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Short Volume Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed Short Volume Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

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.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [26] 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) [27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume data. The proposed rule change would benefit investors by providing access to the Short Volume Report data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, NYSE offers a Daily Short Volume file which provides data that is essentially identical to that currently proposed by the Exchange—trade date, symbol, short volume, short exempt volume, and total volume.[28] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file which includes, date, symbol, short volume, total volume, and market center.[29] Accordingly, the proposed Short Volume Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

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. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the same data offered by other competitor equities exchanges. Additionally, the Short Volume Report will be available equally to Members and non-Members. Market participants are not required to purchase the Short Volume Report, and the Exchange is not required to make the Short Volume Report available to investors. Rather, the Exchange is voluntarily making the Short Volume Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

[19] Nasdaq ''Short Volume'' is the aggregate reported share volume of executed short sales during regular trading hours.

[20] Nasdaq ''Total Volume'' is the aggregate reported share volume of all executed trades during regular trading hours.

[21] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ for NASDAQ file, B = Boston for Boston file, X = PSX).

[22] The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of this proposal.

[23] Historical Short Volume Reports will be available for purchase on an ad hoc basis.

[24] The Exchange notes that NYSE also offers historical daily short sale files. *See https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

[28] *Supra* note 10.

[29] *Supra* note 16.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 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.

A proposed rule change filed under Rule 19b–4(f)(6) [32] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative prior to 30 days after the date of the filing. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed Short Volume Report is nearly identical to the currently available NYSE Daily Short Volume file and Nasdaq Daily Short Volume file and would permit the Exchange to immediately make the Short Volume Report available to subscribers as an alternative to similar products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[34]

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 to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2022–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2022–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2022–019 and should be submitted on or before September 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18187 Filed 8–23–22; 8:45 am]

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[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95552; File No. SR–CboeEDGA–2022–011]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

August 18, 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 August 9, 2022, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 13.8 to introduce a new data product to be known as the Short Volume Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 13.8 to adopt paragraph 13.8(h), which introduces a new data product, the Short Volume Report. A description of each market data product offered by the Exchange is provided in Exchange Rule 13.8 and proposed Rule 13.8(h) provides that the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, and includes trade date,[3] total volume,[4] sell short volume,[5] and sell short exempt volume,[6] by symbol.[7] The Short Volume Report will be available for purchase to both EDGA Members (''Members'')[8] as well as non-Members.[9]

The Exchange notes that the data fields included in the Short Volume Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file.[10] Specifically, the NYSE Daily Short Volume file also includes trade date,[11] symbol,[12] short exempt volume,[13] short volume,[14] and total volume.[15] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file[16] which includes, date,[17] symbol,[18] short volume,[19] total volume,[20] and market center.[21] The Short Volume Report will be available for purchase[22] by both Members and non-Members on a monthly subscription basis, and subscribers will receive a daily end-of-day file. Additionally, like NYSE, the Exchange will offer historical daily Short Volume Reports. Historical daily Short Volume Reports will be available for purchase dating back to January 2, 2015,[23] and will include the same data fields as the daily end-of-day files.[24]

The Exchange anticipates that a wide variety of market participants will purchase the proposed Short Volume Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Short Volume Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed Short Volume Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

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.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] 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)[27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume data. The proposed rule change would benefit investors by providing

[3] ''Trade date'' is the date of the trading activity.

[4] ''Total volume'' is the total share volume of all order executions.

[5] ''Sell Short volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt).

[6] ''Short exempt volume'' is the total share volume of all short exempt order executions.

[7] Symbol refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Exchange Rule 1.5(n), definition of ''Member''.

[9] The Exchange intends to submit a separate filing to establish fees for the Short Volume Report.

[10] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.* The NYSE Daily Short Volume includes trade date, symbol, short exempt volume, short volume, and total volume. Unlike NYSE, the proposed Short Volume Report will not include the trading exchange, as the proposed report includes short sale volume only for transactions executed on EDGA. Additionally, NYSE's Daily Short Volume file specifies that short volume is comprised of the sum of, (sell short volume + sell short exempt volume + sell short with slide). While the Exchange does not specifically flag sell short with slide transactions, such transactions are recognized simply as sell short or sell short exempt and are thus included in the Exchange's sell short and sell short exempt volume totals.

[11] NYSE ''Trade date'' is the date of trading session activity.

[12] NYSE ''Symbol'' is defined in the NYSE Symbology Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.*

[13] NYSE ''Short Exempt Volume'' is the total share volume of all Short Exempt order executions.

[14] NYSE ''Short Volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt + Sell Short with Slide).

[15] NYSE ''Total Volume'' is the total share volume of all order executions.

[16] *See* Specifications for Daily Short Sale Volume file, available at: *https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf.* The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume on EDGA. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

[17] Nasdaq ''Date'' is the trade date (YYYMMDD).

[18] Nasdaq ''Symbol'' is the Trading Symbol.

[19] Nasdaq ''Short Volume'' is the aggregate reported share volume of executed short sales during regular trading hours.

[20] Nasdaq ''Total Volume'' is the aggregate reported share volume of all executed trades during regular trading hours.

[21] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ for NASDAQ file, B = Boston for Boston file, X = PSX).

[22] The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of this proposal.

[23] Historical Short Volume Reports will be available for purchase on an ad hoc basis.

[24] The Exchange notes that NYSE also offers historical daily short sale files. *See https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

access to the Short Volume Report data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, NYSE offers a Daily Short Volume file which provides data that is essentially identical to that currently proposed by the Exchange—trade date, symbol, short volume, short exempt volume, and total volume.[28] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file which includes, date, symbol, short volume, total volume, and market center.[29] Accordingly, the proposed Short Volume Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

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. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the same data offered by other competitor equities exchanges. Additionally, the Short Volume Report will be available equally to Members and non-Members. Market participants are not required to purchase the Short Volume Report, and the Exchange is not required to make the Short Volume Report available to investors. Rather, the Exchange is voluntarily making the Short Volume Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

[28] *Supra* note 10.

[29] *Supra* note 16.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6) [32] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative prior to 30 days after the date of the filing. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed Short Volume Report is nearly identical to the currently available NYSE Daily Short Volume file and Nasdaq Daily Short Volume file and would permit the Exchange to immediately make the Short Volume Report available to subscribers as an alternative to similar products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[34]

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 to determine whether the proposed rule change should be approved or disapproved.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 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.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission also has 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–CboeEDGA–2022–011 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–CboeEDGA–2022–011. 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–CboeEDGA–2022–011 and should be submitted on or before September 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18189 Filed 8–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95529; File No. SR–CboeBZX–2022–038]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 11.28(a) To Extend the MOC Cut-Off Time

August 17, 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 August 5, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Rule 11.28(a) to extend the MOC Cut-Off Time from 3:35 p.m. Eastern Time to 3:49 p.m. Eastern Time. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 11.28 (Cboe Market Close, a Closing Match Process for Non-BZX-Listed Securities) provides Members an optional closing match process for non-BZX-Listed securities, known as Cboe Market Close (''CMC''). Currently, per Rule 11.28(a) (Order Entry) Members [3] may enter, cancel, or replace Market-on-Close (''MOC'') orders designated for participation in CMC beginning at 6:00 a.m. Eastern Time [4] up to 3:35 p.m. (''MOC Cut-Off Time''). The Exchange now proposes to move the MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. The Exchange is not proposing to make any other changes to the CMC process.

By way of background, on May 5, 2017, the Exchange filed a proposed rule change to adopt CMC, a match process for MOC orders in non-BZX listed securities and on December 1, 2017, filed Amendment No. 1 [5] to that proposal (the ''Original Proposal'').[6] On January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,[7] approved the Original Proposal (''Approval Order'').[8] On January 31, 2018, NYSE Group, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'') filed petitions for review of the Approval Order (''Petitions for Review''). Pursuant to Commission Rule of Practice 431(e),[9] the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.[10] On March 1, 2018, pursuant to Commission Rule of Practice 431, the Commission issued a scheduling order granting the Petitions of Review of the Approval Order, and provided until March 22, 2018, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.[11] On April 12, 2018, NYSE and Nasdaq submitted written statements opposing the Approval Order and BZX submitted a statement in support of the Approval Order.[12] On October 4, 2018, BZX filed Amendment No. 2 [13] to the Original Proposal.

The Commission conducted a de novo review of the CMC proposal and associated public record, including

[35] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. *See* Rule 1.5(n), definition of ''Member''.

[4] All times noted throughout are in Eastern Time.

[5] The only change in Amendment No. 1 was to rename the proposed closing match process as Cboe Market Close. Per the Commission, because Amendment No. 1 was a technical amendment and did not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 was not subject to notice and comment.

[6] *See* Securities Exchange Act Release No. 34–80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR–Bats–BZX–2017–34) (Notice of Filing of a Proposed Rule Change to Introduce Bats Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

[7] 17 CFR 200.30–3(a)(12).

[8] *See* Securities Exchange Act Release No. 34–82522 (January 17, 2018), 83 FR 3205 (January 23, 2018) (SR–Bats–BZX–2017–34) (Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

[9] 17 CFR 201.431(e).

[10] *See* Letter to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc. (Jan. 24, 2018) (providing notice of receipt of notices of intention to petition for review of delegated action and stay of order), available at: *https://www.sec.gov/rules/sro/batsbzx/2018/sr-batsbzx-2017-34-letter-from-secretary-to-cboe.pdf.*

[11] *See* Securities Exchange Act Release No. 82794, 83 FR 9561 (Mar. 6, 2018). On March 16, 2018, the Office of the Secretary, acting by delegated authority, issued an order on behalf of the Commission granting a motion for an extension of time to file statements on or before April 12, 2018. *See* Securities Exchange Act Release No. 82896, 83 FR 12633 (Mar. 22, 2018)

[12] *See* Statement of NYSE Group, Inc., in Opposition to the Division's Order Approving a Rule to Introduce Cboe Market Close (''NYSE Statement''); Statement of the Nasdaq Stock Market LLC in Opposition to Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce Cboe Market Close (''Nasdaq Statement''); and Statement of Cboe BZX Exchange, Inc., in support of Commission Staff's Approval Order (''BZX Statement''), available at: *https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm.*

[13] *See* Securities Exchange Act Release No. 34–84670 (November 28, 2018), 83 FR 62646 (December 4, 2018) (SR–BatsBZX–2017–34) (''Notice of Filing of Amendment No. 2 to Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28'').

Amendment No. 2, the Petitions for Review, and all comments and statements submitted by certain exchanges, issuers, and other market participants,[14] to determine whether the proposal was consistent with the requirements of the Act and the rules and regulations issued thereunder that are applicable to a national securities exchange.[15] The Commission noted that under Rule 700(b)(3) of the Commission's Rule of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [16]

Importantly, after reviewing the entire record, the Commission concluded that BZX met its burden to show that the proposed rule change was consistent with the Act, and pursuant to its January 21, 2020, order, set aside the Approval Order and approved BZX's CMC proposal, as amended (''Final Approval Order'').[17] Notably, the Commission stated that the record ''demonstrate[d] that Cboe Market Close should introduce and promote competitive forces among national securities exchanges for the execution of MOC orders'' [18] and that ''the record demonstrate[d] that Cboe Market Close should not disrupt the closing auction price discovery process nor should it materially increase the risk of manipulation of official closing prices''.[19] For the reasons discussed more fully below, the Exchange believes that when applying the Commission's analysis in the Final Approval Order to the current proposal, such review would similarly conclude that this proposal is consistent with the Act and should be approved.

Since the Original Proposal various exchanges have extended the MOC cut-off times for their closing auctions, moving them closer to 4:00 p.m.[20] Additionally, closing price match services offered by off-exchange venues have grown in popularity,[21] including alternative trading systems (''ATS'') that offer a MOC cut-off time as close as 30-seconds before the primary exchanges' cut-off times, as well as MOC cut-off times aligned with those of NYSE, NYSE Arca, and Nasdaq.[22] As the market structure for closing auctions and closing price match offerings has continued to evolve, and in response to customer feedback and to better compete with off-exchange venues, the Exchange is proposing this rule change to align CMC's MOC Cut-Off time more closely with the other exchanges and off-exchange venues.

The Exchange notes that Members have requested a MOC Cut-Off Time that is closer to the end of Regular Trading Hours [23] so that they may retain control of their trading for a longer period and be better able to manage their trading at the close.[24] Generally speaking, notional trading and trading volatility are typically at their highest towards the end of Regular Trading Hours. Accordingly, market participants often prefer to trade as close to 4:00 p.m. as possible, because doing so can provide them with more time to seek better priced liquidity for their orders in a variety of ways, including but not limited to, finding contra-side liquidity in the marketplace and trading directly against such interest, or guaranteeing a customer order at a price better than the national best bid or offer by committing capital to an order and filling it in a principal capacity, as well as continuing to trade orders algorithmically into the close, thus reducing the size of their outstanding orders that they may decide to commit to CMC or the primary auctions.

Additionally, Members have indicated that extending the MOC Cut-Off Time to 3:49 p.m. will help to make CMC a more comparable alternative to NYSE and Nasdaq, which have MOC cut-off times of 3:50 p.m.[25] and 3:55 p.m.,[26] respectively. For reasons discussed directly above, cut-off times closer to 4:00 p.m. are beneficial to market participants, and by extending CMC's MOC Cut-Off Time to 3:49 p.m., CMC will be better positioned to serve as a viable option for market participants to consider when deciding which venues to route their MOC orders, thus enhancing intermarket competition.

The Exchange also notes that today's market participants, including users of CMC,[27] are technologically equipped [28]

[14] *See* ''Statements on File No. SR–BatsBZX–2017–34'', available at: *https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm.*

[15] *See* Securities Exchange Act Release No. 34–88008 (January 21, 2020), 85 FR 4726 (January 27, 2020) (SR–BatsBZX–2017–34) (''Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28'').

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 34–84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR–Nasdaq–2018–068) (Order approving a rule change by NYSE) (The Commission approved a rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC orders from 3:50 p.m. to 3:55 p.m.); *see also* Securities Exchange Act Release No. 34–85021 (January 31, 2019) (SR–NYSE–2018–58) (Order approving a rule change by Nasdaq) (The Commission approved a rule change by the NYSE to amend Rule 123C to extend the cut-off times for order entry and cancellation for participation in the closing auction, from 3:45 p.m. to 3:50 p.m.).

[21] *See infra,* ''Price Discovery and Fragmentation'', which describes the growth of off-exchange closing volume.

[22] For example, JP Morgan Securities' ATS, JPB–X, offers Close Price Match. This functionality utilizes a conditional order process to match orders and crosses them at the security's official closing prices, as determined by the closing auction at the primary exchange for a security. The Close Price Match time for an NMS stock is currently 30-seconds before the MOC cut-off time for that stock's primary exchange. Additionally, Instinet, LLC's ATS, CBX provides for three MOC Crossing Sessions, which consist of: a cross for securities where the primary listing exchange is the Nasdaq (''Nasdaq Cross''), a cross for securities where the primary listing exchange is the NYSE Arca (''Arca Cross''), and a cross for securities where the primary listing exchange is the NYSE (''NYSE Cross''). Subscribers may submit orders for the MOC Crosses at any time between 7:30 a.m. and the relevant crossing session's crossing time. *See* Form ATS–N, JPB–X, available at: *https://www.sec.gov/Archives/edgar//data/782124/000/xslATS-N_X01/primary_doc.xml; see also* Form ATS–N, Instinet, LLC's ATS, CBX, available at: *https://www.sec.gov/Archives/edgar/data/310607/000031060722000009/xslATS-N_X01/primary_doc.xml.*

[23] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Rule 1.2(w), definition of, ''Regular Trading Hours.''

[24] The Exchange notes that part of its rationale for extending CMC's MOC Cut-Off Time is substantively identical to that of other exchanges moving their cut-off times later, namely, NYSE and Nasdaq. *See* Securities Exchange Act Release No. 34–83988 (August 29, 2018), 86 FR 18580 (September 5, 2018) (SR–Nasdaq–2018–068) (''Specifically, the Exchange believes that extending the cutoff times for submitting on close orders will allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close.''); *see also* Securities Exchange Act Release No. 34–84804 (December 12, 2018), 83 FR 64910 (December 18, 2018) (SR–NYSE–2018–58) (''The Exchange believes that extending the cut-off times for entry and cancellation of MOC and LOC Orders, cancellation of CO orders, as well as when the Exchange would begin disseminating Order Imbalance Information for the close would . . . allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close.'').

[25] *See* NYSE Rule 73.5(a)(8), Closing Auction Imbalance Freeze Time.

[26] *See* Nasdaq Rule 4702(b)(11)(A), Market On Close Order.

[27] Users of CMC are mainly broker-dealers that trade electronically, utilizing a variety of automated trading tools such as algorithmic strategies and routing protocols.

[28] The Exchange notes that today's equities markets involve the widespread use of automated trading algorithms and routing solutions, as well market connectivity options with speeds often measured in microseconds. In this regard, a MOC Cut-Off Time of 3:49 p.m. should not present any operational or technological issues, in terms of timing, for Members desiring to reroute any unmatched CMC MOC orders to the primary exchanges. Should Members need additional time to decide whether to send their CMC MOC orders to other exchanges, Members may still cancel their

Continued

to handle a 3:49 p.m. MOC Cut-Off time. As a general mater, today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically measured in microseconds. In this regard, the Exchange believes that if a CMC user receives a message that their MOC order was not matched in CMC,[29] such CMC user will have more than enough time to reroute their MOC order to the primary exchange. Importantly, the Exchange discussed the proposed change with both current CMC users and potential new CMC users to gauge whether a MOC Cut-Off Time one-minute closer to the NYSE cut-off time, and six-minutes closer to the Nasdaq cut-off time, would present operational or technological challenges, and confirmed that CMC users can in fact manage the proposed change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[30] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [31] 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) [32] 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 that moving the MOC Cut-Off Time to 3:49 p.m. would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow Members to retain control over their orders for a longer period, thereby assisting market participants in managing their trading at the close. As discussed more fully above, market participants may prefer to trade as close to 4:00 p.m. as possible, because doing so can provide them with more time to seek better priced liquidity for their orders in a variety of ways, as well as give them more time to determine the size of their outstanding orders that they may decide to commit to CMC or the primary auctions.

Additionally, the Exchange believes that a MOC Cut-Off Time fifteen-minutes (15) prior to NYSE's cut-off time, and twenty-five-minutes (25) prior to Nasdaq's cut-off time, is no longer necessary. Rather, the Exchange notes that today's market participants are technologically equipped [33] to handle a 3:49 p.m. MOC Cut-Off time. As discussed above, today's market participants rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decision on an automated basis, in times often measured in microseconds. As such, Members are technologically equipped to efficiently respond to CMC's publication of matched shares and should they so choose, reroute any unmatched MOC orders to the respective primary closing auction. As noted above, the Exchange discussed the extension of the MOC Cut-Off Time with CMC users and confirmed that the proposed MOC Cut-Off Time will not present them with any operational or technological issues.

Furthermore, the Exchange believes that the extension of cut-off times by the primary exchanges since CMC's proposal, as well as the growth of off-exchange venues [34] with cut-off times in such close proximity to the end of Regular Trading Hours is indicative of Members' desires for such offerings. Logically, such a change in market structure would not have occurred if Members did not already possess the operational and technological wherewithal to effectively manage the multitude of cut-off times offered by the exchanges and off-exchange venues.

Moreover, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because extending the MOC Cut-Off Time to 3:49 p.m. would more closely align the CMC MOC Cut-Off Time to the cut-off times in place for the other exchanges.[35] For the reasons discussed more fully above, the primary exchanges' cut-off times are beneficial to market participants because of their proximity to 4:00 p.m. By moving the MOC Cut-Off Time closer to the other exchanges' cut-off times, CMC can become a comparable alternative for Members to route their unpriced MOC orders. Importantly, even with a MOC Cut-Off Time closer to the primary exchanges' cut-off times, CMC removes any perceived impact on the primary listing markets' close by publishing the number of matched order shares, by security, in advance of the primary markets' cut-off time. The total matched shares would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Time of 3:49 p.m. Because of the speeds and widespread use of market technology, this information can still be used by the primary markets' closing processes, and as discussed above, CMC users will still have ample time [36] to reroute any MOC orders not matched via CMC to reach the primary market to be included in their closing auction process.

Additionally, the proposed rule change would more closely align CMC's MOC Cut-Off Time with that of off-exchange venues that offer cut-off times aligned with those currently offered by the primary exchanges, and as little as

CMC MOC orders any time prior to 3:49 p.m. or may voluntarily choose to not participate in CMC. *See generally* ''Staff Report on Algorithmic Trading in U.S. Capital Markets'' (August 5, 2020), available at *https://www.sec.gov/tm/reports-and-publications/special-studies/algo_trading_report_2020.* (''Over the past decade, the 'manual handling of institutional orders is increasingly rare and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems' '') (''The secondary market for U.S.-listed equity securities that has developed within this structure is now primarily automated. The process of trading has changed dramatically primarily as a result of developments in technologies for generating, routing, and executing orders, as well as by the requirement imposed by law and regulation.'') (''Modern equity markets are connected in part by the data flowing between market centers. An enormous volume of data is available to market participants. In recent years, there has been an exponential growth in the amount of market data that is available, the speed with which it is disseminated, and the computer power used to analyze and react to price movements.'')

[29] The CMC Closing Match Process—*i.e.,* the matching of all buy and sell MOC orders entered into the System by time priority at the MOC Cut-Off Time, the electronic notification to Members of any unmatched MOC orders, and the dissemination by the Exchange of the total size of all buy and sell orders matched via CMC via the Cboe Auction Feed—generally occurs within microseconds. As such, a MOC Cut-Off Time one-minute prior to the primary exchanges' cut-off times is a sufficient period of time for Members to reroute their unmatched MOC orders to the primary exchanges, should they choose to do so.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] *Id.*

[33] *Supra* note 28.

[34] *Supra* note 22.

[35] As noted above, NYSE's cut-off time is 3:50 p.m., and Nasdaq's cut-off time is 3:55 p.m. NYSE Arca's cut-off time for MOC orders id 3:59 p.m. *See* ''Trading Information—Closing Auctions'', available at: *https://www.nyse.com/market/nyse-arca/trading-info.*

[36] *Supra* note 28.

30-seconds prior to market close.[37] As such, the Exchange believes that the proposed rule change is supported by both ample precedent as well as current market structure, and should not present any new or novel issues that market participants must consider when managing their trading and determining which exchange or off-exchange venue to route their MOC orders.

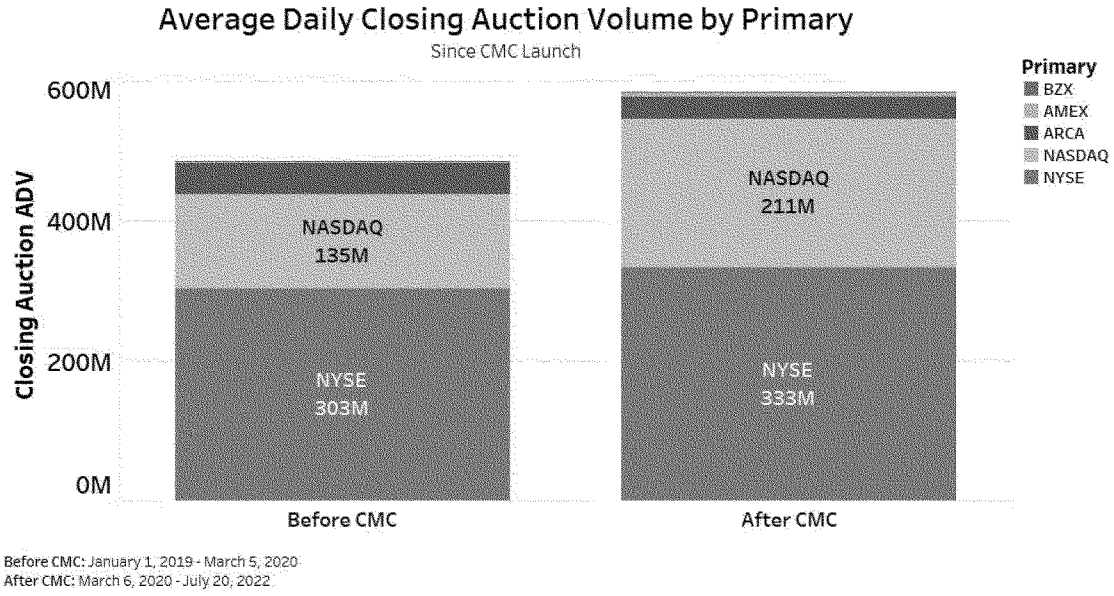
Price Discovery [38]

The Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirements.[39] As previously noted by the Exchange,[40] CMC accepts and matches only unpriced MOC orders. By matching only unpriced MOC orders, and not Limit-On-Close (''LOC'') orders and executing those matched MOC orders that naturally pair off with each other and effectively cancel each other out, CMC is designed to avoid impacting price discovery. While the proposed rule change would have CMC accept MOC orders up to 3:49 p.m., such extension will not change this underlying functionality. As previously noted by the Exchange,[41] matched MOC orders are merely recipients of price formation and do not directly contribute to the price formation process. Indeed, in its Final Approval Order for CMC, even the Commission noted that unpriced, paired-off MOC orders do not directly contribute to setting the official closing price of securities on the primary listing exchanges but, rather, are inherently the recipients of price formation information.[42]

Moreover, the Exchange believes that even if extending the MOC Cut-Off Time to 3:49 p.m. reduces the number of MOC orders routed to a security's primary listing market, CMC is designed to remove any perceived adverse impact on the primary listing markets' close because the total matched shares would still be disseminated by the Exchange free of charge via the Cboe Auction Feed prior to the primary exchanges' cut-off times. Additionally, because of the technological capabilities of today's market participants discussed more fully above, this information can still be incorporated by the primary markets' closing processes, and CMC users will still have ample time [43] to reroute any MOC orders not matched via CMC to the primary markets to be included in their closing auction processes.

Fragmentation [44]

Another matter addressed by the Commission in their review of the Initial Proposal was fragmentation, and whether CMC would fragment the markets beyond what currently occurs through off-exchange close price matching venues.[45] Importantly, as illustrated in the chart below, an analysis by the Exchange shows that the closing auction volume on both NYSE and Nasdaq has increased since the launch of CMC on March 6, 2022. As such, the Exchange believes that the initial fragmentation concerns raised by commenters during the Initial Proposal have not materialized, and that merely extending the MOC Cut-Off Time, while leaving all other CMC functionality intact, will not result in increased market fragmentation.



Source: Internal Exchange Data

[37] *Supra* note 22.

[38] As part of this proposed rule change the Exchange is addressing several questions considered by the Commission in connection with the Exchange's Original Proposal, including price discovery and fragmentation, market complexity and operational risk, and manipulation. Importantly, in considering these questions, the Commission found that based on CMC's design and the record before the Commission, that the proposal was consistent with Section 6(b)(5) of the Act. *Supra* note 15.

[39] The Exchange notes that the Commission, in its Final Approval Order, carefully analyzed and considered CMC and its potential effects, if any, on the primary listing exchanges' closing auctions, including their price discovery functions. Importantly, the Commission found that, based on CMC's design, CMC should not disrupt the price discovery process in the closing auctions of the primary listing exchanges. *Supra* note 15.

[40] *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. (August 2, 2017), available at: *https://www.sec.gov//batsbzx-2017-34/batsbzx201734-2162452-157801.pdf; see also* Letter from Joanne Moffic-Silver (October 11, 2017), available at: *https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2634580-161229.pdf.*

[41] *Id.*

[42] *Supra* note 15.

[43] *Supra* note 28.

[44] *Supra* note 38.

[45] *Supra* note 15.

The Exchange also notes that even if the proposed rule change results in fewer MOC orders participating in the primary exchanges' closing auctions, that the fragmentation of MOC orders already occurs in today's markets on off-exchange venues. As illustrated in the first two charts below, a growing proportion of trading volume at the close occurs on *off-exchange venues,* where the TRF close volume, as a percent of Exchange close volume, has risen steadily since January 2019.[46] In the third chart the Exchange also studied the top ten most actively traded securities during the same time period and found that a significant portion of the total closing volume is executed off-exchange, following the dissemination of the official closing price.

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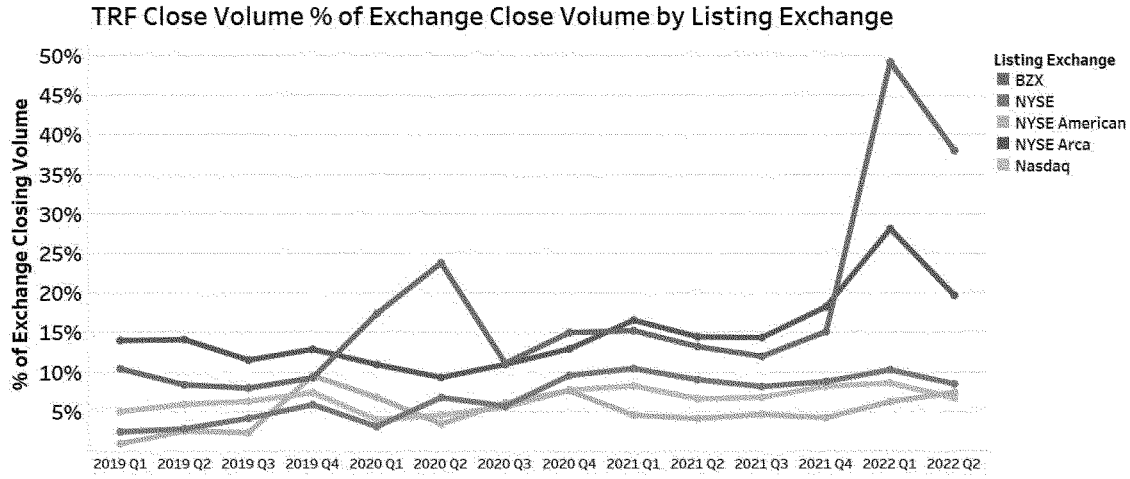
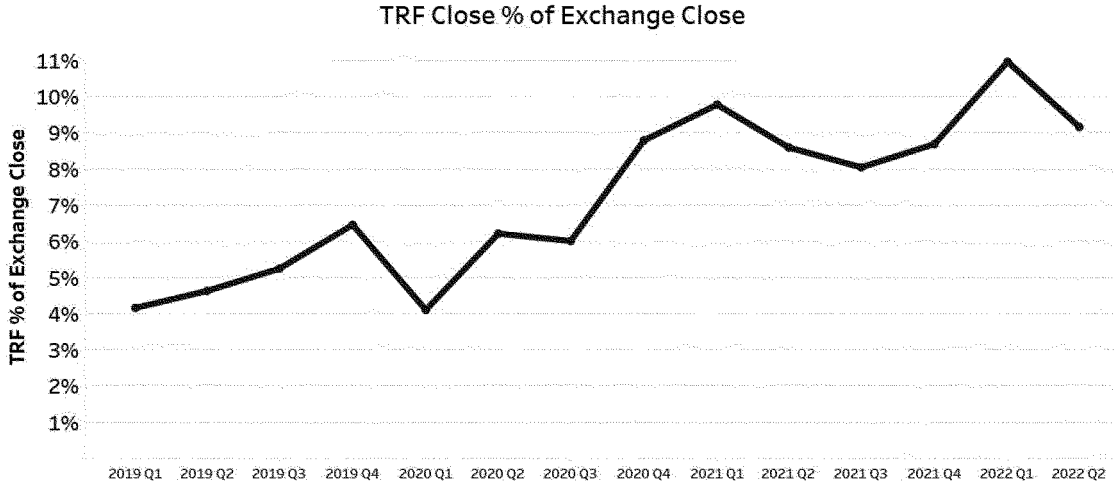


Source: Internal Exchange Data



Source: Internal Exchange Data

Rank	Symbol	Primary exchange	TRF close % inc. PRP[47]
1	AAPL	Nasdaq	9
2	T	NYSE	6
3	BAC	NYSE	10
4	INTC	Nasdaq	5
5	MSFT	Nasdaq	7
6	F	NYSE	9
7	PFE	NYSE	5
8	CSCO	Nasdaq	5
9	CMCSA	Nasdaq	7

[46] The Exchange conducted an analysis of off-exchange/Trade Reporting Facility (''TRF'') closing volume that occurs after market close, 4:00 p.m. Eastern Time, where the price is equal to the closing price and for which such trades are reported with a Prior Reference Price (''PRP'') trade reporting modifier. The TRF is a trade reporting facility where FINRA members may report trades in Nasdaq-listed and other exchange-listed securities, that were executed otherwise than on an exchange.

[47] The first two charts represent TRF executed volume at the close with the ''PRP'' flag that equals the closing auction price, divided by total on exchange auction volume.

Rank	Symbol	Primary exchange	TRF close % inc. PRP [47]
10	WFC	NYSE	9

Source: Internal Exchange Data.

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Accordingly, theExchange believes that approving this proposal will allow the Exchange to compete on a more equal playing field with off-exchange venues for closing volume already being executed away from the primary listing venues. In better competing with off-exchange venues, CMC can help increase transparency, reliability, and price discovery by encouraging market participants that would otherwise seek to match MOC orders off-exchange to re-direct their MOC orders to BZX, a public exchange. Moreover, by attracting such order flow, CMC can help to increase the amount of volume at the close executed on systems subject to the resiliency requirements of Regulation SCI.[48]

Market Complexity and Operational Risk [49]

The Exchange believes that the proposed rule change is simple and straightforward, and as such will not significantly increase market complexity or operational risk. The Exchange seeks only to extend the MOC Cut-Off Time to 3:49 p.m., leaving all other aspects of the CMC process intact. Members will not have to consider new operational requirements of monitoring and consuming a new data feed or consider the utilization of a new order type or implementation of new Exchange code. Rather, Members may continue to monitor the same data feed as they do today, the Cboe Auction Feed, and simply look for the publication of the CMC information at the new proposed MOC Cut-Off Time.

Additionally, as discussed more fully above, the Exchange discussed this proposal with current CMC users prior to submitting this proposal and learned that CMC users are technologically equipped to manage a MOC Cut-Off Time closer to the primary exchanges' cut-off times, and that they can respond to CMC's publication of matched shares and quickly reroute any unmatched MOC orders to the respective primary closing auction. Moreover, CMC is a voluntary offering, and Members may freely decide whether to participate.

Furthermore, as noted throughout, both off-exchange venues and other exchanges already offer MOC cut-off times that are closer in time to the end of Regular Trading Hours. Specifically, as mentioned above, in 2018 Nasdaq received approval to move the cut-off times for the entry of MOC and Limit-On-Close (''LOC'') orders from 3:50 to 3:55 p.m.[50] Similarly, in 2018 the NYSE received approval from the SEC to extend their cut-off times for order entry and cancellation for participation their closing auction, from 3:45 p.m. to 3:50 p.m.[51] NYSE also offers discretionary-orders, which unlike MOC/LOC orders that are subject to NYSE's 3:50 p.m. cut-off, may be entered for participation in the closing auction until 3:59:50.[52] Additionally, market participants may enter MOC orders for participation in NYSE Arca's closing auction up to 3:59 p.m..[53] Finally, various off-exchange venues offer closing match processes with cut-off times aligned with those of the primary exchanges, and even as close to 30-seconds before market close, 4:00 p.m.[54]

Accordingly, the Exchange believes that market participants are well accustomed to managing the various cut-off times in today's marketplace, and in incorporating these timelines into their trading decisions. The number of exchanges and off-exchange venues with extended cut-off times indicates that market participants find value in their ability to retain control of their trading heading into the end of Regular Trading Hours, and the exchanges and off-exchange venues have responded to such demand. Certainly, market participants would not desire cut-off times closer to the end of Regular Trading Hours if they could not technologically and operationally manage their trading accordingly. Therefore, the extension of CMC's MOC Cut-Off Time should not present market participants with any novel operational or technological complexities.

Manipulation [55]

The Exchange does not expect that the proposed extension of the MOC Cut-Off Time to 3:49 p.m. will result in an increase of manipulative activity due to information asymmetries, or raise any unique manipulation concerns relative to how CMC exists today with a current MOC Cut-Time of 3:35 p.m. Specifically, any information CMC participants may be able to glean from their paired-off MOC orders, or from their unmatched MOC orders, is still limited in nature. For instance, any information that CMC participants may learn from receiving unmatched MOC order messages is still limited in nature because the CMC participant would still only know the unexecuted size of its own order.[56] Moreover, even if a

[47] As defined above, ''PRP''.

[48] *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., a Cboe Company (Oct. 11, 2017) (''The Proposal is further consistent with the Commission's assertion that closing auctions are critical SCI systems . . . [CMC] would provide a much needed, seamless, and easy way for the industry to address the single point of failure risk that exists for closing auctions today, especially when a primary listing market is experiencing system issues and lacks full operational capability. As Bats previously asserted, in the event of a system's disruption at the primary listing market, [CMC] could provide an alternative pool of liquidity to which market participants could send MOC orders for execution at the official closing price. Therefore, it promotes just and equitable principles of trade and competition among national securities exchanges. [CMC] would also remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a mechanism for market participants to execute their orders at the official closing price should a system disruption on the primary listing market prevent them from entering orders.''); (''Furthermore, [CMC] would operate on the Exchange's reliable SCI systems . . . significant MOC liquidity is conducted today by off-exchange venues. These venues are not SCI systems and, therefore, not subject to Regulation SCI's enhanced resiliency requirements. [CMC] could attract MOC orders from these off-exchange venues and its reliable SCI system, furthering the Commission's presumed desire for liquidity at the close to be conducted on SCI systems.'')

[49] *Supra* note 38.

[50] *Supra* note 20.

[51] *Id.*

[52] *See* NYSE Rule 7.31 (c)(2)(C); *see also* ''The Floor Broker's Modern Trading Tool'', available at: *https://www.nyse.com/article/trading/d-order* (''While D Orders are available for use throughout the trading day, most executions occur in the closing auction, where they're known as Closing D Orders. At 3:55 p.m., Closing D Order interest eligible to participate in the closing auction is added to the order imbalance feed at their discretionary price range. Closing D Orders can also be submitted, modified or cancelled up to 3:59:50 p.m. These distinct features of Closing D Orders are designed to facilitate the Floor Broker's traditional agency role on behalf of larger institutional interest, allowing Floor Brokers to work in conjunction with their customer to find larger liquidity opportunities.'').

[53] *See* ''Closing Auction Timeline'', available at: *https://www.nyse.com/markets/nyse-arca/trading-info.*

[54] *Supra* note 22.

[55] *Supra* note 38.

[56] The Exchange notes that in its Final Approval Order, even the Commission noted that, ''In particular, a market participant would only be able to determine the direction of the imbalance and

Continued

Member chose to participate in CMC only to gather information about the direction of an imbalance and use such information to manipulate the closing price, the Member's orders were still eligible for execution. Thus, in addition to any such information being of limited use, the Member's actions still do not provide them with free information unavailable to other market participants because the Member's orders were eligible to for execution, subjecting the Member to economic risk.

Furthermore, as with the current MOC Cut-Off Time, the proposed extension does not present any information asymmetries that do not already exist in today's markets, as the very nature of trading creates short term asymmetries of information to those who are parties to a trade.[57] Indeed, as noted by the Commission, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed.[58] Additionally, NYSE imbalance information is already disseminated to NYSE floor brokers, who are permitted to share with their customers specific data from the imbalance feed.[59] Even in this case, though, the Commission stated that the value of such information is limited because the imbalance information does not represent overall supply and demand for a security, is subject to change, and is only one relevant piece of information.[60] Similarly, because any information gleaned by a CMC participant is limited only to the unexecuted size of their order, and relative to the depth of only the BZX pool of liquidity, the Exchange believes that the proposed extension of the MOC Cut-Off Time does not create an increased risk of manipulative trading activity.

While this proposal would result in the total shares for buy and sell orders in CMC being disseminated closer in time to the primary exchanges' cut-off times, this change does not suddenly make the value of such information more valuable or useful in terms of enhancing opportunities for gaming and manipulating the official closing price. The proposed MOC Cut-off Time is one-minute prior to NYSE's cut-off time of 3:50 p.m., and six-minutes prior to Nasdaq's cut-off time of 3:55 p.m. As noted above, today's markets are marked by technological solutions which typically operate in durations of microseconds. In this context, the separation between the CMC MOC Cut-Off Time and that of NYSE's and Nasdaq's is a substantial duration of time, during which much can change in the marketplace, thus limiting the value of information, if any, that can be gleaned from CMC's dissemination of matched shares at 3:49 p.m. Moreover, there are currently controls and processes in place to monitor for manipulative trading activity, such as the supervisory responsibilities and capabilities of exchanges and the expansive cross market surveillance conducted by FINRA. Following approval of this proposal, the Exchange, FINRA and others will continue to surveil for potential manipulative activity and when appropriate, bring enforcement actions against market participants engaged in manipulative trading activity.

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. Rather, the proposed rule change seeks merely to extend the MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., enabling all Members to manage their trading for a longer period. The Exchange is not proposing to make any other changes to the CMC process. Moreover, CMC is a voluntary closing match process, and Members are not required to participate in the CMC. Additionally, the proposed rule change applies to equally to all Members. Importantly, based on feedback from CMC users, the proposed MOC Cut-Off Time will not prevent CMC's current user's from participating in CMC, as CMC's current users are technologically equipped to manage a 3:49 p.m. MOC Cut-Off Time, and should they choose to do so, reroute MOC orders not matched in CMC to the primary exchanges' closing auctions.

Furthermore, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change more closely aligns the CMC MOC Cut-Off Time to the cut-off times of other exchanges, while still providing CMC participants with an opportunity to reroute any of their unpaired MOC orders to the primary exchanges. In this regard, the proposed rule change may make CMC a more viable alternative to the primary auctions and should therefore promote competition amongst the exchanges. Additionally, the proposed MOC Cut-Off Time may also enable the Exchange to more effectively compete with off-exchange venues that have cut-off times much closer in time to the market close and comprise a growing percentage of closing volume.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–038 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.

would have difficulty determining the magnitude of any imbalance, as it would only know the unexecuted size of its own order. In addition, the information would only be with regard to the pool of liquidity on BZX and would provide no insight into imbalances on the primary listing exchange, competing auctions, ATSs, or other off-exchange matching services which, as described above, can represent a significant portion of trading volume at the close.'' *Supra* note 15.

[57] The Exchange further notes that in its approval order, even the Commission noted that, ''Further, the Commission believes information asymmetries as those described by commenters exist today and are inherent in trading, including with respect to closing auctions. For example, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed.'' *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.*

All submissions should refer to File Number SR–CboeBZX–2022–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–038 and should be submitted on or before September 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18097 Filed 8–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95546; File No. SR–CboeBZX–2022–044]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

August 18, 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 August 9, 2022, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 11.22 to adopt paragraph 11.22(f), which introduces a new data product, the Short Volume Report. A description of each market data product offered by the Exchange is provided in Exchange Rule 11.22 and proposed Rule 11.22(f) provides that the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, and includes trade date,[3] total volume,[4] sell short volume,[5] and sell short exempt volume,[6] by symbol.[7] The Short Volume Report will be available for purchase to both BZX Members (''Members'') [8] as well as non-Members.[9]

The Exchange notes that the data fields included in the Short Volume Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file.[10] Specifically, the NYSE Daily Short Volume file also includes trade date,[11] symbol,[12] short exempt volume,[13] short volume,[14] and total volume.[15] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file [16]

[61] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Trade date'' is the date of the trading activity.

[4] ''Total volume'' is the total share volume of all order executions.

[5] ''Sell Short volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt).

[6] ''Short exempt volume'' is the total share volume of all short exempt order executions.

[7] Symbol refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. *See* Exchange Rule 1.5(n), definition of ''Member''.

[9] The Exchange intends to submit a separate filing to establish fees for the Short Volume Report.

[10] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.* The NYSE Daily Short Volume includes trade date, symbol, short exempt volume, short volume, and total volume. Unlike NYSE, the proposed Short Volume Report will not include the trading exchange, as the proposed report includes short sale volume only for transactions executed on BZX. Additionally, NYSE's Daily Short Volume file specifies that short volume is comprised of the sum of, (sell short volume + sell short exempt volume + sell short with slide). While the Exchange does not specifically flag sell short with slide transactions, such transactions are recognized simply as sell short or sell short exempt and are thus included in the Exchange's sell short and sell short exempt volume.

[11] NYSE ''Trade date'' is the date of trading session activity.

[12] NYSE ''Symbol'' is defined in the NYSE Symbology Specification, available at: *https://www.nyse.com/publicdocs//data/Daily_Short_Volume_Client_Spec_v1.3.pdf.*

[13] NYSE ''Short Exempt Volume'' is the total share volume of all Short Exempt order executions.

[14] NYSE ''Short Volume'' is the total share volume of all short order executions, (Sell Short + Sell Short Exempt + Sell Short with Slide).

[15] NYSE ''Total Volume'' is the total share volume of all order executions.

[16] *See* Specifications for Daily Short Sale Volume file, available at: *https://www.nasdaqtrader.com/*

Continued

which includes, date,[17] symbol,[18] short volume,[19] total volume,[20] and market center.[21] The Short Volume Report will be available for purchase [22] by both Members and non-Members on a monthly subscription basis, and subscribers will receive a daily end-of-day file. Additionally, like NYSE, the Exchange will offer historical daily Short Volume Reports. Historical daily Short Volume Reports will be available for purchase dating back to January 2, 2015,[23] and will include the same data fields as the daily end-of-day files.[24]

The Exchange anticipates that a wide variety of market participants will purchase the proposed Short Volume Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Short Volume Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed Short Volume Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

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.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [26] 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) [27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume data. The proposed rule change would benefit investors by providing access to the Short Volume Report data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, NYSE offers a Daily Short Volume file which provides data that is essentially identical to that currently proposed by the Exchange—trade date, symbol, short volume, short exempt volume, and total volume.[28] The proposed Short Volume Report is also similar to Nasdaq's Daily Short Sale Volume file which includes, date, symbol, short volume, total volume, and market center.[29] Accordingly, the proposed Short Volume Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

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. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the same data offered by other competitor equities exchanges. Additionally, the Short Volume Report will be available equally to Members and non-Members. Market participants are not required to purchase the Short Volume Report, and the Exchange is not required to make the Short Volume Report available to investors. Rather, the Exchange is voluntarily making the Short Volume Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf. The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume File, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume on BZX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

[17] Nasdaq ''Date'' is the trade date (YYYYMMDD).

[18] Nasdaq ''Symbol'' is the Trading Symbol.

[19] Nasdaq ''Short Volume'' is the aggregate reported share volume of executed short sales during regular trading hours.

[20] Nasdaq ''Total Volume'' is the aggregate reported share volume of all executed trades during regular trading hours.

[21] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ for NASDAQ file, B = Boston for Boston file, X = PSX).

[22] The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of this proposal.

[23] Historical Short Volume Reports will be available for purchase on an ad hoc basis.

[24] The Exchange notes that NYSE also offers historical daily short sale files. *See https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

[28] *Supra* note 10.

[29] *Supra* note 16.

19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6)[32] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative prior to 30 days after the date of the filing. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed Short Volume Report is nearly identical to the currently available NYSE Daily Short Volume file and Nasdaq Daily Short Volume file and would permit the Exchange to immediately make the Short Volume Report available to subscribers as an alternative to similar products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[34]

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 to determine whether the proposed rule change should be approved or disapproved.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 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.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission also has 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–CboeBZX–2022–044 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–044 and should be submitted on or before September 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–18186 Filed 8–23–22; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12), (59).

SMALL BUSINESS ADMINISTRATION

SBIC Licensing and Examination Fees Inflation Adjustment

AGENCY: U.S. Small Business Administration.

ACTION: Notice of SBIC fee increases.

SUMMARY: The U.S. Small Business Administration (SBA) is providing notice of the increased licensing and examination fees charged to Small Business Investment Companies (SBICs) due to the annual inflation adjustment required under SBIC program regulations.

DATES: The changes to the SBIC program licensing and examination fees identified in this notice take effect on October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, Office of Investment and Innovation, at 202–619–0511 or *louis.cupp@sba.gov.* If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Beginning October 1, 2021, the SBIC program regulations at 13 CFR 107.300(b)(2) and 107.692(b)(2) require SBA to annually adjust the licensing and examination fees for SBICs using the Inflation Adjustment defined in 13 CFR 107.50. This document provides notice of that adjustment. The table below identifies the amounts of the adjusted licensing and examination fees payable by SBICs and SBIC license applicants, which become effective on October 1, 2022.

SBIC fee type	Fees amounts (effective Oct. 1, 2022)
Licensing Fees (§ 107.300)	
Initial Licensing Fee § 107.300(a)	$11,500
Final Licensing Fee § 107.300(b)	40,200
Examination Fees (§ 107.692(b))	
Minimum Base Fee	10,400
Maximum Base Fee for non-Leveraged SBICs	34,500
Maximum Base Fee for Leveraged SBICs	50,600

SBIC fee type	Fees amounts (effective Oct. 1, 2022)
Delay Fee	800

Authority: 15 U.S.C. 681(e) and 687b(b); 13 CFR 107.300 and 107.692.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2022–18167 Filed 8–23–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 11812]

60-Day Notice of Proposed Information Collection: Risk Analysis and Management (RAM)

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 24, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0021 in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: MURTADHAAN@state.gov.*
- *Regular Mail:* Send written comments to: U.S. Department of State, Office of Risk Analysis and Management, 2401 E St. NW, L408, Washington, DC 20037.
- *Hand Delivery or Courier:* U.S. Department of State, Office of Risk Analysis and Management, 2401 E St. NW, L408, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument, and supporting documents, to Annura N. Murtadha, U.S. Department of State, Office of Risk Analysis and Management, 2401 E St. NW, L408, Washington, DC 20037; who can be reached at 202–657–6020 or at *MURTADHAAN@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Risk Analysis and Management.
- *OMB Control Number:* 1405–0204.
- *Type of Request:* Extension (or Revision) of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of the Procurement Executive (A/OPE).
- *Form Number:* DS–4184.
- *Respondents:* Potential Contractors and Grantees.
- *Estimated Number of Respondents:* 500.
- *Estimated Number of Responses:* 500.
- *Average Time per Response:* 1 hour and 30 minutes.
- *Total Estimated Burden Time:* 750 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected from individuals and organizations is used to conduct screening to ensure that State funded activities do not provide support to entities or individuals deemed to be a risk to national security.

Methodology

The State Department has implemented a Risk Analysis and Management Program to vet potential contractors and grantees seeking funding from the Department of State to mitigate the risk that such funds might benefit entities or individuals who present a national security risk. To conduct this vetting program the Department collects information from contractors, sub-contractors, grantees and sub-grantees regarding their directors, officers and/or key employees through electronic submission. The information collected is compared to information gathered from commercial, public, and U.S. government databases to determine the risk that the applying organization, entity or individual might use Department funds or programs in a way that presents a threat to national security.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2022–18166 Filed 8–23–22; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0011]

Request for Comments and Notice of Public Hearing Concerning Russia's Implementation of Its WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to Congress on Russia's implementation of its obligations as a Member of the World Trade Organization (WTO). This notice includes the schedule for the submission of comments to the TPSC for the Russia Report and a virtual public hearing.

DATES:

September 21, 2022 (Wednesday) at 11:59 p.m. EDT: Deadline for submission of written comments for the 2022 Russia WTO implementation report and requests to testify.

October 4, 2022, (Tuesday) at 9:00 a.m. EDT: Virtual public hearing.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in section III below. The docket number is

USTR–2022–0011. For alternatives to online submissions, please contact Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Spencer Smith Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974. Direct all other questions to Betsy Hafner, Deputy Assistant U.S. Trade Representative for Russia and Eurasia at *Elizabeth_Hafner@ustr.eop.gov* or (202) 395–9124.

SUPPLEMENTARY INFORMATION:

I. Background

Russia became a Member of the WTO on August 22, 2012, and on December 21, 2012, following the termination of the application of the Jackson-Vanik amendment to Russia and the extension of permanent normal trade relations to the products of Russia, the United States and Russia both filed letters with the WTO withdrawing their notices of non-application and consenting to have the WTO Agreement apply between them. In accordance with Section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (Pub. L. 112–208), USTR is required to submit annually a report to Congress on the extent to which Russia is implementing the WTO Agreement, including the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Trade Related Aspects of Intellectual Property Rights. The report also must assess Russia's progress on acceding to and implementing the Information Technology Agreement (ITA) and the Government Procurement Agreement (GPA). In addition, to the extent that USTR finds that Russia is not implementing fully any WTO agreement or is not making adequate progress in acceding to the ITA or the GPA, USTR must describe in the report the actions it plans to take to encourage Russia to improve its implementation and/or increase its accession efforts. In accordance with Section 201(a), and to assist it in preparing this year's report, the TPSC is hereby soliciting public comments.

The terms of Russia's accession to the WTO are contained in the Marrakesh Agreement Establishing the World Trade Organization and the Protocol on the Accession of the Russian Federation to the WTO (including its annexes) (Protocol). The Report of the Working Party on the Accession of the Russian Federation (Working Party Report) provides detail and context to the commitments listed in the Protocol. You can find the Protocol and Working Party Report on USTR's website at *https://ustr.gov/node/5887* or on the WTO website at *http://docsonline.wto.org* (document symbols: WT/ACC/RUS/70, WT/MIN(11)/2, WT/MIN(11)/24, WT/L/839, WT/ACC/RUS/70/Add.1, WT/MIN(11)/2/Add.1, WT/ACC/RUS/70/Add.2, and WT/MIN(11)/2/Add.1.)

II. Public Participation

USTR invites public comments and/or oral testimony on Russia's implementation of its WTO commitments according to the schedule set out in the **DATES** section above. Written comments and/or oral testimony of interested persons should address Russia's implementation of the commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas:

a. Import regulation (*e.g.,* tariffs, tariff-rate quotas, quotas, import licenses).
b. Export regulation.
c. Subsidies.
d. Standards and technical regulations.
e. Sanitary and phytosanitary measures.
f. Trade-related investment measures (including local content requirements).
g. Taxes and charges levied on imports and exports.
h. Other internal policies affecting trade.
i. Intellectual property rights (including intellectual property rights enforcement).
j. Services.
k. Government procurement.
l. Rule of law issues (*e.g.,* transparency, judicial review, uniform administration of laws and regulations).
m. Other WTO commitments.

USTR requests small businesses (generally defined by the Small Business Administration as firms with fewer than 500 employees) or organizations representing small business members that submit comments to self-identify as such, so that we may be aware of issues of particular interest to small businesses.

The TPSC will convene a virtual public hearing via Zoom on Tuesday, October 4, 2022, beginning at 9:00 a.m. EDT. Persons wishing to observe the public hearing will find a link on USTR's web page for Russia on the day of the hearing at *https://ustr.gov/countries-regions/europe-middle-east/russia-and-eurasia/russia.*

Persons wishing to testify at the hearing must provide written notification of their intention to testify no later than September 21, 2022 at 11:59 p.m. EDT, as noted above in **DATES** section. Remarks at the hearing will be limited to no more than 5 minutes to allow for possible questions from the TPSC. Because the hearing will be public, testimony should not include any business confidential information (BCI). USTR will provide a link in advance of the virtual hearing to persons wishing to testify.

III. Requirements for Submissions

Persons submitting written comments must do so in English and must identify on the first page of the submission 'Comments Regarding Russia's Implementation of its WTO Commitments.' The submission deadline is September 21, 2022 at 11:59 p.m. EDT. USTR strongly encourages commenters to make online submissions, using *regulations.gov*. To submit comments via *regulations.gov*, enter docket number USTR–2022–0011 on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled 'Comment.' For further information on using *regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page.

Regulations.gov allows users to submit comments by filling in a 'type comment' field, or by attaching a document using the 'upload file' field. USTR prefers that you provide submissions in an attached document and, in such cases, that you write 'see attached' in the 'type comment' field, on the online submission form.

USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field. At the beginning of the submission, include the following text: (1) 2022 Russia WTO Implementation Report; (2) your organization's name; and (3) whether the document is a comment or an answer to a TPSC question. Written comments should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

IV. Business Confidential Submissions

An interested party requesting that USTR treat information contained in a submission as BCI must certify that the information is business confidential. For

any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' at the top of that page. Filers of submissions containing BCI also must submit a public version of their comments that USTR will place in the docket for public inspection. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments.

As noted, USTR strongly urges that you file submissions through *Regulations.gov.* You must make any alternative arrangements with Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 in advance of the deadline.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments at *Regulations.gov* by entering docket number USTR–2022–0011 in the search field on the home page. General information concerning USTR is available at *https://www.ustr.gov.*

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2022–18253 Filed 8–23–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0083]

Agency Information Collection Activities: Requests for Comments; Substantive Change To Multiple Previously Approved Collections: Aircraft Registration, Recording of Aircraft Conveyances and Security Documents, FAA Entry Point Filing Form—International Registry, and Dealer's Aircraft Registration Certificate Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval of a substantive change to multiple previously approved information collections. The FAA Reauthorization Act of 2018, section 546, requires the implementation of systems allowing a member of the public to submit any information or form to the Registry and conduct any transaction with the Registry by electronic or other remote means. In response to this requirement, the FAA created Civil Aviation Registry Electronic Services (CARES) and intends to change its current information collection to accommodate electronic registry applications.

DATES: Written comments should be submitted by September 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Bonnie Lefko by email at: *bonnie.lefko@faa.gov.* Include docket number in the subject line of the message. By phone at: 405–954–7461.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Numbers: 2120–0042, 2120–0043, 2120–0697, 2120–0024.

Titles: Aircraft Registration, Recording of Aircraft Conveyances and Security Documents, FAA Entry Point Filing Form—International Registry, and Dealer's Aircraft Registration Certificate Application.

Form Numbers: AC Forms: 8050–1; 8050–1B; 8050–2; 8050–4; 8050–5; 8050–41; 8050–88; 8050–88A; 8050–98; 8050–117; 8050–135.

Type of Review: Substantive Change to Previously Approved Collections:

(1) 2120–0042, Aircraft Registration Application, AC Form 8050–1

(2) 2120–0042, Aircraft Registration Renewal Application, AC Form 8050–1B

(3) 2120–0042, Aircraft Bill of Sale, AC Form 8050–2

(4) 2120–0042, Certificate of Repossession of Encumbered Aircraft, AC Form 8050–4

(5) 2120–0024, Dealer's Aircraft Registration Certificate Application, AC Form 8050–5

(6) 2120–0043, Notice of Recordation—Aircraft Security Conveyance, AC Form 8050–41

(7) 2120–0042, Affidavit of Ownership, AC Form 8050–88

(8) 2120–0042, Affidavit of Ownership Light-Sport Aircraft, AC Form 8050–88A

(9) 2120–0042, Aircraft Security Agreement, AC Form 8050–98

(10) 2120–0042, Flight Hours for Corporations, AC Form 8050–117

(11) 2120–0697, International Registry Entry Form, AC Form 8050–135.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 27, 2022 (87 FR 4325). Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is used by the FAA to register an aircraft and record a security interest in a registered aircraft.

The FAA Reauthorization Act of 2018 (Pub. L. 115–254 or The Act), Section 546, ''FAA Civil Aviation Registry Upgrade'', requires:

1. The digitization of non-digital Registry information, including paper documents, microfilm images, and photographs, from an analog or non-digital format to a digital format;

2. The digitalization of Registry manual and paper-based processes, business operations, and functions by leveraging digital technologies and a broader use of digitized data;

3. The implementation of systems allowing a member of the public to submit any information or form to the Registry and conduct any transaction with the Registry by electronic or other remote means; and

4. Allowing more efficient, broader, and remote access to the Registry.

In response to The Act, the FAA has initiated the creation of Civil Aviation Registry Electronic Services (CARES). CARES is intended to modernize and streamline the way these forms are submitted by providing online access to users wishing to submit information electronically. Public users will continue to have the paper-based submission option by providing the same information that is accepted today, along with the addition of an email address.

To accommodate the public user with these web-based services, a dedicated

online user account must first be established. CARES will leverage an existing FAA Single Sign-On (SSO) capability known as MyAccess. MyAccess will be used to generate online public user accounts, and also serve as part of the user account sign-on and authentication process after a user account has been created.

As an alternative to the web-based services, public users will still be permitted to send in paper forms directly to the Registry office via conventional mail services. These paper forms will be revised to collect the email address of the public user to help streamline processing of the public users' request. The modified paper forms will supersede all prior forms.

Respondents: Approximately 162,176 applicants for 2120–0042; 3,670 applicants for 2120–0024; 22,370 applicants for 2120–0043; and 14,360 applicants for 2120–0697.

Frequency: Information is collected on occasion for 2120–0042, 2120–0043 and 2120–0697; annually to maintain a certificate for 2120–0024.

Estimated Average Burden per Response: 32 minutes for 2120–0042; 45 minutes for 2120–0024; 1 hour for 2120–0043; and 30 minutes for 2120–0697.

Estimated Total Annual Burden: 135,457 hours for 2120–0042; 2753 hours for 2120–0024; 22,370 hours for 2120–0043; and 7,180 hours for 2120–0697.

Issued in Oklahoma City, OK on August 19, 2022.

Bonnie Lefko,

Program Analyst, Civil Aviation Registry, Aircraft Registration Branch, AFB–710.

[FR Doc. 2022–18261 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Receipt and Request for Review of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of receipt and request for review of noise compatibility program.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Newark Liberty International Airport by The Port Authority of New York and New Jersey. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted for Newark Liberty International Airport were in compliance with applicable requirements, effective January 15, 2019. The proposed noise compatibility program will be approved or disapproved on or before February 15, 2023. This notice also announces the availability of this noise compatibility program for public review and comment.

DATES: The effective date of start of FAA's review of the noise compatibility program is August 19, 2022. The public comment period ends October 18, 2022.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, Regional Environmental Program Manager, Airports Division, Federal Aviation Administration, 1 Aviation Plaza, Room 516, Jamaica, NY 11434. Phone Number: 718–553–2511. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program (NCP) for Newark Liberty International Airport which will be approved or disapproved on or before February 15, 2023. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps (NEM) that are found by FAA to be in compliance with the requirements of title 49, chapter 475 of the United States Code (U.S.C.) (Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and Title 14, Code of Federal Regulations (CFR) part 150 (14 CFR 150), promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses. The FAA previously determined that the NEMs for Newark Liberty International Airport were in compliance with applicable requirements under 14 CFR 150, effective January 15, 2019 (Noise Exposure Map Notice for Newark Liberty International Airport, Newark, New Jersey, volume 84, **Federal Register**, pages 27183–4, June 11, 2019).

The FAA has formally received the NCP for Newark Liberty International Airport on August 8, 2022. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a NCP under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of NCPs, but that further review will be necessary prior to approval or disapproval of the program for Newark Liberty International Airport. The formal review period, limited by law to a maximum of 180 days, was initiated on August 19, 2022 and will be completed on or before February 15, 2023.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the proposed NCP for Newark Liberty International Airport are available for examination online at *http://panynjpart150.com/EWR_FNCP.asp.*

The Port Authority of New York and New Jersey has also made a hard copy of the document available for review at the EWR Redevelopment Program Community Outreach Office, located at 79 West Jersey Street, Elizabeth, New Jersey. Interested parties can contact the office at (732) 258–1801 or via email at *anewewr@panynj.gov* to arrange for a review.

Questions regarding this notice may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Jamaica, NY, on August 19, 2022.

David A. Fish,

Director, Airports Division, Eastern Region.

[FR Doc. 2022–18218 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0127]

Controlled Substances and Alcohol Use and Testing: Application for Exemption; The Trucking Alliance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for exemption from The Trucking Alliance, a group comprised of the following motor carriers: Cargo Transporters; Dupré Logistics LLC; Frozen Food Express; J.B. Hunt Transport, Inc.; KLLM Transport Services; Knight Transportation; Maverick Transportation LLC; Schneider; Swift Transportation; USXpress; and May Trucking Company. The Trucking Alliance applied for an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) ''to amend the definition of actual knowledge to include the employer's knowledge of a driver's positive hair test, which would require such results be reported to the FMCSA Drug and Alcohol Clearinghouse (''Clearinghouse'') and to inquiring carriers.'' Although FMCSA lacks the statutory authority to grant the Trucking Alliance's request for exemption until the Department of Health and Human Services has taken certain action, FMCSA requests public comment on the exemption application, as required by statute.

DATES: Comments must be received on or before September 23, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0127 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0127) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 –FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366–2722 or by email at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0127), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number (''FMCSA–2022–0127'') in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

The Trucking Alliance applied for ''an exemption from 49 CFR 382.107 to amend the definition of actual knowledge to include the employer's knowledge of a driver's positive hair test, which would require such results be reported to the FMCSA Drug and Alcohol Clearinghouse (''Clearinghouse'') and to inquiring carriers as required to comply with 49 CFR 391.23.''

A copy of The Trucking Alliance's application for exemption is available for review in the docket for this notice.

IV. Statutory Requirements for FMCSA's Drug and Alcohol Testing Program

FMCSA drug and alcohol use and testing regulations are authorized by the Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, codified at 49 U.S.C. 31306). Section 31306(c)(2) requires that DOT follow the Department of Health and Human Services' (HHS) Mandatory Guidelines

for technical and scientific testing issues. Thus, while DOT has discretion concerning many aspects of the regulations governing testing in the transportation industries' regulated programs, DOT and FMCSA must follow the HHS Mandatory Guidelines for the laboratory standards and procedures used for regulated testing. Therefore, allowing the use of a non-DOT drug test to serve as the basis for an actual knowledge report under 49 CFR part 382 is contrary to OTETA.

FMCSA notes that in section 5402(b) of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94, 129 Stat. 1548, codified at 49 U.S.C. 31306 note) (Dec. 4, 2015)), Congress required that the U.S. Department of Health and Human Services (HHS) ''not later than one year after . . . this Act, . . . issue scientific and technical guidelines for hair testing as a method of detecting the use of a controlled substance for purposes of section 31306 of title 49, United States Code.'' The FAST Act also amended OTETA by adding a requirement that FMCSA's drug and alcohol testing regulations permit the use of hair testing as an acceptable alternative to urine testing for pre-employment drug testing, and for random drug testing when the driver was subject to pre-employment hair testing (49 U.S.C. 31306(b)(1)(B)). The Conference Report accompanying the FAST Act noted that ''[t]he FMCSA has informed the conferees, and the conferees agree that *nothing in section 5402 authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human Services establishes federal standards for hair testing*'' (emphasis added).[H.R. Rep. 114–357, at 506 (Dec. 1, 2015)]

HHS issued proposed Mandatory Guidelines for Federal Workplace Drug Testing Using Hair (HMG) in 2020 (85 FR 56108 (September 10, 2020)). However, HHS has not yet issued a final version of the HMG.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on The Trucking Alliance's application for an exemption from 49 CFR 382.107. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–18257 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0106; FMCSA–2015–0326; FMCSA–2016–0002; FMCSA–2020–0026]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before September 23, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2014–0106, Docket No. FMCSA–2015–0326, Docket No. FMCSA–2016–0002, or Docket No. FMCSA–2020–0026 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2014–0106, FMCSA–2015–0326, FMCSA–2016–0002, or FMCSA–2020–0026 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0106, Docket No. FMCSA–2015–0326, Docket No. FMCSA–2016–0002, or Docket No. FMCSA–2020–0026), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–2014–0106, FMCSA–2015–0326, FMCSA–2016–0002, or FMCSA–2020–0026 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and

electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments, go to *www.regulations.gov.* Insert the docket number, FMCSA–2014–0106, FMCSA–2015–0326, FMCSA–2016–0002, or FMCSA–2020–0026 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

The seven individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the seven applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The seven drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of September and are discussed below.

As of September 6, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Weston Arthurs (CA)
Charles DePriest (TX)
Richard Hoots (AR)
D'Nielle Smith (OH)

The drivers were included in docket number FMCSA–2014–0106, FMCSA–2015–0326, or FMCSA–2016–0002. Their exemptions are applicable as of September 6, 2022 and will expire on September 6, 2024.

As of September 14, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Jonathan Kelly (TX); Eddie Martinez (TX); and Willie Miller (IA)

The drivers were included in docket number FMCSA–2020–0026. Their exemptions are applicable as of September 14, 2022 and will expire on September 14, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the seven exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–18258 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0027]

Agency Information Collection Activity Under OMB Review: Rail Fixed Guideway System; State Safety Oversight

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

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before September 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590, (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 22, 2022, FTA published a 60-day notice (87 FR 24222) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Rail Fixed Guideway Systems; State Safety Oversight.

OMB Control Number: 2132–0558.

Background: FTA administers a national program for public transportation safety under 49 U.S.C. Section 5329. One element of this program, at 49 U.S.C. 5329(e), requires States to oversee the safety of the rail transit agencies (RTAs) in their jurisdictions, including heavy and light rail systems, streetcars, inclined planes, cable cars, monorail/automated guideways and hybrid rail. Through this program, State Safety Oversight Agencies (SSOAs) ensure that RTAs identify and address safety risks, follow their safety rules and procedures, and take corrective action to address safety deficiencies.

The information collection activities request is for a renewal without change of a currently approved collection. The information collection focus is on the activities of SSOAs and RTAs to report information to FTA. This request for renewal of an existing information collection does not reflect any changes as a result of the Bipartisan Infrastructure Law. In the event that FTA updates State Safety Oversight requirements, FTA will seek comment from stakeholders through the publication of a separate **Federal Register** notice outside of the Paperwork Reduction Act process.

The information collection request includes the annual report FTA requires from SSOAs, FTA's grant management reporting requirement and the triennial audit program, which requires information from both SSOAs and RTAs. Further, the information collection continues to reflect requirements for SSOAs and RTAs to respond to FTA directives and advisories, and SSOAs participation in monthly teleconference calls with FTA. Finally, the information collection request includes RTA event notifications to FTA.

Estimated Annual Number of Respondents: 96 respondents.

Estimated Annual Number of Responses: 1,454.

Estimated Total Annual Burden Hours: 16,366 hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–18276 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0026]

Agency Information Collection Activity Under OMB Review: Public Transportation Emergency Relief Program

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection: Public Transportation Emergency Relief Program.

DATES: Comments must be submitted before October 24, 2022.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Wilson, Office of Program Management (202) 366–5279 or *Thomas.Wilson@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Public Transportation Emergency Relief Program

(OMB Number: 2132–0575)

Background: Since the authorization of the Public Transportation Emergency Relief Program in 2012, Congress has appropriated funds three times for transit agencies affected by disaster.

The first appropriation of funds for the program was in 2013 following Hurricane Sandy, for which the President declared a major disaster for areas of 12 States and the District of Columbia. Under the Disaster Relief Appropriations Act (Pub. L. 113–2), Congress provided $10.9 billion for FTA's Emergency Relief Program for recovery, relief, and resilience efforts in the counties specified in the disaster declaration. Approximately $10.0 billion remained available after implementation of the Balanced Budget and Emergency Deficit Control Act of 2011 (Pub. L. 112–25) and after intergovernmental transfers to other bureaus and offices within DOT. FTA has allocated the full amount in multiple tiers for response, recovery and rebuilding; for locally prioritized resilience projects, and for competitively selected resilience projects.

The second appropriation of funds for the Emergency Relief Program was in 2018 following Hurricanes Harvey, Irma, and Maria, for which the President declared major disasters in areas of Florida, Georgia, Louisiana, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. Under the Bipartisan Budget Act of 2018 (Pub. L. 115–123), Congress provided $330 million for FTA's Emergency Relief Program for transit systems affected by Hurricanes Harvey, Irma, and Maria. On May 31, 2018 FTA allocated $277.5 million for response, recovery, rebuilding, and resilience projects.

The third appropriation of funds for the Emergency Relief Program was in 2019. Under the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (Pub. L. 116–20), Congress appropriated $10.5 million for FTA's Emergency Relief Program for transit systems affected by major declared disasters occurring in calendar year 2018.

On March 13, 2020, FTA announced that expanded eligibility of Federal assistance is available under FTA's Emergency Relief Program to help transit agencies respond to the coronavirus (COVID–19) in states where the Governor has declared an emergency. This includes allowing all transit providers, including those in large urban areas, to use Federal formula funds for emergency-related capital and operating expenses, and raises the cap on the Federal government's share of those expenses.

Respondents: States, local governmental authorities, Indian tribes and other FTA recipients impacted by Hurricane Sandy which affected mid-Atlantic and northeastern states in October 2012; Hurricane Harvey which affected areas of Texas and Louisiana in August 2017; and Hurricanes Irma and Maria which affected the southeastern states and the territories of the Puerto Rico and the U.S. Virgin Islands in September 2017, and by major declared disasters occurring in calendar year 2018.

Estimated Annual Number of Respondents: 26.

Estimated Total Annual Burden: 4,680 hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–18278 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0025]

Agency Information Collection Activity Under OMB Review: Bus Testing Program

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection: Bus Testing Program.

DATES: Comments must be submitted before October 24, 2022.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jamel El-Hamri at (202) 366–8985, or email: *Jamel.El-Hamri@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Bus Testing Program.

OMB Number: 2132–0550.

Background: 49 U.S.C. 5318(a) provides that Federal funds appropriated or otherwise made available under 49 U.S.C. chapter 53 [FTA funding] may not be obligated or expended for the acquisition of a new bus model unless a bus of that model has been tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise, and has achieved a passing test score.

The Bus Testing Center is operated by the Thomas D. Larson Pennsylvania Transportation Institute of the Pennsylvania State University (LTI). LTI operates and maintains the Center under a cooperative agreement with FTA and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center with a passing test score, a draft Bus Testing Report is provided to the manufacturer of the new bus model. If the manufacturer approves the Report for publication, the bus model becomes eligible for FTA funding. 49 CFR 665.7 requires a recipient of FTA funds to certify that a bus model has been tested at the bus testing facility, that the bus model received a passing score, and that the recipient has a copy of the applicable Bus Testing Report(s) on a bus model before final acceptance of any buses of that model. Recipients are strongly encouraged to review the Bus Testing Report(s) relevant to a bus model before final acceptance and/or selection of that bus model.

Respondents: Bus manufacturers and recipients of FTA funds.

Estimated Annual Number of Respondents: 60 (the responses include 40 testing determination requirements requests at 32 hours each, 20 testing authorization requests at 32 hours each, 16 tests scheduled at 10 hours each, and 3 retest requests at 17 hours each).

Estimated Total Annual Burden: 2,131 hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–18277 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0024]

Agency Information Collection Activity Under OMB Review: Transit Research, Development, Demonstration, Deployment and Training Projects

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection: Transit Research Development, Demonstration, Deployment and Training Projects.

DATES: Comments must be submitted before October 24, 2022.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room

W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lisa Colbert, Office of Research and Innovation (202) 366–9261 or *Lisa.Colbert@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Transit Research, Development, Demonstration, Deployment and Training Projects (OMB Number: 2132–0546)

Background: 49 U.S.C. 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, demonstration and deployment projects, and for evaluation of technology of national significance to public transportation, that the Secretary determines will improve mass transportation service or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source. The information collected is submitted as part of the application for grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1D and other Federal requirements.

Respondents: Federal Government Departments, agencies, and instrumentalities of the Government, including Federal laboratories; State and local governmental entities; providers of public transportation; private or non-profit organizations; institutions of higher education; and technical and community colleges.

Estimated Annual Number of Respondents: 175 respondents.

Estimated Annual Number of Responses: 775 responses.

Estimated Total Annual Burden: 20,550 hours.

Frequency: Every Two Years.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–18279 Filed 8–23–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0204]

Air Carrier Access Act Advisory Committee; Solicitation for Nominations

AGENCY: Office of the Secretary (OST), Department of Transportation (Department).

ACTION: Solicitation of memberships for appointment to the Air Carrier Access Act (ACAA) Advisory Committee (ACAA Advisory Committee or the Committee).

SUMMARY: The Department is soliciting applications and nominations for memberships to the ACAA Advisory Committee. The ACAA Advisory Committee reviews issues related to the air travel needs of passengers with disabilities.

DATES: Nominations and applications for ACAA Advisory Committee membership must be received on or before September 14, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about the ACAA Advisory Committee, you may contact Vinh Nguyen, Office of Aviation Consumer Protection, U.S. Department of Transportation, by email at *vinh.nguyen@dot.gov,* or by telephone at 202–366–9342.

SUPPLEMENTARY INFORMATION:

I. Background

Section 439 of the FAA Reauthorization Act of 2018 (2018 FAA Act) requires the Secretary of Transportation to establish an advisory committee to identify and assess barriers to accessible air travel, determine the extent to which DOT is addressing those barriers, recommend improvements, and advise the Secretary on implementing the ACAA. The 2018 FAA Act specifies that the ACAA Committee shall comprise at least one representative of each of the following groups: passengers with disabilities; national disability organizations; air carriers; airport operators; contractor service providers; aircraft manufacturers; wheelchair manufacturers; and national veteran organizations representing disabled veterans.

In September 2019, the Department established the ACAA Advisory Committee, approved its charter, and appointed 19 members to serve on the ACAA Advisory Committee for 2-year terms. The Committee held public meetings in March 2020 and September 2021 and submitted a report with a number of recommendations to the Department in February 2022. The terms of the 19 Committee members have now expired. More information on the ACAA Advisory Committee is available online at *www.transportation.gov/airconsumer/ACAACommittee.*

II. Eligibility for Membership and Selection Criteria

Because the terms of the previously appointed members have expired, the Department is soliciting new applications and nominations for individuals to serve on the ACAA Advisory Committee. Unless it is renewed, the Committee's charter expires on September 28, 2023, and individuals would be appointed to serve for a term not to exceed the life of the charter. Pursuant to the 2018 FAA Act and the ACAA Advisory Committee's Charter,[1] the membership of the Committee shall comprise at least one

[1] The ACAA Advisory Committee's Charter is available online at *www.transportation.gov/individuals/aviation-consumer-protection/charter-air-carrier-access-act-advisory-committee.*

representative each of the following groups:

1. Passengers with disabilities;
2. National disability organizations;
3. Air carriers;
4. Airport operators;
5. Contractor service providers;
6. Aircraft manufacturers;
7. Wheelchair manufacturers; and
8. National veterans' organizations representing disabled veterans.

The chairperson will be designated from among the members appointed. The Department may select more than one representative for a group, if appropriate, to obtain a fairly balanced membership.

The Department will choose members based on four main criteria:

1. Representativeness (does the applicant represent a significant stakeholder group described above);
2. Expertise (does the applicant bring essential knowledge, expertise, and/or experience regarding accessibility);
3. Balance (do selected applicants comprise a balanced array of representative and expert stakeholders); and
4. Willingness to participate fully (is the applicant able and willing to attend the listed meetings and generally contribute constructively to a rigorous policy development process).

Individuals applying for membership should keep in mind that ACAA Advisory Committee members will be selected based on their ability and willingness to effectively represent the interests of all stakeholders in their category, as distinct from their parochial or personal interests. For example, an individual selected to serve on the Committee as a representative of ultra low cost carrier (ULCC) would represent not only his or her own airline, but all ULCCs. As such, the individual would be expected to consult with other airlines in bringing issues to the table and making decisions on proposals before the Committee.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, disability, marital status, or sexual orientation. Past members of the Committee will also be eligible to be nominated for or to seek reappointment on the Committee.

III. Process for Submitting Nominations

Individuals can self-apply or be nominated by any individual or organization. To be considered for the ACAA Advisory Committee, applicants/nominators must submit the following information:

1. Name, title, organization, and contact information (address, telephone number and email address) of nominee/applicant;

2. Category of membership that the nominee/applicant is qualified to represent;

3. Resume of the applicant or short biography of the nominee including professional and academic credentials;

4. A statement of nomination on why the applicant wants to serve or the nominator is nominating the individual to serve, and the unique perspectives and expenses the nominee brings to the Committee;

5. An affirmative statement that the applicant/nominee meets the eligibility requirements; and

6. Optional letters of support.

Please do not send company, trade association, organization brochures, or any other promotional information. Materials submitted should total five pages or less. Should more information be needed, Department staff will contact the applicant/nominee, obtain information from the applicant's/nominee's past affiliations, or obtain information from publicly available sources.

All application/nomination materials must be submitted electronically via email to *ACAA-Advisory-Committee@dot.gov.* Applications and nominations must be received by September 14, 2022.

IV. Compensation for Members

Pursuant to section 439(e) of the 2018 FAA Act, Committee members will be reimbursed for travel and per diem expenses as permitted under applicable Federal travel regulations. Reimbursement is subject to funding availability. Committee members will receive no salary or other compensation for participation in Committee activities.

The Secretary reserves the discretion to appoint members to serve on the ACAA Advisory Committee who were not nominated in response to this notice if necessary to meet specific statutory categories and departmental needs in a manner to ensure an appropriate balance of membership. Individuals selected for appointment to the ACAA Advisory Committee will be notified by return email and by a letter of appointment.

Issued in Washington, DC, on or about this 15th day of August 2022.

John E. Putnam,

General Counsel.

[FR Doc. 2022–18173 Filed 8–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and who have been removed from the list of Specially Designated Nationals and Blocked Persons.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On August 19, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List.

Individuals

1. ALZATE GIRALDO, Rosalba; DOB 13 Sep 1956; POB Santuario, Antioquia, Colombia; citizen Colombia; Cedula No. 22082396 (Colombia) (individual) [SDNTK] (Linked To: MEJIA ALZATE ASOCIADOS Y CIA. LTDA.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: CANTERAS COPACABANA S.A.; Linked To: ALMEQUIP S.A.S.; Linked To: ROSAGRO S.A.S.).

2. ARBELAEZ VELEZ, Ivan Dario, c/o FARBE COMUNICACIONES LTDA; c/o AGROESPINAL S.A.; DOB 26 Jul 1967; POB Medellin, Colombia; Cedula No. 98541418 (Colombia) (individual) [SDNTK].

3. MEJIA ALZATE, Andres Camilo; DOB 15 Aug 1987; POB Medellin, Colombia; citizen Colombia; Cedula No. 1128270678 (Colombia) (individual) [SDNTK] (Linked To: CANTERAS COPACABANA S.A.; Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: TRITCON S.A.S.).

4. MEJIA ALZATE, Juan Carlos; DOB 17 Jul 1980; POB Medellin, Colombia; citizen

Colombia; Cedula No. 71313043 (Colombia) (individual) [SDNTK] (Linked To: PROMOTORA TURISTICA SOL PLAZA S.A.; Linked To: TRITCON S.A.S.).

5. ORTEGA GALICIA, Ismael Marino (a.k.a. ORTEGA GALICIA, Israel Marino), Calle Mariano Matamoros, No. 58, Centro, Col. San Gabriel Chilac, Puebla, Mexico; Calle Sagitario y Lactea No. 3085, Col. Las Palmas, entre Lactea y Av. La Paz, Ciudad Victoria, Tamaulipas, Mexico; DOB 31 May 1974; POB San Gabriel Chilac, Puebla; nationality Mexico; citizen Mexico; R.F.C. OEGI740531 (Mexico); C.U.R.P. OEGI740531HPLRLS07 (Mexico); Electoral Registry No. ORGLIS740531121H100 (Mexico) (individual) [SDNTK].

6. PADROS DEGREGORI, Gino Dusan (a.k.a. PADROS DEGREGORI, Gino Dussan; a.k.a. ''FLACO''), Lima, Peru; DOB 20 Oct 1977; alt. DOB 15 Oct 1977; POB Piura, Peru; citizen Peru; Gender Male; Passport 3096570 (Peru) issued 04 Jan 2005 expires 04 Jan 2010; alt. Passport 2395877 (Peru); RUC # 10068051059 (Peru); National ID No. 06805105–9 (Peru) (individual) [SDNTK] (Linked To: R INVER CORP S.A.C.; Linked To: G & M AUTOS S.A.C.; Linked To: SBK IMPORT S.A.C.).

7. RAHALL, Fawaz Mohamad, Calle 122, No. 11B–37, Colombia; DOB 23 Feb 1969; POB Lala, Lebanon; Cedula No. 5176876 (Colombia) (individual) [SDNTK].

Entities

1. FARBE COMUNICACIONES LTDA, Carrera 81 A 34, No. C–43, Medellin, Colombia; NIT # 811030724–4 (Colombia); Matricula Mercantil No 21–290521–03 (Colombia) [SDNTK].

2. G & M AUTOS S.A.C. (a.k.a. G AND M AUTOS S.A.C.), Copacabana 162, La Molina, Lima 12, Peru; RUC # 20513664339 (Peru) [SDNTK].

3. R INVER CORP S.A.C., Avenida Los Precursores Numero 288 Dpto. 203 Urb. Maranga (Piso 2), San Miguel, Lima, Peru; RUC # 20562939068 (Peru) [SDNTK].

4. ROSAGRO S.A.S., Circular 73B No. 39B–115, Of. 9901, Medellin, Colombia; NIT # 900314092–0 (Colombia) [SDNTK].

5. SBK IMPORT S.A.C., Calle Brigida Silva de Ochoa Numero 370, San Miguel, Lima, Peru; Avenida Los Precursores Numero 288, Urb. Maranga, San Miguel, Lima, Peru; RUC # 20520935461 (Peru) [SDNTK].

Dated: August 19, 2022.

Gregory T. Gatjanis,

Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–18270 Filed 8–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and who have been removed from the list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On August 19, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List.

Individual

1. SHAYBAZIAN, Lazar Gurgenovich (a.k.a. SHAYBAZYAN, Lazar); DOB 01 Apr 1966; Passport CA2485930 (Uzbekistan); alt. Passport CA2179793 (Uzbekistan) (individual) [TCO].

Entities

1. GUGA ARM SRO (a.k.a. GUGA ARM LTD), Dr. Davida Bechera 907/27, Karlovy Vary 36001, Czech Republic; National ID No. 27994783 (Czech Republic) [TCO].

2. GURGEN HOUSE FZCO (a.k.a. GOURGEN HOUSE LTD; a.k.a. GURGEN HOUSE CO LTD; a.k.a. GURGEN HOUSE LLC; a.k.a. GURGEN HOUSE OOO; a.k.a. GURGEN HOUSE TOO), 130 A, Ulitsa Klara Tsetkina, Shymkent 160000, Kazakhstan; Ulitsa Angarskaya, 22.1, Moscow 125635, Russia; Ulitsa General Dorokhova, A 6 A, Moscow 121357, Russia; Ulitsa Letnikovskaya, 13 A, Office 1, Moscow 115114, Russia; Al Quds Street, Dubai Airport Free Zone, Dubai, United Arab Emirates; Office 210, Building 3E, Dubai Airport Free Zone, P.O. Box 293751, Dubai, United Arab Emirates; P.O. Box 777, Jumeirah, Dubai, United Arab Emirates; Ulitsa Jami, 5, Tashkent 100057, Uzbekistan; National ID No. 40788618 (Kazakhstan); alt. National ID No. 582100259386 (Kazakhstan); Tax ID No. 7743693291 (Russia); Company Number 86483143 (Russia); Public Registration Number 1087746669845 (Russia) [TCO].

Dated: August 19, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury

[FR Doc. 2022–18241 Filed 8–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., app. 2., that virtual meetings of the Advisory Committee on Homeless Veterans will be held on September 20 through September 22, 2022. The meeting sessions will begin and end at 12:00 p.m. to 4:00 p.m. Eastern Standard Time (EST). The virtual meeting sessions will be open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an ongoing assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans at risk of and experiencing homelessness. The Committee shall assemble, and review information related to the needs of homeless Veterans and provide advice on the most appropriate means of assisting this Veteran population. The Committee will make recommendations to the Secretary regarding such activities.

On September 20 through September 22, 2022, the agenda will include briefings from VA and other Federal agency officials regarding services for homelessness among Veterans. The Committee will also discuss its proposed annual report recommendations to the Secretary of Veterans Affairs.

No time will be allocated at the meetings for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Anthony Love, Designated Federal Officer, Veterans Health Administration Homeless Programs Office (11HPO), U.S. Department of Veterans Affairs, 811

Vermont Avenue NW (11HPO), Washington, DC 20420, or via email at *achv@va.gov*.

Members of the public who wish to attend the virtual meetings should contact Anthony Love, Designated Federal Officer, Veterans Health Administration, Homeless Programs Office, at *achv@va.gov* no later than September 9, 2022, providing their name, professional affiliation, email address, and phone number. Attendees who require reasonable accommodations should also state so in their requests. The meeting link and call-in number is listed below: Zoom Meeting: *https://us06web.zoom.us/j/81120356187.*

Meeting ID: 811 2035 6187

One Tap Mobile

+13126266799, 81120356187# US (Chicago)
+16465588656, 81120356187# US (New York)

Dial By Your Location

+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 646 931 3860 US
+1 301 715 8592 US (Washington DC)
+1 564 217 2000 US
+1 669 444 9171 US
+1 720 707 2699 US (Denver)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 386 347 5053 US

Dated: August 19, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–18272 Filed 8–23–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 163 August 24, 2022

Part II

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: **Blue Cross and Blue Shield Association, D–12077; Blue Cross and Blue Shield of Kansas City, D–12039; Blue Cross and Blue Shield of Arizona, Inc., D–12035; Blue Cross and Blue Shield of Vermont, D–12055; Hawaii Medical Service Association, D–12038; BCS Financial Corporation, D–12036; Blue Cross and Blue Shield of Mississippi, D–12040; Blue Cross and Blue Shield of Nebraska, Inc., D–12041; BlueCross BlueShield of Tennessee, Inc., D–12045; Triple-S Management Corporation, D–12042; National Account Service Company LLC, D–12049**.

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, Attention: Application No. ____, stated in each Notice of Proposed Exemption via email to *e-OED@dol.gov* or online through *http://www.regulations.gov* by the end of the scheduled comment period. Any such comments or requests should be sent by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

SUPPLEMENTARY INFORMATION:

Comments

In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department, unless otherwise stated in the Notice of Proposed Exemption, within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Blue Cross and Blue Shield Association

Located in Chicago, Illinois

[Application No. D–12077]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield Association (the Plan) in the first quarter of 2020.[2]

This proposed exemption would permit the Plan sponsor, Blue Cross and Blue Shield Association (BCBSA), to make a series of payments to the Plan, including: (1) the past payment of $69,000,000, made on March 12, 2021; and (2) the past payment of $13,500,000, made on March 28, 2022 (the Restorative Payments). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments amount, plus reasonable attorney fees to BCBSA.

Summary of Facts and Representations [3]

1. BCBSA is a national association of 35 independent, community-based and locally operated Blue Cross Blue Shield companies. BCBSA owns and manages the Blue Cross and Blue Shield trademarks and names in more than 170 countries around the world and also grants licenses to independent companies to use the trademarks and names in exclusive geographic areas.

2. The Plan is a defined benefit pension plan that covers eligible employees or participants of BCBSA who, as of December 31, 2006, had completed one year of service, reached the age of 21, and remained continuously employed. The Plan was amended effective January 1, 2007 to close participation to new entrants as of December 31, 2006. As of August 31, 2020, the Plan held $104,789.042 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the Applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $224,525,108. At the time, this represented 77.66% of total Plan assets.[4]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in

[2] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Blue Cross and Blue Shield Association; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[3] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12077 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

[4] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 77.66% of the Plan's total assets in the Allianz Structured Alpha Funds.

market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019, the market value for the Plan's assets totaled $289,100,229. As of March 31, 2020, the market value of total assets for the Plan decreased to $97,181,664. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy was $183,368,144, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCBSA took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on November 24, 2020, BCBSA and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement).

11. Pursuant to the Contribution and Assignment Agreement, BCBSA agreed to make the Restorative Payments to the Plan consisting of: (a) a payment not to exceed $74,000,000 by September 30, 2021; (b) a payment not to exceed $20,000,000 by September 30, 2022; and (c) a payment not to exceed $31,000,000 by September 30, 2023. Thereafter, BCBSA made Restorative Payments to the Plan of $69,000,000 on March 12, 2021, and $13,500,000 on March 28, 2022.

12. On June 22, 2022, BCBSA and the Plan amended the Restorative Payments provision of the Contribution and Assignment Agreement to provide that BCBSA's Restorative Payments under the Agreement will consist only of the $69,000,000 payment made on March 12, 2021, and the $13,500,000 payment made on March 28, 2022.

13. In exchange for the Restorative Payments, the Plan assigned to BCBSA its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[5] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCBSA a repayment (the Repayment) that does not exceed the total Restorative Payments made by BCBSA, plus reasonable attorney fees paid by BCBSA on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBSA to unrelated third parties (the Attorney Fees). For the purposes of this exemption, Attorney Fees reimbursable to BCBSA do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCBSA for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBSA under this exemption, the amount of reasonable attorney fees paid by BCBSA on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBSA in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

14. The Plan must ultimately receive at least the full value of the promised Restorative Payments ($82,500,000), minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that BCBSA has made to the Plan, the Plan's Repayment to BCBSA will be limited to the amount of Restorative Payments actually made by BCBSA, plus Attorney Fees. For example, if BCBSA reasonably incurred $100,000 in Attorney Fees and the Plan receives $120,000,000 in litigation proceeds, the Plan will make a Repayment to BCBSA totaling $82,600,000.

15. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that BCBSA has made to the Plan, the Plan will transfer to BCBSA the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCBSA has reasonably incurred $100,000 in Attorney Fees and the Plan receives $50,000,000 in litigation proceeds, the Plan will make a Repayment to BCBSA totaling $50,100,000.

16. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

17. BCBSA retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

18. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

19. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including BCBSA and any BCBSA affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents

[5] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

approximately 0.78% of Gallagher's total revenue.

20. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

21. On November 23, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCBSA only up to the Required Restorative Payment Amount already received, plus any reasonable legal expense paid to non-BCBSA-related parties that were incurred by, or allocated to, BCBSA as a result of the Claims.[6] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCBSA, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from BCBSA in exchange for the Assignment.

ERISA Analysis

22. Absent an exemption, the Plan's receipt of the Restorative Payments from BCBSA in exchange for the Plan's transfer of litigation or settlement proceeds to BCBSA would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCBSA, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to BCBSA with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCBSA) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCBSA in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

23. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCBSA fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by BCBSA or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCBSA for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBSA to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCBSA or the interests of any party other than the Plan) where BCBSA was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[7]

24. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and

[6] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

[7] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

conditions of the exemption have been met.

25. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBSA; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to BCBSA must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

26. The Plan may not make any Repayment to BCBSA before the date: the Plan has received from BCBSA the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCBSA in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

27. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCBSA for reasonable legal expenses arising from the Claims that BCBSA paid to non-BCBSA-related parties for representation of the Plan and its interests (as opposed to representation of BCBSA or the interests of any party other than the Plan) where BCBSA was not otherwise reimbursed by a non-Plan party.

28. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

29. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[8] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payments substantially improved the Plan's funding status, which enhanced the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and helped the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay BCBSA the lesser of the Required Restorative Payment Amount, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payments (less reasonable legal expenses related to the Claims paid by BCBSA to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBSA; and/or (d) any person or entity related to a person or entity described in (a)–(c).

[8] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

Summary

30. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[9]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCBSA on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBSA to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCBSA do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCBSA for representation of BCBSA or the interests of any party other than the Plan.

(b) The term ''BCBSA'' means Blue Cross and Blue Shield Association.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement dated November 24, 2020, and its amendment that became effective on June 22, 2022, containing all material terms regarding BCBSA's agreement to make Required Restorative Payments to the Plan in return for the Plan's potential Repayment to BCBSA of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by BCBSA in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent

[9] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of BCBSA and does not hold an ownership interest in BCBSA or affiliates of BCBSA;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [10]

(5) Has not received gross income from BCBSA or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCBSA or from affiliates of BCBSA while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield Association.

(g) The term ''Plan Losses'' means the $183,368,144 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the payments made by BCBSA to the Plan in connection with the Plan Losses, defined above, consisting of: (1) the past payment of $69,000,000 on March 12, 2021; and (2) the past payment of $13,500,000 on March 28, 2022. The sum of (1)–(2) is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCBSA following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective November 24, 2020, to the following transactions: BCBSA's transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to BCBSA, which must be no more than the lesser of the Restorative Payment Amount or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan received the entire Restorative Payment Amount no later than March 28, 2022;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCBSA; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to BCBSA is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCBSA may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCBSA must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCBSA for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBSA to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCBSA for reasonable legal expenses paid in connection with the Claims by BCBSA to non-BCBSA-related parties. For purposes of determining the amount of Attorney

[10] 29 CFR 2509.75–4.

Fees the Plan may reimburse to BCBSA under this proposal, the amount of reasonable attorney fees paid by BCBSA on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBSA in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCBSA must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mr. Frank Gonzalez of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Blue Cross and Blue Shield of Kansas City

Located in Kansas City, Missouri

[Application No. D–12039]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Kansas City (the Plan) in the first quarter of 2020.[11]

This proposed exemption would permit the Plan sponsor, Blue Cross and Blue Shield of Kansas City (BCBS KC), to make a series of payments to the Plan, including the past payment of $87,000,000 made to the Plan on September 9, 2021, and additional payments to the Plan totaling $13,000,000 by December 31, 2024. If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments amount already received by the Plan, plus reasonable attorney fees to BCBS KC.

Summary of Facts and Representations [12]

1. BCBS KC is a not-for-profit company that provides health insurance products and services. BCBS KC is an independent licensee of the Blue Cross Blue Shield Association (BCBSA).

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of BCBS KC and employees of affiliated employers. On June 30, 2013, the Plan was closed to new entrants. As of August 31, 2020, the Plan covered 1,212 participants and held $80,441,432 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC

[11] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Blue Cross and Blue Shield of Kansas City; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[12] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12039 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

(Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $170,800,689, which represented 77.66% of total Plan assets.[13]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019 the market value of Plan assets was $219,924,260. As of March 31, 2020, the market value of Plan assets decreased to $73,641,344. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $139,613,178, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCBS KC took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on November 5, 2020, BCBS KC and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement).

11. Pursuant to the Contribution and Assignment Agreement, BCBS KC agreed to make $100,000,000 in Restorative Payments to the Plan by September 30, 2021. On September 9, 2021, BCBS KC made an $87,000,000 Restorative Payment to the Plan. Subsequently, on September 23, 2021, BCBS KC and the Plan amended the Restorative Payments provision of the Contribution and Assignment Agreement to state that BCBS KC will make $100,000,000 in Restorative Payments to the Plan by December 31, 2024. The prior payment of $87,000,000 together with the required future payment of $13,000,000 constitutes the Required Restorative Payments under this exemption.

12. In exchange for the Restorative Payments, the Plan assigned to BCBS KC its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[14] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCBS KC a repayment (the Repayment) that does not exceed the total Restorative Payments made by BCBS KC as of that date, plus reasonable attorney fees paid by BCBS KC on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS KC to unrelated third parties (the Attorney Fees).

For the purposes of this exemption, Attorney Fees reimbursable to BCBS KC do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCBS KC for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS KC under this exemption, the amount of reasonable attorney fees paid by BCBS KC on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS

[13] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 77.66% of the Plan's total assets in the Allianz Structured Alpha Funds.

[14] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

KC in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

13. The Plan must ultimately receive at least the full value of the promised Restorative Payments, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that BCBS KC has made to the Plan, the Plan's Repayment to BCBS KC will be limited to the amount of Restorative Payments actually made by BCBS KC, plus Attorney Fees. For example, if BCBS KC has made $100,000,000 in Restorative Payments to the Plan and has reasonably incurred $100,000 in Attorney Fees, and if the Plan receives $120,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS KC totaling $100,100,000.

14. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that BCBS KC has made to the Plan, the Plan will transfer to BCBS KC the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCBS KC has made $100,000,000 in Restorative Payments to the Plan and has reasonably incurred $100,000 in Attorney Fees, and if the Plan receives $50,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS KC totaling $50,100,000.

15. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

16. BCBS KC retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

17. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

18. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including BCBS KC and any BCBS KC affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

19. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

20. On November 5, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCBS KC only up to the Required Restorative Payment Amount by the Plan, plus any reasonable legal expense paid to non-BCBS KC-related parties that were incurred by, or allocated to, BCBS KC as a result of the Claims.[15] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCBS KC, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from BCBS KC in exchange for the Assignment.

ERISA Analysis

21. Absent an exemption, the Plan's receipt of the Restorative Payments from BCBS KC in exchange for the Plan's transfer of litigation or settlement proceeds to BCBS KC would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCBS KC, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to BCBS KC with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCBS KC) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. BCBS KC's promise to make

[15] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

additional Required Restorative Payments to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCBS KC in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

22. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCBS KC fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by BCBS KC or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCBS KC for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS KC to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCBS KC or the interests of any party other than the Plan) where BCBS KC was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[16]

23. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

24. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS KC; and/or (d) any person or entity related to a person or entity described in (a)-(c) of this paragraph. Additionally, any Repayment by the Plan to BCBS KC must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

25. The Plan may not make any Repayment to BCBS KC before the date: the Plan has received from BCBS KC the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCBS KC in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

26. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCBS KC for reasonable legal expenses arising from the Claims that BCBS KC paid to non-BCBS KC-related parties for representation of the Plan and its interests (as opposed to representation of BCBS KC or the interests of any party other than the Plan) where BCBS KC was not otherwise reimbursed by a non-Plan party.

27. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

28. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[17] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required

[16] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[17] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

Restorative Payments will substantially improve the Plan's funding status, which will enhance the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay BCBS KC the lesser of the Required Restorative Payment Amount, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payments (less reasonable legal expenses related to the Claims paid by BCBS KC to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS KC; and/or (d) any person or entity related to a person or entity described in (a)-(c).

Summary

29. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[18]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCBS KC on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS KC to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCBS KC do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCBS KC for representation of BCBC KC or the interests of any party other than the Plan.

(b) The term ''BCBS KC'' means Blue Cross and Blue Shield of Kansas City.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between BCBS KC and the Plan, dated November 5, 2020, and its amendment that became effective on September 23, 2021, containing all material terms regarding BCBS KC's agreement to make Required Restorative Payments to the Plan in return for the Plan's potential Repayment to BCBS KC of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by BCBS KC in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of BCBS KC and does not hold an ownership interest in BCBS KC or affiliates of BCBS KC;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [19]

(5) Has not received gross income from BCBS KC or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCBS KC or from affiliates of BCBS KC while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Kansas City.

(g) The term ''Plan Losses'' means the $139,613,178 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the payments made by BCBS KC to the Plan in connection with the Plan Losses, defined above, consisting of: (1) the past payment of $87,000,000 on September 9, 2021; and (2) a second installment amount of $13,000,000 due to the Plan by December 31, 2024. The sum of (1) and (2) is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCBS KC following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective November 5, 2020, to the following transactions: BCBS KC's

[18] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[19] 29 CFR 2509.75–4.

transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to BCBS KC, which must be no more than the lesser of the Restorative Payment or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan receives the entire Restorative Payment Amount no later than December 31, 2024;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCBS KC; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to BCBS KC is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCBS KC may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCBS KC must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCBS KC for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS KC to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCBS KC for reasonable legal expenses paid in connection with the Claims by BCBS KC to non-BCBS KC-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS KC under this proposal, the amount of reasonable attorney fees paid by BCBS KC on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS KC in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCBS KC must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice To Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mr. Nicholas Schroth of the Department, telephone (202) 693–8571. (This is not a toll-free number.)

Blue Cross and Blue Shield of Arizona, Inc.

Located in Phoenix, Arizona

[Application No. D–12035]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Arizona, Inc. (the Plan) in the first quarter of 2020.[20]

This proposed exemption would permit the Plan sponsor, Blue Cross and Blue Shield of Arizona, Inc. (BCBS AZ), to make a series of payments to the Plan, including: (a) past payments totaling $130,000,000; and (b) future amounts necessary for (i) the Plan's assets to be equal to or greater than 100% of the Plan's current liabilities, and (ii) the Plan to have an adjusted funding target attainment percentage (AFTAP) of 110% (the Restorative Payments).

If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments, plus reasonable attorney fees to BCBS AZ.

Summary of Facts and Representations [21]

1. Blue Cross and Blue Shield of Arizona, Inc. (BCBS AZ or the Applicant) is a not-for-profit company that provides health insurance products and services. BCBS AZ is an independent licensee of the Blue Cross Blue Shield Association (BCBSA).

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of BCBS AZ and employees of affiliated employers. On June 30, 2012, the Plan was closed to new entrants. As of August 31, 2020, the Plan held $178,703,160 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $369.3 million, which represented 77.67% of total Plan assets.[22]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the

[20] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) the Blue Cross and Blue Shield of Arizona, Inc.; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[21] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12035 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

[22] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 77.67% of the Plan's total assets in the Allianz Structured Alpha Funds.

Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019, the market value of the Plan and its Code section 401(h) Account were $416,127,759 and $59,347,737, respectively.[23] As of March 31, 2020, the market value of the Plan's total assets and the Code section 401(h) Account decreased to $137,298,008 and $20,433,430, respectively. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $302,470,379, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCBS AZ took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on November 5, 2020, BCBS AZ and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement).

11. Pursuant to the Contribution and Assignment Agreement, BCBS AZ agreed to make $274 million in Restorative Payments to the Plan pursuant to an installment payment structure (the Restorative Payments). BCBS AZ made its first installment payment of $60 million to the Plan on September 15, 2020. Thereafter, BCBS AZ made a Restorative Payment to the Plan of $35,000,000 on December 28, 2020, and $10,000,000 on July 31, 2021. Thus, as of July 31, 2021, BCBS AZ had made Restorative Payments to the Plan totaling $105 million.

12. On October 13, 2021, BCBS AZ and the Plan amended the Restorative Payments provision of the Contribution and Assignment Agreement (the Restorative Payment Amendment). BCBS AZ agreed that before December 31, 2023, it would contribute amounts necessary for the Plan to have: (a) an adjusted funding target attainment percentage of 110% (after taking into account any waivers of the funding standard carryover balance by the Plan Sponsor); and (b) an amount of assets that is at least 100% of current Plan liabilities. In addition, any minimum required contributions made by BCBS AZ to the Plan on or after October 13, 2021, will not be included as part of the Restorative Payments required under the Contribution and Assignment Agreement. The prior restorative payments noted above in paragraph 11 together with the obligations noted here in paragraph 12 constitute the Required Restorative Payments under this exemption.

13. On December 21, 2021, BCBS AZ made a fourth Restorative Payment to the Plan totaling $25,000,000.[24] The Applicant represents that after making this most recent $25,000,000 Restorative Payment, BCBS AZ has brought the Plan's funding level to 110% of AFTAP and, thus, has met its obligation under item (a) of the Restorative Payment Amendment identified above. This exemption, if granted, requires BCBS AZ to make additional Restorative Contributions to the Plan before December 31, 2023, to ensure that the Plan has an amount of assets that is at least 100% of current Plan liabilities.

14. In exchange for the Restorative Payments, the Plan assigned to BCBS AZ its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[25] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCBS AZ a repayment (the Repayment) that does not exceed the total Restorative Payments made by BCBS AZ, plus reasonable attorney fees paid by BCBS AZ on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS AZ to unrelated third parties (the Attorney Fees). For the purposes of this exemption, Attorney Fees reimbursable to BCBS AZ do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCBS AZ for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS AZ under this exemption, the amount of reasonable attorney fees paid by BCBS AZ on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS AZ in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

15. The Plan must ultimately receive at least the full value of the promised Restorative Payments, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that BCBS AZ has made to the Plan, the Plan's Repayment to BCBS AZ will be limited to the amount of Restorative Payments actually made by BCBS AZ, plus Attorney Fees. For example, if BCBS AZ has made $130,000,000 in Restorative Payments to the Plan and reasonably incurred $100,000 in Attorney Fees, and the Plan receives $160,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS AZ totaling $130,100,000.

16. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that BCBS AZ has made to the Plan, the Plan will transfer to BCBS AZ the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCBS AZ has made $130,000,000 in Restorative Payments to

[23] Code Section 401(h) permits a pension or annuity plan to provide for payment of benefits for sickness, accident, hospitalization and medical expenses for retired employees, their spouses and dependents. In order for the pension or annuity plan to meet the provisions of Code Section 401(h), the medical benefits must be subordinate to pension benefits and must be established and maintained in a separate account.

[24] With the $25,000,000 payment, total Restorative Payments to the Plan now total $130,000,000.

[25] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

the Plan and has reasonably incurred $100,000 in Attorney Fees, and the Plan receives $50,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS AZ totaling $50,100,000.

17. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

18. BCBS AZ retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

19. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

20. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including BCBS AZ and any BCBS AZ affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

21. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

22. On November 3, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCBS AZ only up to the Required Restorative Payment Amount, plus any reasonable legal expense paid to non-BCBS AZ-related parties that were incurred by, or allocated to, BCBS AZ as a result of the Claims.[26] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCBS AZ, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from BCBS AZ in exchange for the Assignment.

[26] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

ERISA Analysis

23. Absent an exemption, the Plan's receipt of the Restorative Payments from BCBS AZ in exchange for the Plan's transfer of litigation or settlement proceeds to BCBS AZ would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCBS AZ, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to BCBS AZ with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCBS AZ) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. BCBS AZ's promise to make Required Restorative Payments to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCBS AZ in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

24. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the

Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCBS AZ fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by BCBS AZ or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCBS AZ for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS AZ to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCBS AZ or the interests of any party other than the Plan) where BCBS AZ was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[27]

25. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

26. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS AZ; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to BCBS AZ must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

27. The Plan may not make any Repayment to BCBS AZ before the date: the Plan has received from BCBS AZ the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCBS AZ in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

28. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCBS AZ for reasonable legal expenses arising from the Claims that BCBS AZ paid to non-BCBS AZ-related parties for representation of the Plan and its interests (as opposed to representation of BCBS AZ or the interests of any party other than the Plan) where BCBS AZ was not otherwise reimbursed by a non-Plan party.

29. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

30. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is* ''*Administratively Feasible.*'' The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[28] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is* ''*In the Interests of the Plan.*'' The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payments will substantially improve the Plan's funding status, which will enhance the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is* ''*Protective of the Plan.*'' The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay BCBS AZ the lesser of the Required Restorative Payment Amount already received, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets to: (a) an adjusted funding target attainment percentage of at least 110%; and (b) and an amount that is at least equal to or greater than 100% of the current liabilities of the Plan (less reasonable legal expenses related to the Claims paid by BCBS AZ to unrelated third parties as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS AZ; and/or (d)

[27] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[28] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

any person or entity related to a person or entity described in (a)–(c).

Summary

31. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[29]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCBS AZ on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS AZ to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCBS AZ do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCBS AZ for representation of BCBC AZ or the interests of any party other than the Plan.

(b) The term ''BCBS AZ'' means Blue Cross and Blue Shield of Arizona, Inc.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Amended Contribution and Assignment Agreement'' means the written agreement between BCBS AZ and the Plan, dated November 5, 2020, and its amendment that became effective on October 13, 2021, containing all material terms regarding BCBS AZ's agreement to make Required Restorative Payments to the Plan in return for the Plan's potential Repayment to BCBS AZ of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) already received or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by BCBS AZ in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of BCBS AZ and does not hold an ownership interest in BCBS AZ or affiliates of BCBS AZ;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [30]

(5) Has not received gross income from BCBS AZ or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCBS AZ or from affiliates of BCBS AZ while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Arizona, Inc.

(g) The term ''Plan Losses'' means the $302,470,379 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the payments made by BCBS AZ to the Plan in connection with the Plan Losses, defined above, consisting of: (1) a first installment amount of $60,000,000 that BCBS AZ contributed to the Plan on September 15, 2020; (2) a second installment amount of $35,000,000 that BCBS AZ contributed to the Plan on December 28, 2020; (3) a third installment amount of $10,000,000 that BCBS AZ contributed to the Plan on July 30, 2021; (4) a fourth installment amount of $25,000,000 that BCBS AZ contributed to the Plan on December 21, 2021; and (5) other amounts contributed to the Plan by BCBS AZ before December 31, 2023 that are necessary for (i) the Plan to have an adjusted funding target attainment percentage of 110% after taking into account any waivers of the funding standard carryover balance by the Plan Sponsor, and (ii) the Plan's assets to be equal to or greater than 100% of the current liabilities of the Plan. The sum of (1)-(5) is the Required Restorative Payment Amount. The term ''Required Restorative Payment'' will not include any required minimum contributions that BCBS AZ makes to the Plan on and after October 13, 2021.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCBS AZ following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective September 15, 2020, to the following transactions: BCBS AZ's transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to BCBS AZ, which must be no more than the lesser of the Restorative Payment Amount already received or the amount of litigation proceeds the Plan received from the Claims, plus reasonable

[29] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[30] 29 CFR 2509.75–4.

Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan receives the entire Restorative Payment Amount no later than December 31, 2023;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCBS AZ; and/or (4) any person or entity related to a person or entity identified in (1)-(3) of this paragraph;

(c) The Plan's Repayment to BCBS AZ is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCBS AZ may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCBS AZ must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCBS AZ for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS AZ to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCBS AZ for reasonable legal expenses paid in connection with the Claims by BCBS AZ to non-BCBS AZ-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS AZ under this proposal, the amount of reasonable attorney fees paid by BCBS AZ on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS AZ in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCBS AZ must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mr. Frank Gonzalez of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Blue Cross and Blue Shield of Vermont

Located in Berlin, Vermont

[Application No. D–12055]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal

Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Vermont (the Plan) in the first quarter of 2020.[31]

This proposed exemption would permit the Plan sponsor, Blue Cross and Blue Shield of Vermont (BCBS VT), to make a series of payments to the Plan over a four-year period (the Restorative Payments). The Restorative Payments will return the Plan to at least the Plan's funding level (126.61%) as of January 1, 2019. If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments amount, plus reasonable attorney fees to BCBS VT.

Summary of Facts and Representations [32]

1. Blue Cross and Blue Shield of Vermont (BCBS VT or the Applicant) is a not-for-profit hospital and medical services corporation that issues and administers health care coverage for individuals and group health plans. BCBS VT is an independent licensee of the Blue Cross Blue Shield Association (BCBSA).

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of BCBS VT. As of August 31, 2020, the Plan held $28,331,698 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $53,105,089, which represented 76.48% of total Plan assets.[33]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31,

[31] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Blue Cross and Blue Shield of Vermont, Inc.; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[32] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12055 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

[33] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 76.48% of the Plan's total assets in the Allianz Structured Alpha Funds.

2019, the market value of the Plan's total assets was $69,439,545. As of March 31, 2020, the market value of the Plan's total assets decreased to $25,510,951. The Plan's total losses from the Allianz Structured Alpha Strategy were $41,588,205, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCBS VT took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on December 21, 2020, BCBS VT and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement).

11. *The Restorative Payments.* In the Contribution and Assignment Agreement, BCBS VT agreed to make an initial $13,000,000 lump sum payment to the Plan which was expected to restore the Plan to an AFTAP funding level of approximately 80% as of the January 1, 2021 valuation of the Plan. BCBS VT also agreed to make such additional payments to the Plan as necessary to maintain the Plan's funding level at 80% as of such date, to the extent the preliminary $13,000,000 installment payment fails to do so.[34] Finally, BCBS VT stated that it intended to make subsequent installment payments to the Plan on at least an annual basis and over a four-year period to restore Plan funding to approximately the level that was reported prior to the losses sustained within the Allianz Structured Alpha strategy.

12. Since the effective date of the Contribution and Assignment Agreement, BCBS VT has made two Restorative Payments to the Plan: a $13,000,000 payment remitted on December 23, 2020, and a $3,100,000 payment remitted on September 14, 2021.

13. *Department's Note:* This exemption, if granted, requires BCBS VT to make the Restorative Payments necessary to bring the Plan's funding percentage to at least its January 1, 2019, pre-loss funded percentage of 126.61%, by December 31, 2024. The prior restorative payments noted above in paragraph 12 together with the funding obligations noted here in paragraph 13 constitute the Required Restorative Payments under this exemption.

14. In exchange for the Restorative Payments, the Plan assigned to BCBS VT its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[35] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCBS VT a repayment (the Repayment) that does not exceed the total Restorative Payments made by BCBS VT, plus reasonable attorney fees paid by BCBS VT on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS VT to unrelated third parties (the Attorney Fees). For the purposes of this exemption, Attorney Fees reimbursable to BCBS VT do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCBS VT for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS VT under this exemption, the amount of reasonable attorney fees paid by BCBS VT on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS VT in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

15. The Plan must ultimately receive at least the full value of the promised Restorative Payments, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that BCBS VT has made to the Plan, the Plan's Repayment to BCBS VT will be limited to the amount of Restorative Payments actually made by BCBS VT, plus Attorney Fees. For example, if BCBS VT made $18,000,000 in Restorative Payments to the Plan and reasonably incurred $100,000 in Attorney Fees, and if the Plan receives $30,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS VT totaling $18,100,000.

16. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that BCBS VT has made to the Plan, the Plan will transfer to BCBS VT the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCBS VT made $18,000,000 in Restorative Payments to the Plan and has reasonably incurred $100,000 in Attorney Fees, and if the Plan receives $10,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS VT totaling $10,100,000.

17. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

18. BCBS VT retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

19. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

20. Gallagher represents that it does not have any prior relationship with any

[34] BCBS VT has made two Restorative Payments to the Plan: a $13,000,000 payment remitted on December 23, 2020, and a $3,100,000 payment remitted on September 14, 2021.

[35] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

parties in interest to the Plan, including BCBS VT and any BCBS VT affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

21. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

22. On December 21, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCBS VT only up to the Required Restorative Payment Amount received, plus any reasonable legal expense paid to non-BCBS VT-related parties that were incurred by, or allocated to, BCBS VT as a result of the Claims.[36] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCBS VT, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from BCBS VT in exchange for the Assignment.

ERISA Analysis

23. Absent an exemption, the Plan's receipt of the Restorative Payments from BCBS VT in exchange for the Plan's transfer of litigation or settlement proceeds to BCBS VT would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCBS VT, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to BCBS VT with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCBS VT) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. BCBS VT's promise to make Required Restorative Payments to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCBS VT in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

24. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCBS VT fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by BCBS VT or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCBS VT for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS VT to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCBS VT or the interests of any party other than the Plan) where BCBS VT was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section

[36] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

410 or Department Regulations codified at 29 CFR 2509.75–4.[37]

25. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

26. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS VT; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to BCBS VT must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

27. The Plan may not make any Repayment to BCBS VT before the date: the Plan has received from BCBS VT the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCBS VT in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

28. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCBS VT for reasonable legal expenses arising from the Claims that BCBS VT paid to non-BCBS VT-related parties for representation of the Plan and its interests (as opposed to representation of BCBS VT or the interests of any party other than the Plan) where BCBS VT was not otherwise reimbursed by a non-Plan party.

29. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

30. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[38] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payments will substantially improve the Plan's funding status, which will enhance the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay BCBS VT the lesser of the Required Restorative Payment Amount received, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payments (less reasonable legal expenses related to the Claims paid by BCBS VT to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS VT; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

31. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[39]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCBS VT on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS VT to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCBS VT do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCBS VT for representation of BCBC VT or the interests of any party other than the Plan.

(b) The term ''BCBS VT'' means Blue Cross and Blue Shield of Vermont.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between BCBS VT

[37] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[38] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

[39] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

and the Plan, dated December 21, 2020, containing all material terms regarding BCBS VT's agreement to make Restorative Payments (as described in Section I(h)) to the Plan in return for the Plan's potential Repayment to BCBS VT of an amount that is no more than the lesser of the total Restorative Payments or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable Attorney Fees paid to unrelated third parties by BCBS VT in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of BCBS VT and does not hold an ownership interest in BCBS VT or affiliates of BCBS VT;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [40]

(5) Has not received gross income from BCBS VT or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCBS VT or from affiliates of BCBS VT while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Vermont.

(g) The term ''Plan Losses'' means the $41,588,205 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the payments made by BCBS VT to the Plan in connection with the Plan Losses, including: (1) the past payment of $13,000,000 made on December 23, 2020, (2) the past payment of $3,100,000 made on September 14, 2021, and (3) amounts necessary to restore the Plan to its funding level of 126.91% before December 31, 2024. The sum of (1)–(3) is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCBS VT following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective December 21, 2020, to the following transactions: BCBS VT's transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to BCBS VT, which must be no more than the lesser of the Restorative Payment Amount or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan receives the entire Restorative Payment Amount no later than December 31, 2024;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCBS VT; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to BCBS VT is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCBS VT may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCBS VT must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCBS VT for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS VT to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and

[40] 29 CFR 2509.75–4.

conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCBS VT for reasonable legal expenses paid in connection with the Claims by BCBS VT to non-BCBS VT-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS VT under this proposal, the amount of reasonable attorney fees paid by BCBS VT on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS VT in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCBS VT must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mr. Nicholas Schroth of the Department, telephone (202) 693–8571. (This is not a toll-free number.)

Hawaii Medical Service Association

Located in Honolulu, Hawaii

[Application No. D–12038]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of Hawaii Medical Service Association (the Plan) in the first quarter of 2020.[41]

This proposed exemption would permit the past payment of $50,000,000 by Hawaii Medical Service Association (HMSA), the Plan sponsor, to the Plan (the Restorative Payment). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payment amount, plus reasonable attorney fees to HMSA.

Summary of Facts and Representations[42]

1. HMSA is a not-for-profit company that provides health insurance products and services. HMSA is an independent licensee of the Blue Cross Blue Shield Association (BCBSA).

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of HMSA and employees of affiliated employers. On December 31, 2014, the Plan was closed to new entrants. In August 2020, the Sponsor elected to freeze Plan benefits for all participants effective December 31, 2024. As of December 31, 2020, the Plan covered 1,638 participants and held $167,536,184 in total assets.

3. Up until 2020, the Plan held a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust).[43] The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement

[41] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Hawaii Medical Service Association; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[42] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12038 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

[43] The Plan withdrew substantially all of its assets from the Trust in advance of the Trust's August 31, 2020 valuation date.

Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $229,799,688, which represented 86.11% of total Plan assets.[44]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019, the market value of the Plan was $266,849,059. As of March 31, 2020, the market value of the Plan's total assets decreased to $90,420,304. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $187,271,581, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, HMSA took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on November 3, 2020, HMSA and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement) whereby HMSA agreed to make a $50,000,000 Restorative Payment to the Plan. Subsequently, on December 18, 2020, HMSA made a $50,000,000 Restorative Payment to the Plan. This $50,000,000 payment is the Required Restorative Payment Amount under this exemption.

11. In exchange for the Restorative Payment, the Plan assigned to HMSA its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[45] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to HMSA a repayment (the Repayment) that does not exceed the total Restorative Payment made by HMSA as of that date, plus reasonable attorney fees paid by HMSA on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by HMSA to unrelated third parties (the Attorney Fees).

For the purposes of this exemption, Attorney Fees reimbursable to HMSA do not include: (a) legal expenses paid by

[44] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 86.11% of the Plan's total assets in the Allianz Structured Alpha Funds.

[45] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

the Plan; and (b) legal expenses paid by HMSA for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to HMSA under this exemption, the amount of reasonable attorney fees paid by HMSA on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by HMSA in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

12. The Plan must ultimately receive at least the full value of the promised Restorative Payment, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the $50,000,000 Restorative Payment that HMSA made to the Plan, the Plan's Repayment to HMSA will be limited to $50,000,000 plus Attorney Fees. For example, if the Plan receives $80,000,000 in litigation proceeds and HMSA has reasonably incurred $100,000 in Attorney Fees, the Plan will make a Repayment to HMSA totaling $50,100,000.

13. Alternatively, if the Plan receives less litigation or settlement proceeds than the $50,000,000 Restorative Payment that HMSA made to the Plan, the Plan will transfer to HMSA the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if the Plan receives $30,000,000 in litigation proceeds and HMSA has reasonably incurred $100,000 in Attorney Fees, the Plan will make a Repayment to HMSA totaling $30,100,000.

14. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

15. HMSA retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payment and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

16. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

17. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including HMSA and any HMSA affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

18. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

19. On March 18, 2021, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payment, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse HMSA only up to the Required Restorative Payment Amount, plus any reasonable legal expense paid to non-HMSA-related parties that were incurred by, or allocated to, HMSA as a result of the Claims.[46] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, HMSA, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payment from HMSA in exchange for the Assignment.

ERISA Analysis

20. Absent an exemption, the Plan's receipt of the Restorative Payment from HMSA in exchange for the Plan's transfer of litigation or settlement proceeds to HMSA would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. HMSA, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payment to the Plan and the Plan's potential repayment to HMSA with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (HMSA) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the

[46] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to HMSA in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

21. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payment, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payment, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payment was fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to HMSA fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payment actually made to the Plan by HMSA or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to HMSA for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by HMSA to unrelated third parties for representation of the Plan and its interests (as opposed to representation of HMSA or the interests of any party other than the Plan) where HMSA was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[47]

22. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

23. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) HMSA; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to HMSA must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

24. The Plan may not make any Repayment to HMSA before the date: the Plan has received from HMSA the entire amount of the Restorative Payment agreed to in the Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to HMSA in connection with its receipt of the Required Restorative Payment, nor pledge Plan assets to secure any portion of the Required Restorative Payment.

25. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse HMSA for reasonable legal expenses arising from the Claims that HMSA paid to non-HMSA-related parties for representation of the Plan and its interests (as opposed to representation of HMSA or the interests of any party other than the Plan) where HMSA was not otherwise reimbursed by a non-Plan party.

26. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

27. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[48] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payment will substantially improve the Plan's funding status, which will enhance the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The

[47] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[48] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay HMSA the lesser of the Required Restorative Payment Amount, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payment (less reasonable legal expenses related to the Claims paid by HMSA to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) HMSA; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

28. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[49]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by HMSA on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by HMSA to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to HMSA do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by HMSA for representation of HMSA or the interests of any party other than the Plan.

(b) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(c) The term ''Contribution and Assignment Agreement'' means the written agreement between HMSA and the Plan, dated November 3, 2020, containing all material terms regarding HMSA's agreement to make a $50,000,000 payment to the Plan in return for the Plan's potential Repayment to HMSA of an amount that is no more than the lesser of the total Restorative Payments actually made by HMSA or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable Attorney Fees paid to unrelated third parties by HMSA in connection with the Claims.

(d) The term ''HMSA'' means Hawaii Medical Service Association.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of HMSA and does not hold an ownership interest in HMSA or affiliates of HMSA;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [50]

(5) Has not received gross income from HMSA or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from HMSA or from affiliates of HMSA while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of Hawaii Medical Service Association.

(g) The term ''Plan Losses'' means the $187,271,581 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payment'' means the payment made by HMSA to the Plan in connection with the Plan Losses, defined above, consisting of a $50,000,000 payment that HMSA contributed to the Plan on December 18, 2020. This $50,000,000 payment is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to HMSA following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A) and (D), does not apply, effective November 3, 2020, to the following transactions: HMSA's transfer of Restorative Payment to the Plan; and, in return, the Plan's Repayment of an amount to HMSA, which must be no more than the lesser of the Restorative Payment Amount or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

[49] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[50] 29 CFR 2509.75–4.

Section III. Conditions

(a) The Plan received the entire Restorative Payment on December 18, 2020;

(b) In connection with its receipt of the Restorative Payment, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) HMSA; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to HMSA is for no more than the lesser of the total Restorative Payment received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to HMSA may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received the Restorative Payment it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to HMSA must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payment and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payment, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to HMSA for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by HMSA to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payment;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payment;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse HMSA for reasonable legal expenses paid in connection with the Claims by HAS to non-HMSA-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to HMSA under this proposal, the amount of reasonable attorney fees paid by HMSA on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by HMSA in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, HMSA must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register,** and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

BCS Financial Corporation

Located in Oakbrook Terrace, Illinois

[Application No. D–12036]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory

Retirement Program for Certain Employees of BCS Financial Corporation (the Plan) in the first quarter of 2020.[51]

This proposed exemption would permit the Plan sponsor, BCS Financial Corporation (BCS), to make a series of payments to the Plan, including: (a) past payments totaling $19,600,000; and (b) a payment of $1,800,000 on or before September 13, 2023 (the Restorative Payments). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments, plus reasonable attorney fees to BCS.

Summary of Facts and Representations[52]

1. BCS is a not-for-profit company that provides health insurance products and services. BCS is wholly-owned by all of the primary licensees of Blue Cross Blue Shield Association (BCBSA) that are headquartered in Illinois.

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of BCS. On December 31, 2019, the Plan was closed to new entrants. As of December 31, 2020, the Plan covered 242 participants and held $35,258,813 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $36,190,972, which represented 77.66% of total Plan assets.[53]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019, the market value of the Plan was $46,599,770. As of March 31, 2020, the market value of the Plan's total assets decreased to $15,806,147. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $29,496,983, which caused the Plan to be underfunded.

[51] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCS Financial Corporation; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[52] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12036 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

[53] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 77.66% of the Plan's total assets in the Allianz Structured Alpha Funds.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCS took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on October 9, 2020, BCS and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement).

11. Pursuant to the Contribution and Assignment Agreement, BCS agreed to make a $16,000,000 Restorative Payment to the Plan within seven business days after the Agreement's effective date. Subsequently, on October 13, 2020, BCS made a $16,000,000 Restorative Payment to the Plan.

12. On September 27, 2021, BCS and the Plan amended the Restorative Payments provision of the Contribution and Assignment Agreement (the Restorative Payment Amendment). Pursuant to the amendment, BCS agreed to make the following three additional Restorative Payments to the Plan: (a) a payment of $1,800,000 on or before September 13, 2021; (b) a payment of $1,800,000 on or before September 13, 2022; and (c) a payment of $1,800,000 on or before September 13, 2023. Since the effective date of the Restorative Payment Amendment, BCS Financial has made two additional Restorative Payments to the Plan: a $1,800,000 payment on September 14, 2021, and a $1,800,000 payment on January 14, 2022.

13. In exchange for the Restorative Payments, the Plan assigned to BCS its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[54] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCS a repayment (the Repayment) that does not exceed the total Restorative Payments made by BCS, plus reasonable attorney fees paid by BCS on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCS to unrelated third parties (the Attorney Fees). For the purposes of this exemption, Attorney Fees reimbursable to BCS do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCS for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCS under this exemption, the amount of reasonable attorney fees paid by BCS on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCS in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

14. The Plan must ultimately receive at least the full value of the promised Restorative Payments, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that BCS has made to the Plan, the Plan's Repayment to BCS will be limited to the amount of Restorative Payments actually made by BCS, plus Attorney Fees. For example, if BCS has made $19,600,000 in Restorative Payments to the Plan and reasonably incurred $100,000 in Attorney Fees, and if the Plan receives $30,000,000 in litigation proceeds, the Plan will make a Repayment to BCS totaling $19,700,000.

15. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that BCS has made to the Plan, the Plan will transfer to BCS the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCS has made $19,600,000 in Restorative Payments to the Plan and has reasonably incurred $100,000 in Attorney Fees, and if the Plan receives $10,000,000 in litigation proceeds, the Plan will make a Repayment to BCS totaling $10,100,000.

16. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

17. BCS retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

18. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

19. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including BCS and any BCS affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

20. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

21. On October 9, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the

[54] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

Plan's total assets and funding level. Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCS only up to the Required Restorative Payment Amount, plus any reasonable legal expense paid to non-BCS-related parties that were incurred by, or allocated to, BCS as a result of the Claims.[55] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCS, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from BCS in exchange for the Assignment.

ERISA Analysis

22. Absent an exemption, the Plan's receipt of the Restorative Payments from BCS in exchange for the Plan's transfer of litigation or settlement proceeds to BCS would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCS, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to BCS with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCS) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. BCS's promise to make Required Restorative Payments to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCS in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

23. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCS fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by BCS or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCS for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCS to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCS or the interests of any party other than the Plan) where BCS was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[56]

24. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

25. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCS; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to BCS must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

[55] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

[56] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

26. The Plan may not make any Repayment to BCS before the date: the Plan has received from BCS the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCS in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

27. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCS for reasonable legal expenses arising from the Claims that BCS paid to non-BCS-related parties for representation of the Plan and its interests (as opposed to representation of BCS or the interests of any party other than the Plan) where BCS was not otherwise reimbursed by a non-Plan party.

28. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

29. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[57] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payments will substantially improve the Plan's funding status, which will enhance the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay BCS the lesser of the Required Restorative Payment Amount, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payments (less reasonable legal expenses related to the Claims paid by BCS to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCS; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

30. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[58]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCS on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCS to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCS do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCS for representation of BCS or the interests of any party other than the Plan.

(b) The term ''BCS'' means BCS Financial Corporation.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between BCS and the Plan, dated October 9, 2020, and its amendment that became effective on September 27, 2021, containing all material terms regarding BCS's agreement to make Required Restorative Payments (as described in Section I(h)) to the Plan in return for the Plan's potential Repayment to BCS of an amount that is no more than the lesser of the total Restorative Payments or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable Attorney Fees paid to unrelated third parties by BCS in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of BCS and does not hold an ownership interest in BCS or affiliates of BCS;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

[57] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

[58] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [59]

(5) Has not received gross income from BCS or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCS or from affiliates of BCS while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of BCS Financial Corporation.

(g) The term ''Plan Losses'' means the $29,496,983 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the payments made by BCS in connection with the Plan Losses, defined above, consisting of: (1) the past payment of $16,000,000, made on October 13, 2020; (2) the past payment of $1,800,000, made on September 14, 2021; (3) the past payment of $1,800,000 made on January 14, 2022; and (4) a payment of $1,800,000 to be made on or before September 13, 2023. The sum of (1)–(4) is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCS following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective October 9, 2020, to the following transactions: BCS's transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to BCS, which must be no more than the lesser of the Restorative Payment Amount or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan receives the entire Restorative Payment Amount no later than September 13, 2023;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCS; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to BCS is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCS may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCS must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCS for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCS to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCS for reasonable legal expenses paid in connection with the Claims by BCS to non-BCS-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCS under this proposal, the amount of reasonable attorney fees paid by BCS on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCS in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

[59] 29 CFR 2509.75–4.

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCS must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mr. Frank Gonzalez of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Blue Cross and Blue Shield of Mississippi, A Mutual Insurance Company

Located in Flowood, Mississippi

[Application No. D–12040]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Mississippi (the Plan) in the first quarter of 2020.[60]

This proposed exemption would permit the past payments of $70,000,000 and $12,000,000 by the Plan sponsor, Blue Cross and Blue Shield of Mississippi, A Mutual Insurance Company (BCBS MS), to the Plan (the Restorative Payments). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments, plus reasonable attorney fees to BCBS MS.

Summary of Facts and Representations[61]

1. BCBS MS is a not-for-profit company that provides health insurance products and services. BCBS MS is an independent licensee of the Blue Cross Blue Shield Association (BCBSA).

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of BCBS MS and employees of affiliated employers. As of December 31, 2006, the Plan was closed to new entrants. As of December 31, 2020, the Plan covered 976 participants and held $153,536,775 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy

[60] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Blue Cross and Blue Shield of Mississippi, a Mutual Insurance Company; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[61] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12040 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $122,962,882, which represented 71.18% of total Plan assets.[62]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019 the market value of Plan assets was $172,731,750. As of March 31, 2020, the market value of Plan assets decreased to $67,238,446. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $102,446,155, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCBS MS took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on September 17, 2020, BCBS MS and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement).

11. Pursuant to the Contribution and Assignment Agreement, BCBS MS agreed to make the following Restorative Payments to the Plan: (a) a $70,000,000 payment within seven business days of the effective date of the Contribution and Assignment Agreement; and (b) a $12,000,000 payment on or about November 24, 2020. BCBS MS subsequently made the following Restorative Payments to the Plan: (a) a payment of $70,000,000 on September 21, 2020; and (b) a payment of $12,000,000 on November 25, 2020.

12. In exchange for the Restorative Payments, the Plan assigned to BCBS MS its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[63] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCBS MS a repayment (the Repayment) that does not exceed the total Restorative Payments made by BCBS MS as of that date, plus reasonable attorney fees paid by BCBS MS on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS MS to unrelated third parties (the Attorney Fees).

For the purposes of this exemption, Attorney Fees reimbursable to BCBS MS do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCBS MS for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS MS under this exemption, the amount of reasonable attorney fees paid by BCBS MS on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS MS in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

13. The Plan must ultimately receive at least the full value of the promised Restorative Payments, minus the Attorney Fees. The Plan, however, may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that BCBS MS has made to the Plan, the Plan's Repayment to BCBS MS will be limited to the amount of

[62] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 71.18% of the Plan's total assets in the Allianz Structured Alpha Funds.

[63] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

Restorative Payments actually made by BCBS MS, plus Attorney Fees. For example, if BCBS MS reasonably incurred $100,000 in Attorney Fees, and the Plan receives $100,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS MS totaling $82,100,000.

14. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that BCBS MS has made to the Plan, the Plan will transfer to BCBS MS the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCBS MS has reasonably incurred $100,000 in Attorney Fees, and the Plan receives $50,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS MS totaling $50,100,000.

15. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

16. BCBS MS retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

17. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

18. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including BCBS MS and any BCBS MS affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

19. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

20. On September 17, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCBS MS only up to the Required Restorative Payment Amount received by the Plan, plus any reasonable legal expense paid to non-BCBS MS-related parties that were incurred by, or allocated to, BCBS MS as a result of the Claims.[64] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCBS MS, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from BCBS MS in exchange for the Assignment.

ERISA Analysis

21. Absent an exemption, the Plan's receipt of the Restorative Payments from BCBS MS in exchange for the Plan's transfer of litigation or settlement proceeds to BCBS MS would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCBS MS, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to BCBS MS with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCBS MS) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. BCBS MS's promise to make Required Restorative Payments to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCBS MS in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

[64] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

Conditions

22. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCBS MS fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by BCBS MS or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCBS MS for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS MS to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCBS MS or the interests of any party other than the Plan) where BCBS MS was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[65]

23. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

24. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS MS; and/or (d) any person or entity related to a person or entity described in (a)-(c) of this paragraph. Additionally, any Repayment by the Plan to BCBS MS must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

25. The Plan may not make any Repayment to BCBS MS before the date: the Plan has received from BCBS MS the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCBS MS in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

26. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCBS MS for reasonable legal expenses arising from the Claims that BCBS MS paid to non-BCBS MS-related parties for representation of the Plan and its interests (as opposed to representation of BCBS MS or the interests of any party other than the Plan) where BCBS MS was not otherwise reimbursed by a non-Plan party.

27. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

28. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[66] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payments substantially improved the Plan's funding status, which enhanced the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and helped the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because,

[65] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[66] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

among other things, the Plan will repay BCBS MS the lesser of the Required Restorative Payment Amount received by the Plan, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payments (less reasonable legal expenses related to the Claims paid by BCBS MS to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS MS; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

29. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[67]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCBS MS on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS MS to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCBS MS do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCBS MS for representation of BCBC MS or the interests of any party other than the Plan.

(b) The term ''BCBS MS'' means Blue Cross and Blue Shield of Mississippi, a Mutual Insurance Company.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between BCBS MS and the Plan, dated September 17, 2020, containing all material terms regarding BCBS MS's agreement to make Required Restorative Payments to the Plan in return for the Plan's potential Repayment to BCBS MS of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by BCBS MS in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of BCBS MS and does not hold an ownership interest in BCBS MS or affiliates of BCBS MS;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [68]

(5) Has not received gross income from BCBS MS or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCBS MS or from affiliates of BCBS MS while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Mississippi.

(g) The term ''Plan Losses'' means the $102,446,155 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the payments made by BCBS MS to the Plan in connection with the Plan Losses, defined above, consisting of: (1) the past payment of $70,000,000 made on September 21, 2020; and (2) the past payment of $12,000,000 made on November 25, 2020. The sum of (1) and (2) is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCBS MS following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective September 17, 2020, to the following transactions: BCBS MS's transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to BCBS MS, which must be no more than the lesser of the Restorative Payments or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

[67] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[68] 29 CFR 2509.75–4.

Section III. Conditions

(a) The Plan received the entire Restorative Payment Amount no later than November 25, 2020;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCBS MS; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to BCBS MS is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCBS MS may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCBS MS must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payments were fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCBS MS for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS MS to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCBS MS for reasonable legal expenses paid in connection with the Claims by BCBS MS to non-BCBS MS-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS MS under this proposal, the amount of reasonable attorney fees paid by BCBS MS on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS MS in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCBS MS must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

Blue Cross and Blue Shield of Nebraska, Inc.

Located in Omaha, Nebraska

[Application No. D–12041]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S.

LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Nebraska, Inc. (the Plan) in the first quarter of 2020.[69]

This proposed exemption would permit the past payments of $7,000,000 and $6,600,000 by the Plan sponsor, Blue Cross and Blue Shield of Nebraska, Inc. (BCBS Nebraska or the Applicant), to the Plan (the Restorative Payments). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments, plus reasonable attorney fees to BCBS Nebraska.

Summary of Facts and Representations [70]

1. BCBS Nebraska is a not-for-profit company that provides health insurance products and services. BCBS Nebraska is an independent licensee of the Blue Cross Blue Shield Association (BCBSA).

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of BCBS Nebraska. The Plan was amended, effective January 1, 2006, to close participation to new entrants as of December 31, 2005. As of August 31, 2020, the Plan covered 418 participants and held $36,863,722 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $42,147,684, which represented 59.39% of total Plan assets.[71]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019 the market value of Plan assets was $70,967,280. As of March 31, 2020, the market value of Plan assets decreased to $36,028,581. The Applicant represents

[69] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Blue Cross and Blue Shield of Nebraska, Inc.; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[70] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12041 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

[71] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 59.39% of the Plan's total assets in the Allianz Structured Alpha Funds.

that the Plan's total losses from the Allianz Structured Alpha Strategy were $33,649,481, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCBS Nebraska took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on November 5, 2020, BCBS Nebraska and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement). Pursuant to the Contribution and Assignment Agreement, BCBS Nebraska agreed to make Restorative Payments to the Plan not in excess of $33,649,481 by September 15, 2022. Subsequently, on August 25, 2021, BCBS Nebraska made a $7,000,000 Restorative Payment to the Plan.

11. On March 17, 2022, BCBS Nebraska and the Plan amended the Restorative Payments provision of the Contribution and Assignment Agreement to require BCBS Nebraska to make one additional Restorative Payment of $6,600,000 to the Plan by September 15, 2022. Subsequently, on March 29, 2022, BCBS Nebraska made a $6,600,000 Restorative Payment to the Plan.

12. In exchange for the Restorative Payments, the Plan assigned to BCBS Nebraska its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[72] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCBS Nebraska a repayment (the Repayment) that does not exceed the total Restorative Payments made by BCBS Nebraska as of that date, plus reasonable attorney fees paid by BCBS Nebraska on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS Nebraska to unrelated third parties (the Attorney Fees).

For the purposes of this exemption, Attorney Fees reimbursable to BCBS Nebraska do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCBS Nebraska for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS Nebraska under this exemption, the amount of reasonable attorney fees paid by BCBS Nebraska on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS Nebraska in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

13. The Plan must ultimately receive at least the full value of the promised Restorative Payments, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that BCBS Nebraska has made to the Plan, the Plan's Repayment to BCBS Nebraska will be limited to the amount of Restorative Payments actually made by BCBS Nebraska, plus Attorney Fees. For example, if BCBS Nebraska has reasonably incurred $100,000 in Attorney Fees, and the Plan receives $30,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS Nebraska totaling $13,700,000.

14. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that BCBS Nebraska has made to the Plan, the Plan will transfer to BCBS Nebraska the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCBS Nebraska reasonably incurred $100,000 in Attorney Fees, and the Plan receives $5,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS Nebraska totaling $5,100,000.

15. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

16. BCBS Nebraska retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

17. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

18. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including BCBS Nebraska and any BCBS Nebraska affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

19. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

20. On November 5, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level.

[72] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCBS Nebraska only up to the Required Restorative Payment Amount received by the Plan, plus any reasonable legal expense paid to non-BCBS Nebraska-related parties that were incurred by, or allocated to, BCBS Nebraska as a result of the Claims.[73] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCBS Nebraska, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from BCBS Nebraska in exchange for the Assignment.

ERISA Analysis

21. Absent an exemption, the Plan's receipt of the Restorative Payments from BCBS Nebraska in exchange for the Plan's transfer of litigation or settlement proceeds to BCBS Nebraska would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCBS Nebraska, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to BCBS Nebraska with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCBS Nebraska) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. BCBS Nebraska's promise to make Required Restorative Payments to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCBS Nebraska in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

22. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCBS Nebraska fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by BCBS Nebraska or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCBS Nebraska for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS Nebraska to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCBS Nebraska or the interests of any party other than the Plan) where BCBS Nebraska was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[74]

23. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

24. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS

[73] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

[74] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

Nebraska; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to BCBS Nebraska must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

25. The Plan may not make any Repayment to BCBS Nebraska before the date: the Plan has received from BCBS Nebraska the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement, and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCBS Nebraska in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

26. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCBS Nebraska for reasonable legal expenses arising from the Claims that BCBS Nebraska paid to non-BCBS Nebraska-related parties for representation of the Plan and its interests (as opposed to representation of BCBS Nebraska or the interests of any party other than the Plan) where BCBS Nebraska was not otherwise reimbursed by a non-Plan party.

27. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

28. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[75] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payments substantially improved the Plan's funding status, which enhanced the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and helped the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay BCBS Nebraska the lesser of the Required Restorative Payment Amount received by the Plan, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payments (less reasonable legal expenses related to the Claims paid by BCBS Nebraska to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS Nebraska; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

29. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[76]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCBS Nebraska on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS Nebraska to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCBS Nebraska do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCBS Nebraska for representation of BCBC Nebraska or the interests of any party other than the Plan.

(b) The term ''BCBS Nebraska'' means Blue Cross and Blue Shield of Nebraska, Inc.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between BCBS Nebraska and the Plan, dated November 5, 2020, and its amendment that became effective on March 17, 2022, containing all material terms regarding BCBS Nebraska's agreement to make Required Restorative Payments to the Plan in return for the Plan's potential Repayment to BCBS Nebraska of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) received by the Plan or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by BCBS Nebraska in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

[75] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

[76] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

(1) Is not an affiliate of BCBS Nebraska and does not hold an ownership interest in BCBS Nebraska or affiliates of BCBS Nebraska;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [77]

(5) Has not received gross income from BCBS Nebraska or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCBS Nebraska or from affiliates of BCBS Nebraska while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of Blue Cross and Blue Shield of Nebraska, Inc.

(g) The term ''Plan Losses'' means the $33,649,481 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the payments made by BCBS Nebraska to the Plan in connection with the Plan Losses, defined above, consisting of: (1) the past payment of $7,000,000 on August 25, 2021; and (2) the past payment of $6,600,000 on March 29, 2022. The sum of (1) and (2) is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCBS Nebraska following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims, and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective November 5, 2020, to the following transactions: BCBS Nebraska's transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to BCBS Nebraska, which must be no more than the lesser of the Restorative Payment received by the Plan or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan received the entire Restorative Payment Amount no later than March 29, 2022;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCBS Nebraska; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to BCBS Nebraska is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCBS Nebraska may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCBS Nebraska must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCBS Nebraska for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS Nebraska to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCBS Nebraska for reasonable legal expenses paid in connection with the Claims by BCBS

[77] 29 CFR 2509.75–4.

Nebraska to non-BCBS Nebraska-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS Nebraska under this proposal, the amount of reasonable attorney fees paid by BCBS Nebraska on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS Nebraska in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCBS Nebraska must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

BlueCross BlueShield of Tennessee, Inc.

Located in Chattanooga, Tennessee

[Application No. D–12045]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the BlueCross BlueShield of Tennessee, Inc. Pension Plan (the Plan) in the first quarter of 2020.[78]

This proposed exemption would permit the past payment of $100,000,000 to the Plan by the Plan sponsor, BlueCross BlueShield of Tennessee, Inc. (BCBS Tennessee). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payment, plus reasonable attorney fees to BCBS Tennessee.

Summary of Facts and Representations[79]

1. BCBS Tennessee is a not-for-profit company incorporated in Tennessee with its principal office in Chattanooga, Tennessee. BCBS Tennessee issues and administers health care coverage for individuals and group health plans sponsored by Tennessee-based employers and is an independent licensee of the Blue Cross Blue Shield Association (BCBSA).

2. The Plan is an ERISA-covered, frozen defined benefit pension plan that covers eligible employees of BCBS Tennessee and employees of affiliated employers. BCBS Tennessee makes all contributions to the Plan for the exclusive benefit of participants and their beneficiaries, and to cover administrative expenses. As of August 31, 2020, the Plan covered 2,628 participants and held $203,341,148 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's

[78] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BlueCross BlueShield of Tennessee, Inc.; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[79] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12045 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $138,015,536, which represented 68.57% of total Plan assets.[80]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019, the market value of the Plan's assets was $201,265,786. As of March 31, 2020, the market value of the Plan's assets decreased to $103,023,619. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $93,576,015, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, BCBS Tennessee took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on October 8, 2020, BCBS Tennessee and the Plan entered into a Contribution and Assignment Agreement (the Contribution and Assignment Agreement), whereby BCBS Tennessee agreed to make a $100,000,000 payment to the Plan within seven business days of the effective date of the Contribution and Assignment Agreement (the Restorative Payment). BCBS Tennessee remitted $100,000,000 to the Plan on October 8, 2020.

11. In exchange for the Restorative Payment, the Plan assigned to BCBS Tennessee its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[81] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to BCBS Tennessee a repayment (the Repayment) that does not exceed the total Restorative Payment made by BCBS Tennessee, plus reasonable attorney fees paid by BCBS Tennessee on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS Tennessee to unrelated third parties (the Attorney Fees). For the purposes of this exemption, Attorney Fees reimbursable to BCBS Tennessee do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by BCBS Tennessee for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS Tennessee under this exemption, the amount of reasonable attorney fees paid by BCBS Tennessee on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS Tennessee in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

12. The Plan must ultimately receive at least the full value of the promised

[80] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 68.57% of the Plan's total assets in the Allianz Structured Alpha Funds.

[81] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

Restorative Payment, minus the Attorney Fees. The Plan, however, may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of the Restorative Payment that BCBS Tennessee made to the Plan, the Plan's Repayment to BCBS Tennessee will be limited to the amount of Restorative Payment made by BCBS Tennessee, plus Attorney Fees. For example, if BCBS Tennessee has reasonably incurred $100,000 in Attorney Fees, and the Plan receives $120,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS Tennessee totaling $100,100,000.

13. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of the Restorative Payment that BCBS Tennessee made to the Plan, the Plan will transfer to BCBS Tennessee the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if BCBS Tennessee has reasonably incurred $100,000 in Attorney Fees, and the Plan receives $50,000,000 in litigation proceeds, the Plan will make a Repayment to BCBS Tennessee totaling $50,100,000.

14. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

15. BCBS Tennessee retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payment and the potential repayment by the Plan of that Payment (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

16. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

17. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including BCBS Tennessee and any BCBS Tennessee affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

18. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

19. On October 8, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payment, which was received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse BCBS Tennessee only up to the Required Restorative Payment Amount received, plus any reasonable legal expense paid to non-BCBS Tennessee-related parties that were incurred by, or allocated to, BCBS Tennessee as a result of the Claims.[82] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, BCBS Tennessee, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payment from BCBS Tennessee in exchange for the Assignment.

ERISA Analysis

20. Absent an exemption, the Plan's receipt of the Restorative Payment from BCBS Tennessee in exchange for the Plan's transfer of litigation or settlement proceeds to BCBS Tennessee would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. BCBS Tennessee, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payment to the Plan and the Plan's potential repayment to BCBS Tennessee with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (BCBS Tennessee) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to BCBS Tennessee in connection with the Repayment would constitute an impermissible transfer of Plan assets to

[82] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

21. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payment, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payment, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payment was fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to BCBS Tennessee fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payment actually made to the Plan by BCBS Tennessee or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to BCBS Tennessee for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS Tennessee to unrelated third parties for representation of the Plan and its interests (as opposed to representation of BCBS Tennessee or the interests of any party other than the Plan) where BCBS Tennessee was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[83]

22. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

23. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS Tennessee; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to BCBS Tennessee must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

24. The Plan may not make any Repayment to BCBS Tennessee before the date: the Plan has received from BCBS Tennessee the entire amount of the Restorative Payment agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to BCBS Tennessee in connection with its receipt of the Required Restorative Payment, nor pledge Plan assets to secure any portion of the Required Restorative Payment.

25. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse BCBS Tennessee for reasonable legal expenses arising from the Claims that BCBS Tennessee paid to non-BCBS Tennessee-related parties for representation of the Plan and its interests (as opposed to representation of BCBS Tennessee or the interests of any party other than the Plan) where BCBS Tennessee was not otherwise reimbursed by a non-Plan party.

26. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

27. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[84] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payment substantially improved the Plan's funding status, which enhanced the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because,

[83] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[84] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

among other things, the Plan will repay BCBS Tennessee the lesser of the Required Restorative Payment Amount received, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payment (less reasonable legal expenses related to the Claims paid by BCBS Tennessee to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) BCBS Tennessee; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

28. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[85]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by BCBS Tennessee on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by BCBS Tennessee to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to BCBS Tennessee do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by BCBS Tennessee for representation of BCBC Tennessee or the interests of any party other than the Plan.

(b) The term ''BCBS Tennessee'' means BlueCross BlueShield of Tennessee, Inc.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between BCBS Tennessee and the Plan, dated October 8, 2020, containing all material terms regarding Tennessee's agreement to make the Required Restorative Payment to the Plan in return for the Plan's potential Repayment to BCBS Tennessee of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) received or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by BCBS Tennessee in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of BCBS Tennessee and does not hold an ownership interest in BCBS Tennessee or affiliates of BCBS Tennessee;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [86]

(5) Has not received gross income from BCBS Tennessee or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from BCBS Tennessee or from affiliates of BCBS Tennessee while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the BlueCross BlueShield of Tennessee, Inc. Pension Plan.

(g) The term ''Plan Losses'' means the $93,576,015 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payment'' means the payment made by BCBS Tennessee to the Plan in connection with the Plan Losses, defined above, consisting of a $100,000,000 payment that BCBS Tennessee contributed to the Plan on October 8, 2020. This $100,000,000 payment is the Required Restorative Payment Amount.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to BCBS Tennessee following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims; and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective September 15, 2020, to the following transactions: BCBS Tennessee's transfer of the Restorative Payment to the Plan; and, in return, the Plan's Repayment of an amount to BCBS Tennessee, which must be no more than the lesser of the Restorative Payment Amount received or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

[85] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[86] 29 CFR 2509.75–4.

Section III. Conditions

(a) The Plan received the entire Restorative Payment Amount no later than October 8, 2020;

(b) In connection with its receipt of the Required Restorative Payment, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) BCBS Tennessee; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to BCBS Tennessee is for no more than the lesser of the total Restorative Payment received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to BCBS Tennessee may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received the entirety of the Restorative Payment it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to BCBS Tennessee must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payment and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payment, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to BCBS Tennessee for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by BCBS Tennessee to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payment;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payment;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse BCBS Tennessee for reasonable legal expenses paid in connection with the Claims by BCBS Tennessee to non-BCBS Tennessee-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to BCBS Tennessee under this proposal, the amount of reasonable attorney fees paid by BCBS Tennessee on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by BCBS Tennessee in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, BCBS Tennessee must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Ms. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

Triple-S Management Corporation

Located in San Juan, Puerto Rico

[Application No. D–12042]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims)

against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Triple-S Management Corporation Non-Contributory Retirement Plan (the Plan) in the first quarter of 2020.[87]

This proposed exemption would permit the past payment of $10,000,000 by Triple-S Management Corporation (Triple-S), the Plan sponsor, to the Plan (the Restorative Payment). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payment amount, plus reasonable attorney fees to Triple-S.

Summary of Facts and Representation [88]

1. Triple-S is an insurance holding company that provides health insurance products and services. Triple-S is the only independent licensee of the Blue Cross Blue Shield Association (BCBSA) in Puerto Rico and has a presence in markets such as the U.S. Virgin Islands and Costa Rica.

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees or participants of Triple-S. The Plan was amended effective January 31, 2017, to freeze benefit accruals as of that date with respect to all participants. As of August 31, 2020, the Plan covered 1,144 participants and held $64,771,505 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $127,024,812, which represented 77.66% of total Plan assets.[89]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31,

[87] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Triple-S Management Corporation and/or (4) any person or entity related to a person or entity described in (1)–(3).

[88] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12042 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

[89] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 77.66% of the Plan's total assets in the Allianz Structured Alpha Funds.

2019 the market value of Plan assets was $163,558,110. As of March 31, 2020, the market value of Plan assets decreased to $54,855,395. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $103,793,253, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, Triple-S took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on November 6, 2020, Triple-S and the Plan entered into a Contribution and Assignment Agreement whereby Triple-S agreed to make a $10,000,000 Restorative Payment to the Plan not later than December 31, 2021 (the Contribution and Assignment Agreement). Subsequently, on June 28, 2021, Triple-S made a $10,000,000 Restorative Payment to the Plan.

11. In exchange for the Restorative Payment, the Plan assigned to Triple-S its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[90] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to Triple-S a repayment (the Repayment) that does not exceed the total Restorative Payment made by Triple-S as of that date, plus reasonable attorney fees paid by Triple-S on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by Triple-S to unrelated third parties (the Attorney Fees).

For the purposes of this exemption, Attorney Fees reimbursable to Triple-S do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by Triple-S for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to Triple-S under this exemption, the amount of reasonable attorney fees paid by Triple-S on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by Triple-S in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

12. The Plan must ultimately receive at least the full value of the promised Restorative Payment, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payment that Triple-S has made to the Plan, the Plan's Repayment to Triple-S will be limited to the Restorative Payment amount, plus Attorney Fees. For example, if Triple-S reasonably incurred $100,000 in Attorney Fees, and the Plan receives $20,000,000 in litigation proceeds, the Plan will make a Repayment to Triple-S totaling $10,100,000.

13. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of the Restorative Payment, the Plan will transfer to Triple-S the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if Triple-S reasonably incurred $100,000 in Attorney Fees, and the Plan receives $5,000,000 in litigation proceeds, the Plan will make a Repayment to Triple-S totaling $5,100,000.

14. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

15. Triple-S retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payment and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

16. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

17. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including Triple-S and any Triple-S affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

18. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

19. On November 5, 2020, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payment, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse Triple-S only up to the Required Restorative

[90] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

Payment Amount received by the Plan, plus any reasonable legal expense paid to non-Triple-S-related parties that were incurred by, or allocated to, Triple-S as a result of the Claims.[91] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, Triple-S, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payment from Triple-S in exchange for the Assignment.

ERISA Analysis

20. Absent an exemption, the Plan's receipt of the Restorative Payment from Triple-S in exchange for the Plan's transfer of litigation or settlement proceeds to Triple-S would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. Triple-S, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payment to the Plan and the Plan's potential repayment to Triple-S with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (Triple-S) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. Triple's promise to make the Required Restorative Payment to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to Triple-S in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

21. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payment, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payment, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payment was fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to Triple-S fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payment or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to Triple-S for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by Triple-S to unrelated third parties for representation of the Plan and its interests (as opposed to representation of Triple-S or the interests of any party other than the Plan) where Triple-S was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[92]

22. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

23. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) Triple-S; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to Triple-S must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

24. The Plan may not make any Repayment to Triple-S before the date: the Plan has received from Triple-S the entire amount of the Restorative Payment agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to Triple-S in connection with its receipt of the Required Restorative Payment, nor pledge Plan assets to secure any portion of the Required Restorative Payment.

[91] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

[92] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

25. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse Triple-S for reasonable legal expenses arising from the Claims that Triple-S paid to non-Triple-S-related parties for representation of the Plan and its interests (as opposed to representation of Triple-S or the interests of any party other than the Plan) where Triple-S was not otherwise reimbursed by a non-Plan party.

26. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

27. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[93] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payment substantially improved the Plan's funding status, which enhanced the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay Triple-S the lesser of the Required Restorative Payment Amount received by the Plan, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payment (less reasonable legal expenses related to the Claims paid by Triple-S to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) Triple-S; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

28. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[94]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by Triple-S on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by Triple-S to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to Triple-S do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by Triple-S for representation of Triple-S or the interests of any party other than the Plan.

(b) The term ''Triple-S'' means Triple-S Management Corporation.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between Triple-S and the Plan, dated November 6, 2020, containing all material terms regarding Triple-S's agreement to make Required Restorative Payment to the Plan in return for the Plan's potential Repayment to Triple-S of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) received by the Plan or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by Triple-S in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of Triple-S and does not hold an ownership interest in Triple-S or affiliates of Triple-S;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [95]

(5) Has not received gross income from Triple-S or its affiliates during any fiscal year in an amount that exceeds

[93] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

[94] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[95] 29 CFR 2509.75–4.

two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Triple-S or from affiliates of Triple-S while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Triple-S Management Corporation Non-Contributory Retirement Plan.

(g) The term ''Plan Losses'' means the $103,793,253 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payment'' means the payment made by Triple-S of $10,000,000 to the Plan in connection with the Plan Losses, defined above, consisting of a $10,000,000 payment that Triple-S contributed to the Plan on June 28, 2021.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to Triple-S following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims, and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B), and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective November 5, 2020, to the following transactions: Triple-S's transfer of Restorative Payment to the Plan; and, in return, the Plan's Repayment of an amount to Triple-S, which must be no more than the lesser of the Restorative Payment received by the Plan or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan received the entire Restorative Payment Amount no later than June 28, 2021;

(b) In connection with its receipt of the Required Restorative Payment, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) Triple-S; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to Triple-S is for no more than the lesser of the total Restorative Payment received by the Plan or the amount of litigation proceeds the Plan receives from the Claims. The Plan's Repayment to Triple-S may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to Triple-S must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payment and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payment, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to Triple-S for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by Triple-S to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payment;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payment;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse Triple-S for reasonable legal expenses paid in connection with the Claims by Triple-S to non-Triple-S-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to Triple-S under this proposal, the amount of reasonable attorney fees paid by Triple-S on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by Triple-S in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity

that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, Triple-S must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Ms. Anna Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

National Account Service Company LLC

Located in Atlanta, Georgia

[Application No. D–12049]

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption relates to legal actions and claims (the Claims) against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), that arose from certain losses incurred by the Non-Contributory Retirement Program for Certain Employees of National Account Service Company (the Plan) in the first quarter of 2020.[96]

This proposed exemption would permit the Plan sponsor, the National Account Service Company LLC (NASCO), to make payments totaling $50 million to the Plan (the Restorative Payments). If the Plan receives litigation proceeds from the Claims, the Plan will transfer the lesser of the ligation proceeds amount or the Restorative Payments, plus reasonable attorney fees to NASCO.

Summary of Facts and Representations[97]

1. NASCO is a healthcare technology company dedicated to co-creating digital health solutions for Blue Cross and Blue Shield companies. NASCO provides information technology products and services and offers payment management, system delivery, business optimization solutions, membership enrollment, and other related services. NASCO is owned by Blue Cross Blue Shield of Michigan Mutual Insurance Company.

2. The Plan is an ERISA-covered qualified defined benefit pension plan that covers eligible employees of NASCO. The Plan was amended effective January 1, 2009 to close participation to new entrants as of December 31, 2008. As of December 31, 2020, the Plan covered 264 participants and held $47,306,049 in total assets.

3. The Plan holds a beneficial interest in the Blue Cross and Blue Shield National Retirement Trust (the Trust). The Trust is a master trust that holds the assets of 16 defined benefit pension plans that participate in the BCBSA's National Retirement Program (the Participating Plans). Northern Trust serves as Trustee and asset custodian to the Trust and maintains separate records that reflect the net asset value of each Participating Plan. The Trust's earnings, market adjustments, and administrative expenses are allocated among the Participating Plans based on the respective Participating Plan's share of the Trust's assets. A Participating Plan's interest in the Trust's net assets is based on its share of the Trust.

4. The Committee serves as named fiduciary and administrator for each Participating Plan. The Committee is a standing committee of the BCBSA's board of directors. In 2011, the Committee invested a portion of the Trust's assets in funds managed by Allianz Global Investors U.S. LLC (Allianz), as part of a Structured Alpha Investment Strategy. These funds included: (a) AllianzGI Structured Alpha Multi-Beta Series LLC I; (b) AllianzGI Structured Alpha Emerging Markets Equity 350 LLC; and (c) AllianzGI Structured Alpha 1000 LLC (collectively, the Structured Alpha Funds).

5. The Applicant represents that the Allianz Structured Alpha strategy consisted of alpha and beta components. According to the applicant, the alpha component was an options trading strategy that Allianz claimed would seek targeted positive return potential while maintaining structural risk protections. The beta component was intended to provide broad market exposure to a particular asset class through investments in financial products similar to an exchange-traded fund that replicates the performance of a market index, such as the S&P 500. According to the Applicant, Allianz

[96] In proposing this exemption, the Department is not expressing an opinion regarding the merits of any Claim against Allianz and Aon, or whether the Plan's fiduciaries met their fiduciary duties with respect to Plan assets that are the subject of the Claims. Further, in proposing this exemption, the Department is not limiting any party's claim, demand and/or cause of action arising from the Plan's 2020 first quarter losses in any way. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) National Account Service Company LLC; and/or (4) any person or entity related to a person or entity described in (1)–(3).

[97] The Department notes that availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12049 are true and complete at all times and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change. The Summary of Facts and Representations is based on the Applicant's representations, as well as factual representations contained in the Claims' cause of action (as described below) and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

represented that the Structured Alpha Strategy would capitalize on the return-generating features of option selling (short volatility) while simultaneously benefitting from the risk-control attributes associated with option buying (long volatility). According to the Applicant, Allianz represented further that the alpha component would include position hedging consisting of long-volatility positions designed to protect the portfolio in the event of a market crash.

6. As of December 31, 2019, the total market value of the Plan's portion of the Trust's investment in the Allianz Structured Alpha Funds was $63,571,918, which represented 77.66% of total Plan assets.[98]

7. In 2009, the Committee retained Aon (then called Ennis Knupp) to provide investment advice regarding the investment of Plan assets held in the Trust. The Applicant represents that Aon provided regular investment advice pursuant to a written contract between it and the Committee. Pursuant to its engagement, Aon agreed to provide the following: ''recommendations to [the Committee] regarding asset allocation'' within the Trust; ''recommendations to [the Committee] regarding the specific asset allocation and other investment guidelines'' for the Trust's investment managers such as Allianz; and advice ''regarding the diversification of assets'' held in the Trust.'' The Applicant represents that Aon agreed to: conduct ''active, ongoing monitoring'' of Allianz to ''identify any forward-looking'' risks ''that could impact performance;'' and ''inform itself'' of any information necessary to discharge its duty to monitor, including information about the actual options positions Allianz had constructed.

8. The Applicant represents that when equity markets sharply declined in February and March of 2020, volatility spiked and the options positions held within the Structured Alpha Strategy were exposed to a heightened risk of loss. The Applicant represents that, unbeknownst to the Committee, and in violation of Allianz's stated investment strategy, Allianz abandoned the hedging strategy that was the supposed cornerstone of the Structured Alpha Strategy, leaving the portfolio almost entirely unhedged against a spike in market volatility. As described in the Claims, although Allianz had represented that it would buy hedges at strike prices ranging from 10% to 25% below the market, the hedges it actually held at the end of February 2020 were as much as 60% below the market.

The Applicant represents that, as of January 31, 2020, the Trust had invested approximately $2,916,049,486 in the Structured Alpha Strategy. Six weeks later, the Trust faced a margin call, which the Applicant states left it no choice but to liquidate the investment. The Trust was ultimately able to redeem only $646,762,678 of its $2,916,049,486 investment, resulting in a total loss of $2,269,286,808.

Specifically, regarding the Plan's portion of the loss, as of December 31, 2019 the market value of Plan assets was $81,855,683. As of March 31, 2020, the market value of Plan assets decreased to $28,120,905. The Applicant represents that the Plan's total losses from the Allianz Structured Alpha Strategy were $51,662,561, which caused the Plan to be underfunded.

9. On September 16, 2020, the Committee filed a cause of action in the United States District Court for the Southern District of New York (Case number 20–CIV–07606) against Allianz and Aon for Breach of Fiduciary Duty under ERISA Section 404, Breach of Co-Fiduciary Duty under ERISA Section 405, and violation of ERISA Section 406(b) for managing the Plan assets in its self-interest and breach of contract. It is possible that resolution of this claim and other legal actions against Allianz and Aon in connection with the Plan's losses (the Claims) could take an extended period of time.

10. The Applicant states that rather than wait for the Claims to be resolved, NASCO took steps to protect Plan benefits and avoid onerous benefit restrictions under Code section 436 that could apply to the Plan as a result of a funding shortfall. Therefore, on March 1, 2021, NASCO and the Plan entered into a Contribution and Assignment Agreement pursuant to which NASCO agreed to make Restorative Payments to the Plan not in excess of $50,000,000 over the course of 2021 through 2025 (the Contribution and Assignment Agreement).

11. NASCO has made Restorative Payments to the Plan totaling $22,800,000, including: (a) a $2,000,000 payment on August 3, 2020; (b) a $2,000,000 payment on September 2, 2020; (c) a $3,625,000 payment on June 21, 2021; (d) a $3,625,000 payment on July 21, 2021; (e) a $3,625,000 payment on August 16, 2021; (f) a $3,625,000 payment on September 13, 2021; and (g) a $4,300,000 payment on June 21, 2021.

12. In exchange for the Restorative Payments, the Plan assigned to NASCO its right to retain certain litigation and/or settlement proceeds recovered from the Claims (the Assigned Interests).[99] Per the assignment, once the Allianz/Aon litigation is resolved and if the Plan receives litigation proceeds from the Claims, the Plan will transfer to NASCO a repayment (the Repayment) that does not exceed the total Restorative Payments made by NASCO as of that date, plus reasonable attorney fees paid by NASCO on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by NASCO to unrelated third parties (the Attorney Fees).

For the purposes of this exemption, Attorney Fees reimbursable to NASCO do not include: (a) legal expenses paid by the Plan; and (b) legal expenses paid by NASCO for representation of its own interests or the interests of any party other than the Plan. For purposes of determining the amount of Attorney Fees the Plan may reimburse to NASCO under this exemption, the amount of reasonable attorney fees paid by NASCO on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by NASCO in connection with the Claims from any non-Plan party (for example, from a third party pursuant to a court award).

13. The Plan must ultimately receive at least the full value of the promised Restorative Payments, minus the Attorney Fees. The Plan may ultimately receive more than the Restorative Payment amount required under the Contribution and Assignment Agreement. If the Plan receives litigation or settlement proceeds that exceed the amount of Restorative Payments that NASCO has made to the Plan, the Plan's Repayment to NASCO will be limited to the amount of Restorative Payments actually made by NASCO, plus Attorney Fees. For example, if NASCO has made $22,800,000 in Restorative Payments to the Plan and reasonably incurred $100,000 in Attorney Fees, and the Plan receives $50,000,000 in litigation proceeds, the Plan will make a Repayment to NASCO totaling $22,900,000.

14. Alternatively, if the Plan receives less litigation or settlement proceeds than the amount of Restorative Payments that NASCO has made to the

[98] By proposing this exemption, the Department does not, in any way, suggest a conclusion that the Plan's fiduciaries met their ERISA Section 404 duties when they caused the Trust to invest 77.66% of the Plan's total assets in the Allianz Structured Alpha Funds.

[99] Under the Contribution and Assignment Agreement, if the Plan receives litigation or settlement proceeds from the Claims, the proceeds would first flow to the Trust, and then each Plan's pro rata portion of the proceeds would be deposited into the individual trust funding that Plan.

Plan, the Plan will transfer to NASCO the lesser amount of litigation or settlement proceeds, plus Attorney Fees. For example, if NASCO has made $22,800,000 in Restorative Payments to the Plan and has reasonably incurred $100,000 in Attorney Fees, and the Plan receives $10,000,000 in litigation proceeds, the Plan will not make any Repayment to NASCO. Under this scenario, NASCO will remain obligated to complete the Restorative Payments to the Plan (totaling $50,000,000) by December 31, 2025, prior to the Plan making any 10,100,000 Repayment to NASCO.

15. The Department notes that if the Plan receives any restitution that is tied to the conduct underlying the Claims but was ordered pursuant to a proceeding or directive that is external to Case number 20–CIV–07606, the disposition of such proceeds must conform to the requirements of this exemption.

16. NASCO retained Gallagher Fiduciary Advisors, LLC (Gallagher or the Independent Fiduciary) of New York, New York, to serve as the Plan's independent fiduciary with respect to the Required Restorative Payments and the potential repayment by the Plan of those Payments (collectively, the Proposed Transactions). Gallagher represents that it has extensive experience in institutional investment consulting and fiduciary decision-making regarding traditional and alternative investments. Gallagher further represents that its independent fiduciary decision-making work involves acting as a fiduciary advisor or decision-maker for plans and other ERISA-regulated asset pools and that it has experience with a wide range of asset classes and litigation claims.

17. Gallagher represents that it understands its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plan. Gallagher also acknowledges that it is authorized to take all appropriate actions to safeguard the Plan's interests, and that it will monitor the Proposed Transactions on the Plan's behalf on a continuous basis and throughout the term required by this exemption.

18. Gallagher represents that it does not have any prior relationship with any parties in interest to the Plan, including NASCO and any NASCO affiliates. Gallagher further represents the total revenues it has received from the Plan and from parties in interest to the Plan in connection with its engagement as Independent Fiduciary represents approximately 0.78% of Gallagher's total revenue.

19. Gallagher represents that no party associated with this exemption application has or will indemnify it, in whole or in part, for negligence of any kind and/or any violation of state or federal law that may be attributable to Gallagher's performance of its duties as Independent Fiduciary to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument entered into by Gallagher as Independent Fiduciary may purport to waive any liability under state or federal law for any such violation.

20. On March 1, 2021, Gallagher completed an Independent Fiduciary Report (the Independent Fiduciary Report) finding that the massive losses caused by the Trust's investment in the Allianz Structured Alpha Strategy resulted in a significant reduction to the Plan's total assets and funding level. Gallagher represents that the Required Restorative Payments, which will be received by the Plan substantially in advance of a final resolution of the Claims against Allianz and Aon, should restore the Plan's funded percentage to its pre-loss funded percentage as of January 1, 2019. The restoration of the Plan's funding status will secure ongoing benefit payments to participants and beneficiaries.

Gallagher notes that the Contribution and Assignment Agreement provides that the Trust must reimburse NASCO only up to the Required Restorative Payment Amount received by the Plan, plus any reasonable legal expense paid to non-NASCO-related parties that were incurred by, or allocated to, NASCO as a result of the Claims.[100] Thus, if the Plan's ultimate recovery amount from the Claims is less than the Required Restorative Payment Amount, plus related litigation expenses that were allocated to the Plan, NASCO, not the Plan, will suffer the loss.

Gallagher states that the Proposed Transactions and the terms of the Contribution and Assignment Agreement were negotiated and approved by Gallagher in its role as the Plan's Independent Fiduciary. Gallagher states that it approved the Proposed Transactions only after conducting an extensive analysis of the damages suffered by the Plan as a result of the failed Allianz Structured Alpha Strategy. Gallagher represents that it conducted numerous discussions with Trust representatives and counsel, along with the Plan's representatives and counsel to ensure that the interests of the Plan's participants and beneficiaries were protected with respect to all aspects of the Proposed Transactions. Based upon its assessment, Gallagher approved the Plan's receipt of the Required Restorative Payments from NASCO in exchange for the Assignment.

ERISA Analysis

21. Absent an exemption, the Plan's receipt of the Restorative Payments from NASCO in exchange for the Plan's transfer of litigation or settlement proceeds to NASCO would violate ERISA. In this regard, ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. NASCO, as an employer whose employees are covered by the Plan, is a party in interest with respect to the Plan under ERISA Section 3(14)(C). The Required Restorative Payments to the Plan and the Plan's potential repayment to NASCO with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest (NASCO) in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(B) prohibits the lending of money or other extension of credit between a plan and a party-in-interest. NASCO's promise to make Required Restorative Payments to the Plan, over time, constitutes an impermissible extension of credit between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(B).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The transfer of Plan assets to NASCO in connection with the Repayment would constitute an impermissible transfer of Plan assets to a party-in-interest in violation of ERISA Section 406(a)(1)(D).

Conditions

22. This proposed exemption contains a number of conditions that must be met. For example, the proposed exemption mandates that the Independent Fiduciary, in full accordance with its obligations of

[100] Currently, legal fees and expenses associated with the Claims are being paid by most of the Participating Plan's trusts on a pro rata basis according to each Participating Plan's total invested assets held in the Master Trust's Allianz Structured Alpha Strategy before the losses were incurred in the first quarter 2020. The Applicant represents that the Committee reviews and approves these legal fees before passing them through to each Participating Plan.

prudence and loyalty under ERISA Section 404(a)(1)(A) and (B) must:

(a) review, negotiate, and approve the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement, before the Plan enters into such payments and the agreement;

(b) determine that the terms and conditions of the Required Restorative Payments, the Repayment, and the Contribution and Assignment Agreement are prudent, in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the Plan's participants and beneficiaries;

(c) confirm that the Required Restorative Payments are fully and timely made;

(d) monitor the Claims and confirm that the Plan receives its proper share of any litigation or settlement proceeds received by the Trust in connection with the Claims;

(e) ensure that any Repayment by the Plan to NASCO fully complies with the terms of this exemption and is for no more than the lesser of the total Restorative Payments actually made to the Plan by NASCO or the amount the Plan received from the Claims, plus Attorney Fees;

(f) ensure that any Repayment by the Plan to NASCO for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by NASCO to unrelated third parties for representation of the Plan and its interests (as opposed to representation of NASCO or the interests of any party other than the Plan) where NASCO was not otherwise reimbursed from a non-Plan party;

(g) monitor the Plan's Assigned Interests on an ongoing basis to determine and confirm that any excess recovery amount from the Claims (*i.e.,* any amount that exceeds the Required Restorative Payment Amount) is retained by the Plan;

(h) ensure that all of the conditions and definitions of this proposed exemption are met; and

(i) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or Department Regulations codified at 29 CFR 2509.75–4.[101]

23. This proposed exemption also requires Gallagher to respond in writing to any information requests from the Department regarding Gallagher's activities as the Plan's Independent Fiduciary. Additionally, no later than 90 days after the resolution of the litigation, Gallagher must submit a written report to the Department demonstrating that all terms and conditions of the exemption have been met.

24. This proposed exemption requires that the Plan has not and will not release any claims, demands and/or causes of action it may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) NASCO; and/or (d) any person or entity related to a person or entity described in (a)–(c) of this paragraph. Additionally, any Repayment by the Plan to NASCO must be made in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments.

25. The Plan may not make any Repayment to NASCO before the date: the Plan has received from NASCO the entire amount of the Restorative Payments agreed to in the Amended Contribution and Assignment Agreement; and all the Claims are settled. Furthermore, the Plan may not pay any interest to NASCO in connection with its receipt of the Required Restorative Payments, nor pledge Plan assets to secure any portion of the Required Restorative Payments.

26. Pursuant to this proposed exemption, the Plan may not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, as noted above, under certain circumstances the Plan may reimburse NASCO for reasonable legal expenses arising from the Claims that NASCO paid to non-NASCO-related parties for representation of the Plan and its interests (as opposed to representation of NASCO or the interests of any party other than the Plan) where NASCO was not otherwise reimbursed by a non-Plan party.

27. Finally, the exemptive relief provided under this proposed exemption is conditioned upon the Department's assumption that the material facts and representations set forth above in the Summary of Facts and Representation section are true and accurate at all times. In the event that a material fact or representation detailed above is untrue or inaccurate, the exemptive relief provided under this exemption will cease immediately.

Statutory Findings

28. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria is discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Proposed Transactions.[102] In this regard, not later than 90 days after the resolution of the litigation, the Independent Fiduciary must submit a written report to the Department demonstrating that all of the requirements of this exemption have been met.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plan because, among other things, the Plan's receipt of the Required Restorative Payments will substantially improve the Plan's funding status, which will enhance the Plan's ability to meet its obligations to fund benefit obligations to participants and beneficiaries and help the Plan avoid the imposition of benefit limitations imposed under Code section 436.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because, among other things, the Plan will repay NASCO the lesser of the Required Restorative Payment Amount received by the Plan, or the amount the Plan receives in proceeds from the Claims, ensuring that the Proposed Transactions will result in an increase in Plan assets of at least the total amount of Restorative Payments (less reasonable legal expenses related to the Claims paid by NASCO to unrelated third parties, as confirmed and approved by the Independent Fiduciary). Further,

[101] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy.''

[102] This proposed exemption would require that if the Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the successor Independent Fiduciary must, among other things, assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, the Plan Sponsor and the Plan must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciaries. The notification must contain all material information including the qualifications of the successor Independent Fiduciary.

this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) any fiduciary of the Plan; (b) any fiduciary of the Trust; (c) NASCO; and/or (d) any person or entity related to a person or entity described in (a)–(c).

Summary

29. Based on the conditions described above, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements under ERISA Section 408(a) for the Department to make findings that support its issuance of a proposed exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) and in accordance with the procedures set forth in the Department's exemption procedure regulation.[103]

Section I. Definitions

(a) The term ''Attorney Fees'' means reasonable legal expenses paid by NASCO on behalf of the Plan in connection with the Claims, if such fees are reviewed and approved by a qualified independent fiduciary who confirms that the fees were reasonably incurred and paid by NASCO to unrelated third parties. For the purposes of this exemption, the Attorney Fees reimbursable to NASCO do not include: (1) legal expenses paid by the Plan; and (2) legal expenses paid by NASCO for representation of NASCO or the interests of any party other than the Plan.

(b) The term ''NASCO'' means National Account Service Company LLC.

(c) The term ''Claims'' means the legal claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon), to recover certain losses incurred by the Plan in the first quarter of 2020.

(d) The term ''Contribution and Assignment Agreement'' means the written agreement between NASCO and the Plan, dated March 1, 2021, containing all material terms regarding NASCO's agreement to make Required Restorative Payments to the Plan in return for the Plan's potential Repayment to NASCO of an amount that is no more than lesser of the Required Restorative Payment Amount (as described in Section I(h)) received by the Plan or the amount of litigation proceeds the Plan receives from the Claims, plus reasonable attorney fees paid to unrelated third parties by NASCO in connection with the Claims.

(e) The term ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (Gallagher) or a successor Independent Fiduciary to the extent Gallagher or the successor Independent Fiduciary continues to serve in such capacity who:

(1) Is not an affiliate of NASCO and does not hold an ownership interest in NASCO or affiliates of NASCO;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries; [104]

(5) Has not received gross income from NASCO or its affiliates during any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from NASCO or from affiliates of NASCO while serving as an Independent Fiduciary. This prohibition will continue for six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The ''Plan'' means the Non-Contributory Retirement Program for Certain Employees of National Account Service Company.

(g) The term ''Plan Losses'' means the $51,662,561 in Plan losses the BCBSA's National Employee Benefits Committee alleges were the result of breaches of fiduciary responsibilities and breaches of contract by Allianz Global Investors U.S. LLC and/or Aon Investments USA Inc.

(h) The term ''Restorative Payments'' means the $50 Million in payments NASCO is required to pay the Plan by December 21, 2025, as set forth in the Contribution and Assignment Agreement.

(i) The ''Repayment'' means the payment, if any, that the Plan will transfer to NASCO following the Plan's receipt of proceeds from the Claims, where the Repayment is made following the full and complete resolution of the Claims, and in a manner that is consistent with the terms of the exemption.

Section II. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A), (B) and (D) and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (B) and (D), shall not apply, effective September 2, 2020, to the following transactions: NASCO's transfer of Restorative Payments to the Plan; and, in return, the Plan's Repayment of an amount to NASCO, which must be no more than the lesser of the Restorative Payment received by the Plan or the amount of litigation proceeds the Plan received from the Claims, plus reasonable Attorney Fees, provided that the Definitions set forth in Section I and the Conditions set forth in Section III are met.

Section III. Conditions

(a) The Plan receives the entire Restorative Payment Amount no later than December 31, 2025;

(b) In connection with its receipt of the Required Restorative Payments, the Plan does not release any claims, demands and/or causes of action the Plan may have against the following: (1) any fiduciary of the Plan; (2) any fiduciary of the Trust; (3) NASCO; and/or (4) any person or entity related to a person or entity identified in (1)–(3) of this paragraph;

(c) The Plan's Repayment to NASCO is for no more than the lesser of the total Restorative Payments received by the Plan or the amount of litigation

[103] 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[104] 29 CFR 2509.75–4.

proceeds the Plan receives from the Claims. The Plan's Repayment to NASCO may only occur after the Independent Fiduciary has determined that: all the conditions of the exemption are met; the Plan has received all the Restorative Payments it is due; and the Plan has received all the litigation proceeds it is due. The Plan's Repayment to NASCO must be carried out in a manner designed to minimize unnecessary costs and disruption to the Plan and its investments;

(d) A qualified independent fiduciary (the Independent Fiduciary, as further defined in Section II(e)), acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) must:

(1) Review, negotiate and approve the terms and conditions of the Restorative Payments and the Repayment and the Contribution and Assignment Agreement, all of which must be in writing, before the Plan enters into those transactions/agreement;

(2) Determine that the Restorative Payments, the Repayment, and the terms of the Contribution and Assignment Agreement, are prudent and in the interest of the Plan and its participants and beneficiaries;

(3) Confirm that the Required Restorative Payment Amount was fully and timely made;

(4) Monitor the litigation related to the Claims and confirm that the Plan receives, in a timely manner, its proper share of any litigation or settlement proceeds received by the Trust;

(5) Ensure that any Repayment by the Plan to NASCO for legal expenses in connection with the Claims is limited to only reasonable legal expenses that were paid by NASCO to unrelated third parties;

(6) Ensure that all of the conditions and definitions of this proposed exemption are met;

(7) Submit a written report to the Department's Office of Exemption Determinations demonstrating and confirming that the terms and conditions of the exemption were met, within 90 days after the Repayment; and

(8) Not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations codified at 29 CFR Section 2509.75–4.

(f) The Plan pays no interest in connection with the Restorative Payments;

(g) The Plan does not pledge any Plan assets to secure any portion of the Restorative Payments;

(h) The Plan does not incur any expenses, commissions, or transaction costs in connection with the Proposed Transactions. However, if first approved by the Independent Fiduciary, the Plan may reimburse NASCO for reasonable legal expenses paid in connection with the Claims by NASCO to non-NASCO-related parties. For purposes of determining the amount of Attorney Fees the Plan may reimburse to NASCO under this proposal, the amount of reasonable attorney fees paid by NASCO on behalf of the Plan in connection with the Claims must be reduced by the amount of legal fees received by NASCO in connection with the Claims from any non-Plan party (*i.e.,* pursuant to a court award);

(i) The proposed transactions do not involve any risk of loss to either the Plan or the Plan's participants and beneficiaries;

(j) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

(k) If an Independent Fiduciary resigns, is removed, or for any reason is unable to serve as an Independent Fiduciary, the Independent Fiduciary must be replaced by a successor entity that: (1) meets the definition of Independent Fiduciary detailed above in Section II(e); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set forth in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible, including before the appointment of a successor Independent Fiduciary, NASCO must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information regarding the successor Independent Fiduciary, including the successor Independent Fiduciary's qualifications; and

(l) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate at all times.

Notice to Interested Persons

The Applicant will give notice of the proposed exemption to all interested persons and all of the parties to the litigation described above, within fifteen calendar days after the publication of the notice of proposed exemption in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to the Department's regulations codified at 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due by October 11, 2022.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of August, 2022.

Timothy D. Hauser,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–17995 Filed 8–23–22; 8:45 am]

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Part III

Commodity Futures Trading Commission

17 CFR Part 50

Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AF18

Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is modifying its existing interest rate swap clearing requirement regulations under applicable provisions of the Commodity Exchange Act (CEA) due to the global transition from reliance on certain interbank offered rates (IBORs) (*e.g.,* the London Interbank Offered Rate (LIBOR)) that have been, or will be, discontinued as benchmark reference rates to alternative reference rates, which are predominantly overnight, nearly risk-free reference rates (RFRs). The amendments update the set of interest rate swaps that are required to be submitted for clearing pursuant to the CEA and the Commission's regulations to a derivatives clearing organization (DCO) that is registered under the CEA (registered DCO) or a DCO that has been exempted from registration under the CEA (exempt DCO) to reflect the market shift away from swaps that reference IBORs to swaps that reference RFRs.

DATES: This rule is effective September 23, 2022, except for amendatory instructions 3 and 5, which are effective July 1, 2023. Specific compliance dates are discussed in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, at 202–418–5684 or *sjosephson@cftc.gov;* or Daniel O'Connell, Special Counsel, at 202–418–5583 or *doconnell@cftc.gov;* each in the Division of Clearing and Risk at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Commission's Existing Interest Rate Swap Clearing Requirement

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established a comprehensive new regulatory framework for swaps.[1] Title VII of the Dodd-Frank Act (Title VII) amended the CEA to require, among other things, that a swap be cleared through a registered DCO or an exempt DCO if the Commission has determined that the swap, or group, category, type, or class of swaps, is required to be cleared, unless an exception to the clearing requirement applies.[2] The CEA, as amended by Title VII, provides that the Commission may issue a clearing requirement determination based either on a Commission-initiated review of a swap,[3] or a swap submission from a DCO.[4]

Section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider the following five factors when making a clearing requirement determination: (I) the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (II) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is traded; (III) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCOs available to clear the contract; (IV) the effect on competition, including appropriate fees and charges applied to clearing; and (V) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.[5]

The Commission adopted its first clearing requirement determination (First Determination) in 2012.[6] The First Determination was implemented between March 2013 and October 2013

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[3] Section 2(h)(2)(A) of the CEA, 7 U.S.C. 2(h)(2)(A). Section 2(h)(2)(A) provides for a Commission-initiated review process whereby the Commission, on an ongoing basis, must review swaps, or a group, category, type, or class of swaps, to determine whether a swap, or a group, category, type, or class of swaps, should be required to be cleared.

[4] Section 2(h)(2)(B) of the CEA, 7 U.S.C. 2(h)(2)(B). Section 2(h)(2)(B)(i) requires that each DCO submit to the Commission each swap, or group, category, type, or class of swaps, that it plans to accept for clearing. The swaps subject to this determination were submitted by DCOs pursuant to CEA section 2(h)(2)(B)(i) and regulation § 39.5(b), 17 CFR 39.5(b). Pursuant to section 2(h)(2)(B)-(C) of the CEA, the Commission must review swap submissions from DCOs to determine whether the swaps should be subject to required clearing. Regulation § 39.5(b) implements the procedural elements of section 2(h)(2)(B)-(C) by establishing the process by which a DCO must submit the swaps it offers for clearing to the Commission for purposes of considering a clearing requirement determination.

[5] 7 U.S.C. 2(h)(2)(D)(ii).

[6] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (First Determination).

based on the schedule described in regulation § 50.25 and the preamble to the First Determination.[7] The First Determination applied to interest rate swaps in four classes: fixed-to-floating swaps, basis swaps, forward rate agreements (FRAs), and overnight index swaps (OIS).[8]

In making its initial interest rate swap clearing determination, the Commission focused on the size of the interest rate swap market relative to the swap market overall, as well as the fact that these swaps were already widely being cleared.[9] As set forth in regulation § 50.4(a), the Commission required clearing for four classes of interest rate swaps having six specifications related to (i) the currency in which the notional and payment amounts are specified; (ii) the floating rate index referenced in the swap; (iii) the stated termination date; (iv) optionality; (v) dual currencies; and (vi) conditional notional amounts.[10] The Commission also limited the interest rate swaps required to be cleared to those denominated in four currencies (U.S. dollar (USD), Euro (EUR), British pound (GBP), and Japanese yen (JPY)). The Commission noted that interest rate swaps denominated in these currencies comprised an outsized portion of the interest rate swap market in terms of notional amounts outstanding and trading volumes compared to interest rate swaps denominated in other currencies.[11]

The First Determination covered a number of interest rate swaps that reference IBORs, including fixed-to-floating swaps, basis swaps, and FRAs denominated in USD, GBP, JPY, and EUR, referencing USD LIBOR, GBP LIBOR, JPY LIBOR, and the Euro Interbank Offered Rate (EURIBOR), respectively. The First Determination also included OIS denominated in EUR referencing the Euro Overnight Index Average (EONIA), as well as OIS denominated in USD referencing FedFunds and GBP referencing the Sterling Overnight Index Average (SONIA). The Commission observed that interest rate swaps referencing those rates had significant outstanding notional amounts and trading liquidity.[12] The First Determination was implemented throughout 2013 by type of market participant pursuant to regulation § 50.25, in subpart B of part 50 of the Commission's regulations.

The Commission adopted its second clearing requirement determination for interest rate swaps (Second Determination) in 2016.[13] The Second Determination covered interest rate swaps in nine additional currencies: Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK), and Swiss franc (CHF), and was implemented between December 2016 and October 2018 based on the effective dates of analogous clearing mandates adopted by authorities in non-U.S. jurisdictions.[14] The Commission adopted the Second Determination largely in order to further harmonize its interest rate swap clearing requirement with those of other jurisdictions that had already issued, or were in the process of issuing, interest rate swap clearing mandates.[15] The Second Determination also covered swaps that reference other IBORs, including fixed-to-floating swaps denominated in SGD referencing the Singapore Swap Offer Rate (SOR–VWAP) and fixed-to-floating swaps denominated in CHF referencing CHF LIBOR.[16]

B. End of LIBOR

LIBOR is an interest rate benchmark that was intended to measure the average rate at which a bank can obtain unsecured funding in the London interbank market for a given tenor and currency. It had been one of the world's most frequently referenced interest rate benchmarks, serving as a reference rate for a wide variety of swaps and other financial products. Over the years, LIBOR was calculated based on submissions from panels of contributor banks and published every London business day. Immediately prior to January 1, 2022, LIBOR was published for five currencies (USD, GBP, EUR, CHF, and JPY) and seven tenors (overnight or spot-next depending on currency, one-week, one-month, two-month, three-month, six-month, and 12-month), resulting in 35 individual LIBOR rates.[17] Beginning this year, these LIBOR rates have almost entirely ceased publication or become nonrepresentative of the underlying market they are intended to measure.

Government investigations into LIBOR that occurred nearly a decade ago, as well as a decline in the volume of interbank lending transactions that LIBOR was intended to measure, gave rise to concerns regarding the integrity and reliability of LIBOR and other IBORs.[18] Although LIBOR was subject to

[7] 17 CFR 50.25; First Determination, 77 FR 74319–74321.

[8] *See generally* First Determination. By way of background, an interest rate swap is generally an agreement by counterparties to exchange payments based on a series of cash flows over a specified period of time, typically calculated using two different rates. Fixed-to-floating swaps are interest rate swaps in which the payment(s) owed on one leg of the swap is calculated using a fixed rate, and the payment(s) owed on the other leg is calculated using a floating rate. Basis swaps are interest rate swaps for which the payments for both legs are calculated using floating rates. FRAs are interest rate swaps in which payments are exchanged on a predetermined date for a single period and one leg of the swap is calculated using a fixed rate while the other leg is calculated using a floating rate set on a predetermined date. OIS are interest rate swaps for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

[9] *Id.* at 74287, 74307. To this day, significant amounts of notional in interest rate swaps are traded in markets around the world, and these swaps comprise an outsized portion of notional among all swaps. According to the Bank for International Settlements (BIS), as of December 2021, there was an estimated $475 trillion in outstanding notional of interest rate swaps, which represents approximately 79% of the total outstanding notional of all over-the-counter (OTC) derivatives. *See* BIS, ''Interest rate derivatives,'' Table D7, H2 2021, updated May 12, 2022, available at *https://stats.bis.org/statx/srs/table/d7?f=pdf;* BIS, ''Global OTC derivatives market,'' Table D5.1, H2 2021, updated May 12, 2022, available at *https://stats.bis.org/statx/srs/table/d5.1?f=pdf;* BIS, ''OTC derivatives statistics at end-December 2021,'' May 12, 2022, available at *https://www.bis.org/publ/otc_hy2205.htm;* BIS, ''Global OTC derivatives market,'' Table D5.2, H2 2021, updated May 12, 2022, available at *https://stats.bis.org/statx/srs/table/d5.2?f=pdf.*

[10] 17 CFR 50.4(a).

[11] First Determination, 77 FR 74308.

[12] *Id.* at 74309.

[13] Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps, 81 FR 71202 (Oct. 14, 2016) (Second Determination).

[14] 17 CFR 50.26; Second Determination, 81 FR 71202–71228.

[15] Second Determination, 81 FR 71203–71205. The Commission explained that such harmonization serves an important anti-evasion goal: if a non-U.S. jurisdiction issued a clearing requirement, and a swap dealer located in the United States were not subject to an analogous a clearing requirement under U.S. law, then market participants potentially could avoid the non-U.S. jurisdiction's clearing requirement by entering into a swap with a swap dealer located in the United States. *Id.* at 71203.

[16] *Id.* at 71205. These IBOR rates also were discussed specifically in the notice of proposed rulemaking (NPRM). Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates, 87 FR 32898 at 32914–32915 (May 31, 2022) (NPRM).

[17] *See generally* ICE Benchmark Administration (IBA), LIBOR, available at *https://www.theice.com/iba/libor.*

[18] *See, e.g.,* International Organization of Securities Commissions (IOSCO), Principles for Financial Benchmarks, July 2013, at 1, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf. See also* David Bowman, et al., ''How Correlated Is LIBOR With Bank Funding Costs?,'' FEDS Notes, June 29, 2020, available at *https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm;* and Alternative Reference Rates Committee, *Second Report,* Mar. 2018, at 1–3, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

a number of significant reform efforts,[19] regulators and global standard-setting bodies did not view these reforms as a long-term solution. On July 27, 2017, Andrew Bailey, then-Chief Executive of the United Kingdom (UK) Financial Conduct Authority (FCA), LIBOR's primary regulator, announced that the FCA would not use its authority to compel LIBOR panel banks to contribute to the benchmark after 2021.[20] On March 5, 2021, the FCA announced that publication of LIBOR would cease on December 31, 2021, for the following: [21]

(i) EUR LIBOR in all tenors;

(ii) CHF LIBOR in all tenors;

(iii) JPY LIBOR in the spot-next, one-week, two-month, and 12-month tenors;

(iv) GBP LIBOR in the overnight, one-week, two-month, and 12-month tenors; and

(v) USD LIBOR in the one-week and two-month tenors.

The FCA further determined that GBP and JPY LIBOR in one-month, three-month, and six-month tenors would become nonrepresentative after December 31, 2021.[22] Additionally, the FCA determined that USD LIBOR in the overnight and 12-month tenors would cease after June 30, 2023, and that USD LIBOR in the one-month, three-month, and six-month tenors would not be representative after that date.[23] At this time, EUR, CHF, JPY, and GBP LIBOR in all tenors, and USD LIBOR in the one-week and two-month tenors, have ceased publication or become nonrepresentative of the underlying market they are intended to measure.

The circumstances surrounding the transition from IBORs to RFRs are the result of significant private and public sector coordinated efforts.[24] As plans to retire LIBOR proceeded, regulators in the United States and other jurisdictions worked to identify, develop, and implement reference rates to serve as alternatives to LIBOR and other IBORs.[25] In the United States, the Alternative Reference Rates Committee (ARRC), convened in 2014 by the Federal Reserve Board (FRB) and the Federal Reserve Bank of New York (FRBNY) and comprised of private market participants and *ex officio* banking and financial sector regulators, selected the Secured Overnight Financing Rate (SOFR) [26] as its preferred alternative to USD LIBOR.[27] The ARRC developed a Paced Transition Plan, which has now been completed, to facilitate an orderly transition from USD LIBOR to USD SOFR.[28]

Table 1 that follows this paragraph contains a non-exhaustive list of RFRs that have been identified to replace IBORs. Each of these RFRs is currently being published.[29]

TABLE 1—RFRS IDENTIFIED FOR IBORS

Currency	Index	Identified RFR	RFR administrator	Secured
AUD	Bank Bill Swap Rate (BBSW)	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA).	Reserve Bank of Australia	No.
CAD	Canadian Dollar Offered Rate (CDOR).	Canadian Overnight Repo Rate Average (CORRA).	Bank of Canada	Yes.
CHF	LIBOR	Swiss Average Rate Overnight (SARON).	SIX Swiss Exchange	Yes.
EUR	LIBOR	Euro Short-Term Rate (€STR)	European Central Bank (ECB)	No.
	EONIA	€STR	ECB	No.
	EURIBOR	€STR	ECB	No.
GBP	LIBOR	SONIA	Bank of England	No.
HKD	Hong Kong Interbank Offered Rate (HIBOR).	Hong Kong Dollar Overnight Index Average (HONIA).	Treasury Market Association	No.

[19] *See generally* IBA, Methodology, available at *https://www.theice.com/publicdocs/ICE_LIBOR_Methodology.pdf;* H.M. Treasury, The Wheatley Review of LIBOR: Final Report, Sept. 2012, available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf;* Intercontinental Exchange (ICE), ICE LIBOR Evolution, Apr. 25, 2018, at 4, available at *https://www.theice.com/publicdocs/ICE_LIBOR_Evolution_Report_25_April_2018.pdf.*

[20] Andrew Bailey, ''The future of Libor,'' July 27, 2017, available at *https://www.fca.org.uk/news/speeches/the-future-of-libor.*

[21] FCA, FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks, Mar. 5, 2021 (FCA Announcement on LIBOR Cessation), available at *https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.*

[22] FCA Announcement on LIBOR Cessation. The FCA stated that once a LIBOR rate becomes nonrepresentative, its representativeness will not be restored.

[23] *Id.*

[24] While not all benchmark rates considered to be alternative reference rates for IBORs may be RFRs, efforts to transition markets away from IBORs have focused on RFRs as alternatives. For purposes of brevity, the Commission uses the term ''RFR'' in this final rulemaking to refer to alternative reference rates.

[25] For additional background information, *see generally* Swap Clearing Requirement To Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 86 FR 66476 at 66480 (Nov. 23, 2021) (Request for Information (RFI)).

[26] USD SOFR is an RFR that measures the cost of overnight repurchase agreement transactions collateralized by U.S. Treasury securities. FRBNY, Statement Introducing the Treasury Repo Reference Rates, Apr. 3, 2018, available at *https://www.newyorkfed.org/markets/opolicy/operating_policy_180403. See also* FRBNY, Secured Overnight Financing Rate Data, available at *https://apps.newyorkfed.org/markets/autorates/SOFR#:~:text=The%20SOFR%20is%20calculated%20as,LLC%2C%20an%20affiliate%20of%20the;* and FRBNY, Additional Information about the Treasury Repo Reference Rates, available at *https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information.* USD SOFR has been published each New York business day at 8 a.m. ET since April 3, 2018, by the FRBNY in cooperation with the U.S. Office of Financial Research (OFR).

[27] ARRC, ''The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate,'' June 22, 2017, available at *https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf.*

[28] ARRC, Paced Transition Plan, available at *https://www.newyorkfed.org/arrc/sofr-transition#pacedtransition.* The Paced Transition Plan called for (i) the establishment of infrastructure for futures and/or OIS trading in USD SOFR by the second half of 2018; (ii) the start of trading in futures and/or bilateral, uncleared OIS that reference USD SOFR by the end of 2018; (iii) the start of trading in cleared OIS that reference USD SOFR in the effective Federal funds rate (EFFR) price alignment interest (PAI) and discounting environment by the end of the first quarter of 2019; (iv) Chicago Mercantile Exchange, Inc. (CME)'s and LCH Limited (LCH)'s conversion of discounting, and PAI and price alignment amount, from EFFR to USD SOFR with respect to all outstanding cleared USD-denominated swaps by October 16, 2020; and (v) the ARRC's endorsement of a term reference rate based on USD SOFR derivatives markets by the end of the first half of 2021. All steps in this plan have been completed as of July 29, 2021.

[29] *See generally* Financial Stability Board (FSB), Reforming Major Interest Rate Benchmarks, Nov. 20, 2020, at 29–43, 54–55, available at *https://www.fsb.org/2020/11/reforming-major-interest-rate-benchmarks-2020-progress-report/. See also* Andreas Schrimpf and Vladislav Sushko, ''Beyond Libor: a primer on the new reference rates,'' BIS Quarterly Review, Mar. 2019, at 35, available at *https://www.bis.org/publ/qtrpdf/r_qt1903e.pdf;* Bank of England, Preparing for 2022: What You Need to Know about LIBOR Transition, Nov. 2018, at 10, *https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/what-you-need-to-know-about-libor-transition.pdf;* ISDA, et al., IBOR Global Benchmark Survey 2018 Transition Roadmap, Feb. 2018, at 32, *https://www.isda.org/a/g2hEE/IBOR-Global-Transition-Roadmap-2018.pdf;* European Central Bank, Euro Short-Term Rate (€STR), available at *https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_short-term_rate/html/index.en.html#:~:text=The%20euro%20short%2Dterm%20rate,activity%20on%201%20October%202019.*

TABLE 1—RFRS IDENTIFIED FOR IBORS—Continued

Currency	Index	Identified RFR	RFR administrator	Secured
JPY	LIBOR	Tokyo Overnight Average Rate (TONA).	Bank of Japan	No.
MXN	Term Interbank Equilibrium Interest Rate (TIIE).	Overnight TIIE	Banco de Mexico	Yes.
SGD	SOR	Singapore Overnight Rate Average (SORA).	Association of Banks in Singapore (ABS).	No.
	Singapore Interbank Offered Rate (SIBOR).	SORA	ABS	No.
USD	LIBOR	SOFR	FRBNY	Yes.

Regulators and global standard-setting bodies have urged market participants to accelerate their adoption of USD SOFR and other RFRs and cease entering new swaps referencing LIBOR and other IBORs,[30] and Commission staff have issued no-action letters to facilitate the transition.[31] In the United States, on July 13, 2021, the Commission's Market Risk Advisory Committee adopted SOFR First, a phased initiative to switch interdealer trading conventions from reliance on USD LIBOR to USD SOFR as a reference rate for swaps.[32] SOFR First was implemented in four phases between July 26, 2021 and December 16, 2021.[33] SOFR First mirrors similar best practices adopted in other jurisdictions to increase activity in swaps referencing RFRs.[34]

[30] *See, e.g.,* FSB, FSB Statement Welcoming Smooth Transition Away from LIBOR, Apr. 5, 2022, available at *https://www.fsb.org/wp-content/uploads/P050422.pdf.*

[31] *See, e.g.,* CFTC Letter Nos. 20–25 and 21–28, available at *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm.*

[32] CFTC, ''CFTC Market Risk Advisory Committee Adopts SOFR First Recommendation at Public Meeting,'' July 13, 2021, available at *https://www.cftc.gov/PressRoom/PressReleases/8409-21.*

[33] CFTC, CFTC's Interest Rate Benchmark Reform Subcommittee Issues User Guide for the Transition of Exchange-Traded Derivatives Activity to SOFR, Dec. 16, 2021, available at *https://www.cftc.gov/PressRoom/PressReleases/8469-21.* SOFR First spurred a significant shift in liquidity toward USD SOFR, particularly in the interbank market. *See* J.P. Morgan, SOFR Takes Over, Mar. 30, 2022, available at *https://www.jpmorgan.com/solutions/cib/markets/libor-sofr-transition;* Chatham Financial, ''LIBOR transition update—2022,'' Apr. 19, 2022, available at *https://www.chathamfinancial.com/insights/libor-transition-update.*

[34] *See, e.g.,* Bank of England, ''The FCA and the Bank of England encourage market participants in further switch to SONIA in interest rate swap markets,'' Sept. 28, 2020, available at *https://www.bankofengland.co.uk/news/2020/september/fca-and-boe-joint-statement-on-sonia-interest-rate-swap;* Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, ''Transition of Quoting Conventions in the JPY interest rate swaps market ('TONA First'),'' July 26, 2021, available at *https://www.boj.or.jp/en/paym/market/jpy_cmte/data/cmt210726b.pdf;* European Securities and Markets Authority (ESMA), ''Recommendations from the Working Group on Euro Risk-Free Rates on the switch to risk free rates in the interdealer market,'' July 1, 2021, available at *https://www.esma.europa.eu/sites/default/files/library/esma81-391-73_eur_rfr_wg_statements_on_estr_first_and_ccs.pdf.*

C. Update on Work by DCOs To Support the Transition to RFRs

As explained in the NPRM,[35] the Chicago Mercantile Exchange Group (CME),[36] the London Stock Exchange Group (LSEG),[37] and Eurex Clearing AG (Eurex) all operate or are registered DCOs that offer for clearing RFR swaps subject to this final rule. Japan Securities Clearing Corporation (JSCC), an exempt DCO, offers JPY TONA swaps for clearing. OTC Clearing Hong Kong Limited (HKEX), another exempt DCO, offers USD SOFR and EUR €STR swaps for clearing.[38] Exempt DCOs, such as JSCC and HKEX, do not offer customer clearing to U.S. customers.

DCOs played an important role in the transition from IBORs to RFRs by offering clearing services for RFR swaps and converting cleared EUR EONIA and GBP, EUR, CHF, and JPY LIBOR swaps to RFR OIS.[39] These efforts have helped to facilitate a smooth transition from cleared IBOR swaps to cleared RFR swaps.

In responding to the Commission's November 23, 2021 RFI regarding updates to the clearing requirement to account for the transition to RFRs, CME, LSEG, and Eurex also discussed plans to convert cleared USD LIBOR swaps to market standard USD SOFR OIS. In April 2022, LCH published a consultation on its proposed conversion process.[40] Having learned from the conversion process for non-USD LIBOR and EUR EONIA interest rate swaps at the end of 2021 and received input based on this consultation, LCH is ''working closely with industry bodies, such as ARRC and [International Swaps and Derivatives Association (ISDA)], and with [its] user-base, to ensure clarity around the [USD LIBOR] transition process.'' [41] In response to LCH's consultation, market participants have not raised any operational concerns about the USD LIBOR swap conversion process.

Since the publication of the NPRM, CME and Eurex published more detailed information regarding their plans to convert cleared USD LIBOR contracts to USD SOFR OIS, ahead of the June 30, 2023 end date for USD LIBOR.[42] Additionally, JSCC converted all its JPY LIBOR interest rate swaps into JPY TONA swaps pursuant to plans announced in 2021.[43] Finally, HKEX implemented RFR fallback rates identified by the ISDA in its IBOR Fallbacks Supplement for the interest rate swaps it offers for clearing.[44]

[35] NPRM, 87 FR 32902.

[36] CME Group is the parent company of CME.

[37] LSEG has majority ownership of LCH Group, which operates LCH.

[38] *See* Hong Kong Exchanges and Clearing, Interest Rate Swaps, available at *https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en.*

[39] Conversion events were intended to address market participant concerns related to potential bifurcation of liquidity between trading in legacy IBOR swaps that had fallen back to RFRs (*i.e.,* as a result of the operation of DCO rules implementing ISDA's fallbacks) and new RFR OIS, as well as certain operational costs. NPRM, 87 FR 32902; *see also* RFI, 86 FR 66484.

[40] LCH, USD LIBOR Contract Conversion, Apr. 2022, available at *https://www.lch.com/system/files/media_root/LCH_USD%20LIBOR%20Conversion_Consultation.pdf* (proposing a two-stage conversion based on product category over two weekends in April and May 2023).

[41] LCH, LCH Benchmark Reform Overview, available at *https://www.lch.com/Services/swapclear/benchmark-reform.*

[42] CME, CME Conversion for USD LIBOR Cleared Swaps, June 2022, available at *https://www.cmegroup.com/trading/interest-rates/files/cme-conversion-for-usd-libor-cleared-swaps.pdf* (proposing a two-stage conversion (based on product category) occurring on two dates in May and July 2023); Eurex, ''Eurex Clearing Readiness Newsflash: EurexOTC Clear: Details on OTCClear transition plan for transactions referencing the USD Libor benchmark,'' June 8, 2022, available at *https://www.eurex.com/ec-en/find/circulars/Eurex-Clearing-Readiness-Newsflash-EurexOTC-Clear-Details-on-OTCClear-transition-plan-for-transactions-referencing-the-USD-Libor-benchmark-3103098* (proposing a conversion on a single date ahead of June 30, 2023).

[43] This conversion process is discussed in JSCC's response to the RFI, available at *https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.*

[44] HKEX, Benchmark Reform, Feb. 4, 2021, available at *https://www.hkex.com.hk/Services/*

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To be clear, these final rules apply only to swaps entered into on or after the implementation dates discussed below. As was in the case with the First Determination in 2012 and the Second Determination in 2016, only these new swaps are required to be cleared. Market participants may wish to clear other interest rate swaps in their portfolios on a voluntary basis, as has been the case with a majority of RFR OIS. As reflected in the data presented below, the overwhelming majority of RFR OIS are being voluntarily cleared already.

D. Update on Work by Market Participants To Support the Transition to RFRs

Market participants also play a critical role in the transition from reliance on IBORs to the adoption of RFRs through engagement with RFR working groups, such as ARRC, and the provision of trading liquidity in interest rate swaps referencing RFRs.[45] As explained in the NPRM, many RFR swaps are now voluntarily cleared by market participants in large proportions.[46] In its recent public announcements, ISDA reported that the proportion of cleared OTC and exchange-traded interest rate derivatives denominated in USD and referencing SOFR climbed to a record high of more than 50% in May 2022.[47]

Clearing/OTC-Clear/Special-Topics/Benchmark-Reform?sc_lang=en. For further discussion of ISDA's fallbacks, *see* RFI, 86 FR 66483–66484.

[45] ISDA played a key role in the development of contractual fallbacks for IBORs, ensuring that swaps documented under ISDA agreements that reference certain key IBORs can transition to adjusted versions of corresponding RFRs when those IBORs cease or become non-representative. ISDA, ''Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks,'' Oct. 23, 2020, available at *http://assets.isda.org/media/3062e7b4/23aa1658.pdf;* ISDA, ISDA 2020 IBOR Fallbacks Protocol, Oct. 23, 2020, available at *http://assets.isda.org/media/3062e7b4/08268161-pdf/;* ISDA 2021 Fallbacks Protocol, December 2021 Benchmark Module, Dec. 16, 2021, available at *https://www.isda.org/a/UhtgE/ISDA-2021-Fallbacks-Protocol_December-2021-Benchmark-Module_Publication-Version.pdf. See also* RFI, 86 FR 66483–66484 (discussing ISDA's IBOR fallbacks protocol and supplement).

[46] NPRM, 87 FR 32903.

[47] ISDA, ISDA-Clarus RFR Adoption Indicator, May 2022, available at *https://www.isda.org/a/AlWgE/ISDA-Clarus-RFR-Adoption-Indicator-May-2022.pdf?_zs=gOSgP1&_zl=PRxk6. See also* ISDA, SwapsInfo, Interest Rate and Credit Derivatives Weekly Trading Volume: Week Ending June 10, 2022, June 13, 2022, available at *http://analysis.swapsinfo.org/2022/06/interest-rate-and-credit-derivatives-weekly-trading-volume-week-ending-june-10-2022/* (showing for the week ending June 10, 2022 a year-to-date increase over 2021 of 258% in traded notional and 364% in trade count for OIS, versus a 2% increase in traded notional and 16% decrease in trade count for fixed-to-floating swaps).

II. Domestic and International Coordination Efforts

The global shift from IBORs to RFRs represents a historic effort by international bodies such as IOSCO and FSB, regulators, cross-jurisdictional working groups, market infrastructure providers, market participants, and others, to move the global interest rate swap market toward more reliable benchmarks.[48] Due to the cross-border nature of this effort and the size of the affected markets, the Commission believes it is a priority to engage with domestic and international regulators, as it makes changes to the swap clearing requirement. As with prior clearing requirement determinations, the Commission engaged in ongoing consultation and coordination with regulatory authorities and with market participants.

A. Domestic Coordination Efforts

The Commission is committed to working with domestic authorities, such as the FRB, FRBNY, and the Securities and Exchange Commission, to ensure transparency in its efforts and, to the greatest extent possible, consistency in the transition from IBORs to RFRs. For example, the Commission sought input from domestic authorities through this rulemaking process and continued its participation in relevant coordinating committees. Commission staff also shared a draft of this final rulemaking with certain domestic authorities.

B. International Coordination Efforts

Section 752(a) of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards for the regulations of swaps.[49] The Commission accomplished this with respect to the Second Determination by considering the ways in which it could harmonize its clearing requirement with clearing requirements in other jurisdictions.[50] The Commission has long recognized the interconnectedness of the interest rate swap market and the importance of consulting and coordinating with its counterparts in other jurisdictions in the adoption of clearing requirements in order to (1) promote regulatory consistency and certainty and (2) prevent the evasion of clearing requirements.[51]

In particular, as part of the ongoing regulatory dialogue among authorities, Commission staff consulted with counterparts, including those at Australian Securities and Investments Commission (ASIC), Bank of England, ESMA, Hong Kong Securities and Futures Commission (HKSFC),[52] Japanese Financial Services Agency (JFSA), Monetary Authority of Singapore (MAS), and Swiss Financial Market Supervisory Authority (FINMA). This type of dialogue reflects an effort to ensure consistency in interest rate swap clearing requirements across jurisdictions.

The discussion below sets forth relevant updates and coordination efforts among international authorities. As part of this rulemaking process, the Commission sought input from overseas counterparts to ensure a coordinated approach to required clearing of interest rate swaps during the move from use of swaps referencing IBORs to swaps referencing RFRs and shared information regarding this final rulemaking with international counterparts.[53]

C. Interest Rate Swap Clearing Requirements in Other Jurisdictions

Regulators and public-private working groups have been working to identify, develop, and encourage market uptake of interest rate swaps referencing RFRs to replace interest rate swaps referencing IBORs. As relevant to these amendments, RFRs identified as alternatives for IBORs, in addition to SOFR for USD, include: (i) SONIA for GBP; (ii) SARON for CHF; (iii) TONA for JPY; and (iv) €STR for EUR.

In finalizing these amendments, the Commission considered relevant changes to clearing requirements in other jurisdictions. As noted in the NPRM, the Commission sought to

[48] *See generally* NPRM, 87 FR 32903–32904; and RFI, 86 FR 66478–66482.

[49] Section 752 can be found in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This section is not codified in the CEA.

[50] Second Determination, 81 FR 71203.

[51] *E.g.,* Second Determination, 81 FR 71223 (noting that ''the interest rate swaps market is global and market participants are interconnected''); First Determination, 77 FR 74287 (''The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign regulators in developing the final regulations.'').

[52] In Hong Kong, clearing rules are issued by HKSFC in consultation with the Hong Kong Monetary Authority (HKMA). For further information please see the FAQs issued by Hong Kong authorities, available at *https://www.sfc.hk/-/media/EN/files/SOM/OTC/FAQ-CLearing-Rules-20220103-FINAL.pdf.*

[53] Commission staff also participate in a number of international groups, including FSB Official Sector Steering Group, that work on IBOR transition issues.

harmonize these part 50 amendments to the greatest extent possible with those adopted by international counterparts. This goal is consistent with the Commission's approach in the Second Determination and the views of commenters on both the NPRM and the RFI. The discussion that follows addresses specific IBOR swap reform efforts by jurisdiction.

1. Australia

On December 6, 2021, ASIC published a consultation proposing changes to its interest rate swap clearing requirement. The consultation proposed (i) removing contracts referencing EUR EONIA from the OIS class and replacing them with OIS referencing EUR €STR with a termination date range of seven days to two years; (ii) removing contracts referencing JPY LIBOR from the fixed-to-floating swap, basis swap, and FRA classes and replacing them with OIS referencing JPY TONA with a termination date range of seven days to 30 years; and (iii) removing contracts referencing GBP LIBOR from the fixed-to-floating swap, basis swap, and FRA classes, and extending the termination date range for OIS referencing GBP SONIA to include seven days to 50 years.[54]

On May 12, 2022, Australia finalized changes to its clearing requirement. There was only one change from the proposal: the termination date range for EUR-denominated €STR OIS required to be cleared was expanded from two years to three years, in line with final European Union (EU) rules.[55] In its explanatory statement, ASIC referenced the Commission's NPRM and suggested ASIC may be waiting for final rule changes to part 50 before updating its USD-denominated interest rate swap clearing obligation.[56]

2. European Union

In the EU, the Working Group on Euro Risk-Free Rates, convened in 2018 by the ECB in connection with Belgian Financial Services, ESMA, and European Commission (EC), identified EUR €STR as its preferred alternative to EUR EONIA, which ceased publication on January 3, 2022.[57]

In 2021, ESMA published a consultation proposing to (i) remove swaps referencing EUR EONIA from the OIS class and replace them with swaps referencing EUR €STR with a termination date range of seven days to three years; (ii) remove swaps referencing GBP LIBOR from the fixed-to-floating swap, basis swap, and FRA classes and extend the termination date range for OIS referencing GBP SONIA to include seven days to 50 years; (iii) remove swaps referencing JPY LIBOR from the fixed-to-floating and basis swap classes; and (iv) add swaps referencing USD SOFR to the OIS class with a termination date range of seven days to three years.[58] The changes were proposed to come into force on the later of January 3, 2022, or 20 days after publication in the Official Journal of the European Union.

On February 8, 2022, ESMA adopted final regulatory technical standards (RTS), which also removed swaps referencing USD LIBOR from the fixed-to-floating swap, basis swap, and FRA classes.[59] These RTS changes were approved by the EC and published on May 17, 2022.

On July 11, 2022, ESMA proposed adding OIS referencing JPY TONA (seven days to 30 years) to its clearing obligation, as well as expanding the termination date range for OIS referencing USD SOFR to include seven days to 50 years.[60] ESMA noted trading activity increased for USD SOFR activity up to and including 50 years. In terms of implementation timing, ESMA considered it unnecessary to provide a specific implementation date. Rather, ESMA proposed that its modified clearing obligation for USD SOFR OIS, and its new clearing obligation for JPY TONA OIS, would take effect on the twentieth day following publication of the final RTS, as per common practice. ESMA also indicated that it will analyze the feedback received on its consultation and to publish final rules by the end of 2022 or beginning of 2023.

3. Hong Kong

HKSFC and HKMA have jurisdiction over the clearing obligation in Hong Kong. As of September 1, 2016, clearing mandate rules promulgated jointly by HKSFC and HKMA require that swaps between certain local and foreign-incorporated entities covering fixed-to-floating and basis swaps denominated in USD, GBP, and JPY each referencing LIBOR, fixed-to-floating and basis swaps denominated in EUR referencing EURIBOR, and fixed-to-floating and basis swaps denominated in HKD referencing HIBOR be cleared.[61] The same mandate requires that OIS denominated in USD referencing Fed Funds, EUR referencing EONIA, and GBP referencing SONIA be cleared.

A recent publication of frequently asked questions indicated that ''certain indexes may not be relevant if they are no longer maintained. For example, we do not expect HIBOR–ISDC will be used as it is no longer maintained by [ISDA]. The list of indexes may evolve over time but changes will be subject to consultation and the industry will be given time to make necessary arrangement before changes are implemented.'' [62] The list of designated

[54] ASIC, Consultation Paper 353, ''Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015,'' Dec. 6, 2021, at 5, 14, available at *https://download.asic.gov.au/media/mjknuhlh/cp-353-published-6-december-2021.pdf.*

[55] ASIC Derivative Transaction Rules (Clearing) Amendment Instrument 2022/224, May 12, 2022 (ASIC Derivative Transaction Rules), available at *https://www.legislation.gov.au/Details/F2022L00697.* ASIC's adopted termination date range for EUR €STR OIS is consistent with changes adopted in the UK and EU and proposed in Switzerland. It is also consistent with the termination date range established for EUR €STR OIS in this final rulemaking.

[56] *Id.* (noting ASIC would revisit the removal and replacement of swaps referencing USD LIBOR ''once the US authorities settled their approach'').

[57] ESMA, Working Group on Euro Risk-Free Rates, available at *https://www.esma.europa.eu/policy-activities/benchmarks/working-group-euro-risk-free-rates;* European Money Markets Institute, EONIA, available at *https://www.emmi-benchmarks.eu/benchmarks/eonia/.*

[58] ESMA, Consultation Paper, ''On the clearing and derivative trading obligations in view of the benchmark transition,'' July 9, 2021, at 37–39, 58–59, available at *https://www.esma.europa.eu/sites/default/files/library/consultation_paper_on_the_co_and_dto_for_swaps_referencing_rfrs.pdf.*

[59] Commission Delegated Regulation (EU) 2022/750 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts (Text with EEA relevance), May 17, 2022, available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0750&qid=1654283051240. See also* ESMA, Final Report, ''On draft RTS on the clearing and derivative trading obligations in view of the benchmark transition to risk free rates,'' Nov. 18, 2021, at 31 (ESMA Final Report), available at *https://www.esma.europa.eu/sites/default/files/library/esma70-156-4953_final_report_on_the_co_and_dto_re_benchmark_transition.pdf.*

[60] ESMA, Consultation Paper, ''On the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition,'' July 11, 2022, available at *https://www.esma.europa.eu/file/124582/download?token=rnNMa9ak.*

[61] The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules impose a clearing obligation on transactions between prescribed persons, including local and foreign (i) licensed corporations, (ii) authorized financial institutions, and (iii) approved money brokers, that have reached the clearing threshold of USD $20 billion during the applicable three-month calculation period. In addition, any transactions between such a prescribed person and a financial services provider must be cleared. Financial services providers are designated by HKSFC, with the consent of HKMA. Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules, The Government of the Hong Kong Special Administrative Region Gazette, available at *http://www.gld.gov.hk/egazette/pdf/20162005/es22016200528.pdf.*

[62] Frequently Asked Questions on the Implementation and Operation of the Mandatory Clearing Regime, January 2022, available at *https://www.sfc.hk/en/faqs/OTC-derivatives.* However,

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central counterparties (CCPs) in Hong Kong includes CME, JSCC, LCH, and HKEX.

4. Japan

On December 6, 2021, proposed changes to JFSA's clearing rules became effective.[63] The changes removed contracts referencing three-month and six-month JPY LIBOR from the fixed-to-floating swap class and replaced them with OIS referencing JPY TONA with a termination date range of seven days to 40 years.[64] In a May 2022 report, Bank of Japan stated that a smooth transition from JPY LIBOR has been achieved due to JFSA and Bank of Japan support of efforts by financial institutions and market participants.[65] The report went on to indicate that ''[f]uture challenges include the transition from USD LIBOR, for which the publication of some of the tenor settings will be ceased at the end of June 2023, and the development of infrastructure to facilitate the smooth use of JPY interest rate benchmarks to replace LIBOR.'' [66]

Japanese authorities accomplished the smooth transition from swaps referencing JPY LIBOR to JPY TONA OIS in coordination with JSCC. As JSCC explains in its comment letter,[67] the conversion of JPY IRS referencing LIBOR was completed without any issue and market liquidity has now completely shifted to JPY TONA OIS. JSCC no longer accepts clearing of any new JPY interest rate swaps referencing LIBOR. As discussed further below, JSCC now clears increased volumes of JPY TONA OIS.[68]

5. Singapore

With regard to SGD denominated interest rate swaps, MAS established the Steering Committee for SOR & SIBOR Transition to SORA. This group has been working to oversee a transition from SGD SOR–VWAP to SGD SORA.[69] SGD SOR–VWAP relies on USD LIBOR as an input and is expected to be discontinued across all tenors after June 30, 2023.[70] Commission staff updated MAS regarding the status of IBOR OIS conversion efforts as part of this rulemaking process and staff identified no major concerns. Additional discussion of SGD SORA OIS is included below.

6. Switzerland

On May 9, 2022, FINMA launched a consultation on amendments to its Financial Market Infrastructure Ordinance to, among other things, update the list of interest rate swaps subject to mandatory clearing. The consultation closed on July 5, 2022. In relevant part, the proposal would require clearing of the following OIS: (i) EUR €STR OIS for a termination date range of seven days to three years; (ii) GBP SONIA OIS for a termination date range of seven days to 50 years; and (iii) USD SOFR OIS for a termination date range of seven days to three years.[71]

The publicly available English language documents state that proposed changes to FINMA's clearing mandate ''will be adjusted in line with foreign legal developments to the altered market conditions resulting from benchmark reform,'' and that, more specifically, FINMA will ''align[ ] itself closely with EU law.'' [72] The consultation states that adoption of the revised ordinance is planned for the third quarter of 2022, with an effective date in early 2023.

As explained in the NPRM, following the Commission's action in 2016, FINMA did not require clearing of swaps referencing CHF LIBOR, and to date no jurisdiction has implemented mandatory clearing for swaps referencing CHF SARON.[73] Commission staff updated FINMA regarding the status of IBOR OIS conversion efforts as part of this rulemaking process and identified no major concerns regarding the transition process. Additional discussion of CHF SARON OIS is included below.

7. United Kingdom

On May 20, 2021, Bank of England proposed to (i) effective October 18, 2021, remove contracts referencing EUR EONIA from the OIS class and replace them with contracts referencing EUR €STR with a termination date range of seven days to three years; and (ii) effective December 20, 2021, remove contracts referencing GBP LIBOR from the fixed-to-floating swap, basis swap, and FRA classes, and extend the termination date range for OIS referencing GBP SONIA to include seven days to 50 years.[74] Additionally, on September 29, 2021, Bank of England proposed to remove contracts referencing JPY LIBOR from the fixed-to-floating and basis swap classes and replace them with OIS referencing JPY TONA with a termination date range of seven days to 40 years, effective December 6, 2021.[75] On December 3, 2021, Bank of England updated the effective date for its new JPY TONA clearing requirement to be January 31, 2022, rather than December 6, 2021.[76]

HKMA recently noted that there is no plan to discontinue HIBOR. HKMA, Reform of Interest Rate Benchmarks, Feb. 2, 2022, available at *https://www.hkma.gov/hk/eng/key-functions/banking/banking-regulatory-and-supervisory-regime/reform-of-interest-rate-benchmarks/.*

[63] Prior to implementation of the changes, Bank of Japan urged market participants to cease entering new JPY LIBOR transactions by the end of September 2021 and announced that JPY TONA would become the primary replacement RFR for JPY LIBOR interest rate swaps. Bank of Japan, ''Preparations for the discontinuation of LIBOR in the JPY interest rate swaps market,'' Mar. 26, 2021, available at *https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210326c.pdf.*

[64] Although JFSA does not clearly prescribe a termination date range in its public notice regarding its JPY TONA clearing requirement, JSCC rules provide for the clearing of JPY TONA OIS with a termination date range of seven days to 40 years. JSCC, Interest Rate Swap Clearing Products: List of Cleared Products, available at *https://www.jpx.co/jp/jscc/en/cash/irs/product.html.*

[65] Review of JPY LIBOR Transition and Future Initiatives, Bank of Japan Review, May 2022, available at *www.fsa.go.jp.*

[66] *Id.*

[67] A complete discussion of comment letters received in response to the NPRM is found in section III.

[68] It is the Commission's understanding that under Japanese law, all swaps entered into by two Japanese entities must be cleared through a CCP located in Japan.

[69] ABS, About SC–STS, available at *https://www.abs.org.sg/benchmark-rates/about-sc-sts.*

[70] Steering Committee for SOR & SIBOR Transition to SORA, Update to the SORA Market Compendium: Transition from SOR to SORA, Nov. 17, 2021, at 4, available at *https://www.abs.org.sg/docs/library/sora-market-compendium-on-the-transition-from-sor-to-sora-version-1-1.pdf.*

[71] Ordinance of the Federal Financial Market Supervisory Authority on the Financial Market Infrastructure and Market Behavior in Securities and Derivatives Trading, May 9, 2022, available at *https://www.finma.ch/~/media/finma/dokumente/dokumentencenter/anhoerungen/laufende-anhoerungen/20220509-finanzmarktinfrastrukturverordnung/20220509_finfrav_finma_anhoerung_verordnung.pdf?sc_lang=de&hash=17383BC6490B694C7CC2D82354100AFB* (translated from original German).

[72] FINMA, ''FINMA Financial Market Infrastructure Ordinance—partial revision,'' Key Points, May 9, 2022, available at *https://www.finma.ch/~/media/finma/dokumente/dokumentencenter/anhoerungen/abgeschlossene-anhoerungen/20220509-finanzmarktinfrastrukturverordnung/20220509_finfrav_finma_anhoerung_kernpunkte.pdf?sc_lang=en&hash=39645D542F56C608D72C1A8C4D408580;* FINMA, Press Release, ''FINMA to adjust FinMIO–FINMA,'' May 9, 2022, available at *https://www.finma.ch/~/media/finma/dokumente/dokumentencenter/8news/medienmitteilungen/2022/05/20220509-mm-anhoerung-finfrav-de.pdf?sc_lang=en&hash=08F6A2BB006408179809E99958977762.*

[73] NPRM, 87 FR 32914.

[74] Bank of England, ''Derivatives clearing obligation—modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205,'' May 20, 2021, available at *https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform-amendments.*

[75] Bank of England, ''Derivatives clearing obligation—modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205,'' Sept. 29, 2021, available at *https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform.*

[76] Bank of England, ''Derivatives clearing obligation—introduction of contracts referencing TONA: Amendment to BTS 2015/2205,'' Dec. 3, 2021, available at *https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-introduction-of-contracts-*

These changes went into effect as proposed.

On June 9, 2022, Bank of England published a proposal to remove contracts referencing USD LIBOR from the fixed-to-floating swap, basis swap, and FRA classes, that would come into force ''around the same time as a number of CCPs contractually convert these contracts and remove them from their list of contracts eligible for clearing,'' and add OIS referencing USD SOFR effective October 31, 2022.[77]

This proposal, and the proposed implementation approach, are largely aligned with the Commission's proposal.[78] The proposal for mandatory clearing of USD SOFR OIS is for an identical termination date range of seven days to 50 years. As discussed further below, Bank of England's proposed implementation timing of October 31, 2022, would align with Commission action.

III. Overview of Comment Letters Received

The interest rate swap market has made tremendous progress toward completing the transition from reliance on swaps that reference LIBOR and other IBORs to clearing and trading swaps that reference RFRs. In issuing this final rule, the Commission further facilitates this transition by amending its interest rate swap clearing requirement to reflect the cessation or loss of representativeness of certain IBORs and the market adoption of swaps referencing RFRs.

On May 31, 2022, the Commission published an NPRM seeking public input regarding how it should amend the interest rate swap clearing requirement to address the cessation or loss of representativeness of IBORs that have been used as benchmark reference rates and the market adoption of swaps that reference RFRs. The NPRM was preceded by an RFI that the Commission issued on November 23, 2021.[79] Both these efforts sought input on all aspects of the swap clearing requirement that may be affected by the transition from IBORs to RFRs, including enumerated requests for data and other information related to IBOR and RFR swaps.

The NPRM proposed amending regulation § 50.4(a) to remove from the clearing requirement interest rate swaps in all classes referencing LIBOR (USD, GBP, CHF, and JPY), EUR EONIA, and SGD SOR–VWAP, as applicable. The NPRM also proposed updating the clearing requirement to include OIS referencing USD SOFR (seven days to 50 years), CHF SARON (seven days to 30 years), JPY TONA (seven days to 30 years), EUR €STR (seven days to three years), and SGD SORA (seven days to 10 years), as well as extending the termination date range of GBP SONIA OIS to include seven days to 50 years. The NPRM proposed an implementation date of 30 days after publication of final rules in the **Federal Register** for nearly all the amendments. The one exception proposed was an implementation date of July 1, 2023, for removing the requirement to clear interest rate swaps referencing USD LIBOR and SGD SOR–VWAP.

The Commission received 12 comments on its NPRM from a variety of market infrastructure providers, market participants, and industry organizations.[80] All NPRM comment letters, as well as the RFI response letters, are available on the CFTC's Comments Portal. Most commenters largely supported the Commission's proposal and offered specific responses to questions posed in the NPRM. Several commenters asked for clarification regarding certain issues. These matters are addressed in the discussion and analysis below.

A. Scope of Amendments—Coverage of OIS and Removal of Existing Rules

Nearly all of the commenters expressed support for the scope of the OIS covered under the Commission's proposal, and many agreed with the Commission's analysis that an updated swap clearing requirement would enhance financial stability by reducing systemic risk, improving market integrity, and increasing transparency in the interest rate swap market.[81] Commenters also noted the important role played by the Commission throughout the IBOR transition process.[82]

1. Importance of Harmonization

Commenters, including CCP12, CME, Citadel, ISDA, JSCC, and MFA supported the Commission's goal of harmonizing its clearing requirement with those of non-U.S. jurisdictions. CCP12 stated such coordination with counterparts would allow the U.S. to align its interest rate swap clearing requirement with other major jurisdictions in a manner that promotes legal certainty, regulatory transparency, and the preservation of liquidity in cleared swaps. CME stated its support for adding the RFR OIS covered by the NPRM to the clearing requirement in light of rapid market adoption of voluntary clearing of RFR OIS and the objective of harmonizing global clearing requirements to the extent possible. CME also noted the Commission's commitment to coordination, transparency, and consistency in engaging with domestic authorities. JSCC stated support for the inclusion of JPY TONA OIS in the modifications to regulation § 50.4(a) because such action would harmonize the Commission's interest rate swap clearing requirement with those of other jurisdictions. JSCC stated that this harmonization, in turn, would lower the operational and compliance burden for market participants active across multiple jurisdictions. Market participants including those represented by ISDA, MFA, and others stated their support for global harmonization efforts as well.

2. DCOs' Ability To Clear OIS

CCP12 highlighted the work done by CCPs to support the transition to RFRs. CCP12 stated that CCPs offered clearing for new RFR swaps, which has encouraged participation, growth, and liquidity in these products, and enabled a smooth conversion of certain cleared

referencing-tona-ps. Bank of England noted that the change was designed to ''provide firms with more time to complete their preparations without . . . posing a risk to UK financial stability.'' *Id.* There were no changes to the date for removing Bank of England's JPY LIBOR clearing requirement.

[77] Bank of England, Derivatives clearing obligation—modifications to reflect USD interest rate benchmark reform: Amendments to BTS 2015/2205, June 9, 2022 (Bank of England SOFR Proposal), available at *https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment.*

[78] *Id.* (''In the light of the changes in market activity observed since [2021], and aligning with the Commodity Futures Trading Commission's (CFTC's) recent announcements, the Bank is now proposing to add OIS contracts referencing SOFR to the clearing obligation and remove contracts referencing USD Libor.'')

[79] RFI, 86 FR 66486–66488. The following 14 entities responded to the RFI: Alternative Investment Management Association (AIMA), American Council of Life Insurers (ACLI), Bloomberg L.P., CCP12, Citadel, CME, Eurex, ISDA, Investment Company Institute (ICI), JSCC, LSEG, Managed Funds Association (MFA), Toronto-Dominion Bank (TD Bank), and Tradeweb Markets LLC (Tradeweb), available at *https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.*

[80] Comments were submitted by: AIMA, ACLI, CCP12, Citadel, CME, ISDA, ICI, JSCC, MFA, and SOFR Academy. In addition to these ten responses from institutional entities, two individuals submitted responses to the NPRM. All letters related to this rulemaking are available on the CFTC Comments Portal: *https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.*

[81] Comments from AIMA, ACLI, CCP12, Citadel, CME, ISDA, ICI, JSCC, MFA, and one of the individual commenters were largely supportive of the Commission's proposal. Several raised additional issues, questions, and/or requests that will be discussed further below. SOFR Academy and the other individual commenter requested clarification regarding SOFR.

[82] *See, e.g.,* comment letters from CCP12, ISDA, ICI, and MFA.

IBOR swaps to RFR OIS at the end of 2021. CCP12 stated that DCOs are required to ensure that they have sufficient resources and liquidity, adequate pricing data, and risk management practices and capabilities in terms of default management with respect to the swaps covered by the NPRM.

This point is consistent with comments submitted by both CME and JSCC, among others. For example, CME stated that with the expected increase in the number of transactions, it is prepared to continue clearing RFR OIS. JSCC stated that requiring JPY TONA OIS to be cleared would not affect the ability of DCOs to comply with the CEA or the relevant legal and regulatory regime of any other jurisdiction.

3. Inclusion of CHF-Denominated OIS Referencing SARON

ISDA recommended that the Commission delay the issuance of a clearing requirement for CHF-denominated interest rate swaps referencing SARON that would take the place of an existing Commission clearing requirement for interest rate swaps referencing LIBOR, until such time as the Swiss authorities adopt a clearing requirement for interest rate swaps referencing CHF SARON.[83] No other commenter responded to the NPRM's question on this topic.

4. Inclusion of USD SOFR–USD LIBOR Basis Swaps

ACLI stated its support for the Commission's decision not to include USD SOFR–USD LIBOR basis swaps in the interest rate swap clearing requirement. ACLI pointed to the limited and dwindling use cases for these swaps, along with low liquidity and limitations on the ability to electronically execute such basis swaps. No other commenter responded to the NPRM's question on this topic.

5. Effect of Margin Rules for Uncleared Swaps

ACLI stated that because both the cleared swaps framework and uncleared swap margin rules reduce risk, life insurers should be free to weigh the pros and cons of cleared versus uncleared swaps and choose a regime that provides the most flexibility in allocating collateral.[84] ACLI stated that central clearing provides market participants with numerous advantages over bilateral arrangements, including increased safety, transparency, and customer protection. However, ACLI stated that mandatory clearing elevates concentration of risk in CCPs and futures commission merchants (FCMs).[85] ACLI also stated that central clearing's risk mitigation benefits are decreased by the Commission's rules that require swap dealers to margin their uncleared swaps with certain counterparties.[86]

No other commenter raised these issues.[87]

6. Clarification Regarding USD SOFR

In its comment letter, SOFR Academy recommended that the Commission clarify the definition of USD SOFR OIS in the final rule to avoid potential confusion in the event a market develops for OIS referencing a new index that combines USD SOFR as administered and published by FRBNY with a credit spread supplement.[88] Similarly, an individual commenter requested that the Commission clarify which version of USD SOFR is referenced by the swaps to which its USD SOFR OIS clearing requirement would apply.[89] The individual asked the Commission to confirm that the proposed determination (i) would not apply to swaps using a CME term USD SOFR rate; and (ii) would apply to swaps using both compounded USD SOFR and daily simple USD SOFR.

In its comment letter, CME referred to the ongoing industry transition of swaps referencing LIBOR to the relevant nominated successor RFRs and noted that market participants have demonstrated a preference for transition to market standard RFR OIS.

B. Implementation, Cross-Border Coordination, and Operational Considerations

Commenters expressed a number of views with regard to the implementation schedule for the RFR OIS clearing requirement and the removal of the existing clearing requirement for LIBOR, EUR EONIA, and SGD SOR–VWAP interest rate swaps.

1. Immediate Implementation of RFR OIS Clearing Requirement

A majority of commenters favored the Commission's proposed approach of implementing the RFR OIS clearing requirement 30 days after publication of this final rulemaking in the **Federal Register**. For example, CCP12 supported this approach because the market has already gravitated toward central clearing of RFR OIS (including USD SOFR OIS) to a significant degree, and 30 days would provide market participants with sufficient time to comply with the new determination. CCP12 stated that the new determination would not lead to a material change in operations for a majority of market participants. Likewise, Citadel and MFA stated that the Commission's proposed 30-day compliance date is appropriate as almost all USD SOFR OIS transactions are cleared voluntarily. AIMA stated that the Commission should expedite its consideration of a final rule, consistent with the NPRM, and update the clearing requirement as quickly as possible. Finally, CME and JSCC agreed with the Commission's proposal to adopt a single compliance date that would be 30 days after the publication of the final rule in the **Federal Register**.

2. Harmonizing Implementation Timing With International Counterparts

ISDA recommended that the implementation date for the RFR OIS

[83] In the alternative, ISDA suggests that the Commission delay the effective date of its CHF SARON OIS clearing requirement until three months after the effective date of any Swiss clearing mandate.

[84] The ability to choose not to clear swaps subject to the clearing requirement is reserved for those entities that are eligible to elect an exception or exemption from the swap clearing requirement under subpart C of part 50 of the Commission's regulations. Section 2(h)(7)(C)(i)(VIII) excludes certain financial entities from such eligibility by defining financial entity as ''a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature,'' as defined in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). Section 4(k) of the Bank Holding Company Act defines such activities to include the activities of life insurers and certain related entities. 12 U.S.C. 1843(k)(4)(B), (H)(ii)(II), and (I)(ii)–(iii).

[85] ACLI stated that (1) when large FCMs face financial difficulties, their clients will face elevated credit risk; (2) if an FCM were to default, the FCM's clients may have difficulty porting their swap positions on short notice; (3) the process of negotiating new FCM arrangements, completing operational setup, and porting positions from one FCM to another takes significant time and is operationally burdensome; and (4) some smaller life insurers have difficulty finding FCMs who will take on their business at competitive costs.

[86] ACLI stated that practical solutions to allow end-users to clear directly at CCPs do not currently exist, and there are significant operational and regulatory hurdles to their creation. This issue is beyond the scope of this rulemaking.

[87] ACLI's comment is discussed further in the Cost Benefit Considerations section VII.

[88] According to SOFR Academy, such ''all-in'' benchmark rates combine across-the-curve credit spreads with variations of USD SOFR that are administered and published by FRBNY.

[89] The commenter sought clarification regarding whether such swaps reference term USD SOFR, compounded USD SOFR, or daily simple USD SOFR. This commenter also requested that the Commission clarify whether the Commission intends its USD SOFR OIS clearing requirement to apply retroactively to existing USD SOFR OIS that were executed before implementation but not voluntarily cleared. Consistent with its past clearing requirement determinations, this final clearing requirement determination will not apply retroactively. It will apply to swaps executed on or after the implementation dates discussed below.

clearing requirement be October 31, 2022, which would align with Bank of England's proposed effective date for its USD SOFR OIS clearing obligation. According to ISDA, this alignment of implementation dates would reduce operational burdens for clearing members and their clients. ISDA stated that a shorter deadline might require ISDA members to adopt tactical solutions and place unnecessary strain on resources, preventing an efficient implementation.[90]

No other commenter expressly recommended October 31, 2022, as an implementation date for all RFR OIS. However, despite supporting the Commission's 30-day implementation approach, CCP12 stated that a harmonized approach to timing would reduce the potential operational burden for clearing members and clients of having to comply with the same, or very similar, clearing mandates at different times and in different jurisdictions.

3. Delay Implementation Until June 30, 2023

ACLI stated that the Commission should postpone the inclusion of USD SOFR OIS in the clearing requirement until June 30, 2023, which would coincide with the date USD LIBOR swaps are removed from the clearing requirement and create an incentive for market participants concerned about clearing trades to move from USD LIBOR to USD SOFR swaps. ACLI stated that the Commission and other regulators have offered significant relief to smooth the transition from USD LIBOR to USD SOFR, and that postponing implementation of the USD SOFR OIS clearing requirement would be consistent with that approach. No other commenter supported this view.

4. Removal of Existing USD LIBOR Clearing Requirement

AIMA supported the Commission's proposal, particularly the proposal to require USD SOFR OIS clearing out to 50 years, and to maintain the USD LIBOR clearing requirement until July 1, 2023. Likewise, Citadel agreed with the Commission's proposal to maintain the current clearing requirement for USD LIBOR swaps until July 1, 2023, in light of continued significant trading activity in USD LIBOR swaps. Citadel stated that this would provide the Commission with flexibility to continue evaluating market developments for specific tenors and adjust requirements as necessary.

CME supported the Commission's proposal to retain its USD LIBOR swap clearing requirement because USD LIBOR is widely expected to continue until June 30, 2023, and clearing services are expected to continue to be offered up to or shortly before that date. CME stated that retaining the USD LIBOR swap clearing requirement until CCPs cease to provide clearing services and/or convert swaps would provide clarity and certainty for market participants.

ISDA proposed March 6, 2023, as the implementation date for removing rules requiring clearing interest rate swaps referencing USD LIBOR. ISDA stated that the removal date for USD LIBOR swaps should be no earlier than any CCP conversion date because a later removal date would be inconsistent with Commission objectives. ISDA stated that because CCPs are unlikely to convert simultaneously, there will be confusion when one converts and others do not.[91] In the alternative, ISDA suggested the removal date be the earlier of July 1, 2023, or the first conversion date at any registered or exempt DCO clearing USD LIBOR swaps. However, as ISDA noted, this could result in uncertainty if a clearinghouse were to change its proposed conversion date on short notice.

MFA stated that the Commission's proposal to maintain its USD LIBOR interest rate swap clearing requirement until July 1, 2023, is appropriate, as liquidity in swaps denominated in USD that reference LIBOR in the fixed-to-floating swap, basis swap, and FRA classes is sufficient to continue to support required clearing.[92] Other commenters, including Citadel and CME, generally supported this view.

C. Issues Beyond the Scope of the Rulemaking

Commenters raised the following two issues that are related to the IBOR transition. They are presented for the sake of a complete consideration of comments submitted, but the Commission observes that, as discussed below, they are beyond the scope of this rulemaking.

1. Trade Execution Requirement

ICI supported the proposed modifications to the interest rate swap clearing requirement, but urged the Commission to recognize the separate nature of the trade execution requirement. ICI commented that the Commission should not approve or allow certification of a subsequent made-available-to-trade (MAT) determination solely on the basis of the swap being subject to a clearing requirement. ICI stated that the MAT process is especially important with respect to longer-dated swaps proposed to be cleared, which are less liquid. ISDA also stated that a corresponding MAT determination alongside or closely following a clearing mandate could challenge a smooth and orderly IBOR transition, and ISDA requested that the Commission consider changes to its MAT determination process to ensure that any MAT determination in new RFRs occur at the appropriate time and in line with overall policy objectives.

Pursuant to section 2(h)(8) of the CEA and Commission regulations §§ 37.10 and 38.12, a trade execution requirement could, in the future, apply to some or all of the interest rate swaps covered by this rulemaking. The process for determining which swaps are subject to the trade execution requirement is separate from the clearing requirement determination process. Therefore, it is beyond the scope of this rulemaking for the Commission to address the suitability of particular swaps for a trade execution requirement or to address issues related to the MAT process.

2. Post-Trade Risk Reduction

ISDA stated that currently swap dealers are able to book OIS into their cleared or uncleared portfolios to match changes in risk as part of portfolio compression exercises. According to ISDA, a clearing requirement for RFR OIS would impair swap dealers' ability to manage their uncleared portfolios. ISDA requested that the Commission consider an exemptive order or staff no-action from the clearing requirement for RFR swaps where the trades result from post-trade risk reduction (PTRR) exercises.

By contrast, Citadel stated that the Commission should continue to reject requests for additional exemptions, including for PTRR services, when updating the clearing requirement.

[90] ISDA noted that compliance with new clearing requirements requires ISDA members to adapt systems, create and run internal trainings, and issue client communications; develop and implement control frameworks and internal governance; and address unique jurisdictional requirements. For example, ISDA noted that in some jurisdictions such as Germany, creation and delivery of job-related training which introduces changes to working practices such as clearing requirements require review with and sign-off by workers' representatives.

[91] ISDA raised the possibility that market participants could be required to establish new clearing relationships to comply with a USD LIBOR swap clearing requirement that may be months or days away from ceasing to be effective or opt to continue unhedged until the expiration of the clearing requirement if the IBOR clearing requirement remains in place beyond the initiation of a conversion at any one CCP.

[92] MFA also suggested that if before July 1, 2023, concerns arise regarding the sufficiency of outstanding notional, liquidity, or pricing data to support required clearing, the Commission could take appropriate action that expires on June 30, 2023, to facilitate the IBOR transition.

Citadel stated that existing no-action relief for multilateral portfolio compression exercises provides market participants with adequate flexibility to reduce exposures in uncleared portfolios while ensuring swaps subject to the clearing requirement are cleared. Citadel also stated that a broader exemption risks circumventing the clearing requirement, increasing trading activity in uncleared OTC derivatives, and increasing systemic risk.

No other commenters raised this issue.

In 2013, Commission staff issued a no-action letter regarding PTRR services.[93] This letter explained that compression is an important tool to facilitate post-trade risk reduction. Prior Commissions have declined to codify this no-action letter, and this matter is beyond the scope of this rulemaking.

IV. Final Amendments to Regulation § 50.4(a)

The Commission is finalizing amendments to regulation § 50.4(a) to remove certain IBORs and EUR EONIA interest rate swap clearing requirements and add requirements to clear corresponding RFR OIS. The IBOR swaps for which clearing requirements are being removed span all four classes of swaps currently required to be cleared—fixed-to-floating swaps, basis swaps, FRAs, and (in the case of EUR EONIA) OIS.[94] The RFR swaps that the Commission is adding to the clearing requirement are all OIS.[95] OIS are swaps where one leg is calculated based on a fixed rate and the other is calculated based on a daily overnight floating rate (*i.e.,* the RFR).

A. Scope of Amendments—Coverage of OIS and Removal of Existing Rules

These amendments to the interest rate swap clearing requirement are the first rule changes that the Commission has issued to facilitate the transition from IBORs to RFRs. The amendments update the existing clearing requirement. In effect, the amendments replace the requirement to clear certain IBOR swaps in a number of different classes with a requirement to clear RFR OIS because the IBOR swaps have become unavailable and liquidity has shifted into RFR OIS. Accordingly, pursuant to this final rulemaking, the following swaps will no longer be required to be cleared:

- Swaps denominated in USD, GBP, CHF, and JPY that reference LIBOR as a floating rate index in each of the fixed-to-floating swap, basis swap, and FRA classes, as applicable.
- Swaps denominated in EUR that reference EONIA as a floating rate index in the OIS class.
- Swaps denominated in SGD that reference SOR–VWAP as a floating rate index in the fixed-to-floating swap class.

The Commission is amending the OIS class of interest rate swaps under regulation § 50.4(a) that are required to be cleared to include the following:

- Swaps denominated in USD that reference SOFR as a floating rate index with a stated termination date range of seven days to 50 years,
- Swaps denominated in EUR that reference €STR as a floating rate index with a stated termination date range of seven days to three years,
- Swaps denominated in CHF that reference SARON as a floating rate index with a stated termination date range of seven days to 30 years,
- Swaps denominated in JPY that reference TONA as a floating rate index with a stated termination date range of seven days to 30 years, and
- Swaps denominated in SGD that reference SORA as a floating rate index with a stated termination date range of seven days to 10 years.
- Swaps denominated in GBP that reference SONIA as a floating rate index with a stated termination date range of seven days to 50 years.[96]

While these amendments are legally effective 30 days after publication of the final rule in the **Federal Register**, they will be implemented according to a schedule discussed in detail below.[97]

B. Clarification Regarding OIS Product Specifications

SOFR Academy and one of the individual commenters requested clarification regarding the product specifications subject to this rulemaking. These commenters asked which interest rates apply to the USD-denominated OIS referencing SOFR.

The final rules apply to the USD SOFR OIS that are offered for clearing at registered and exempt DCOs. These DCOs' product specifications provide that the USD SOFR OIS that they clear reference USD–SOFR–COMPOUND under the 2006 ISDA Definitions and USD–SOFR–OIS Compound under the 2021 ISDA Definitions. Similarly, GBP SONIA, CHF SARON, JPY TONA, SGD SORA, and EUR €STR OIS clearing requirements refer to the GBP SONIA, CHF SARON, JPY TONA, SGD SORA, and EUR €STR OIS that are offered for clearing at registered and exempt DCOs. Each of these rates reference compound RFR indexes as defined in ISDA Definitions.[98]

C. Swaps Referencing CHF SARON and SGD SORA

The Commission is the only authority to require CHF LIBOR swaps be submitted for clearing. In 2016, FINMA considered adopting a clearing mandate for swaps referencing CHF LIBOR, but after the Commission's final rules that included CHF LIBOR swaps went into effect, FINMA did not adopt a similar mandate.[99] To date, FINMA has not adopted a clearing mandate for CHF SARON OIS. However, as explained above, FINMA may adjust its clearing obligation in line with international authorities and altered market conditions resulting from benchmark reform.

Likewise, while MAS did not require clearing of SGD SOR–VWAP swaps with a termination date range of 28 days to 10 years until October 2018, the Commission was aware of this expected action, and took it into account when adopting a clearing requirement for SGD

[93] Staff No-Action Letter Re: Relief from Required Clearing for Swaps Resulting from Multilateral Portfolio Compression Exercises, CFTC Letter No. 13–01, Mar. 18, 2013, available at *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm.*

[94] Beyond the IBOR swaps that will be removed from regulation § 50.4 and replaced with RFR swaps pursuant to this determination, regulation § 50.4 contains requirements to clear a number of swaps referencing IBORs that have not yet been discontinued. In the future the Commission may consider further modifications to the interest rate swap clearing requirement in regulation § 50.4 to address the cessation of additional IBORs and market adoption of corresponding RFRs. But no further modifications are necessary at this time.

[95] GBP SONIA OIS are already required to be cleared. Regulation § 50.4(a) Table 2.

[96] For GBP SONIA OIS, these amendments expand the existing maximum termination date range to 50 years, for a new termination date range of seven days to 50 years.

[97] Specific implementation timing is set forth in section VI.

[98] *See generally* CME, Product Scope, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc.html;* LCH, Product Specific Contract Terms and Eligibility Criteria Manual, June 20, 2022, at 36–44, available at *https://www.lch.com/system/files/media_root/220620%20-%20Product%20Specific%20Contract%20Terms%20-%20SGD%20SORA.pdf;* Eurex, EurexOTC Clear Product List, available at *https://www.eurex.com/ec-en/clear/eurex-otc-clear/interest-rate-swaps;* JSCC, List of Clearing Products, available at *https://www.jpx.co.jp/jscc/en/cash/irs/product.html;* HKEX, Interest Rate Swaps, available at *https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en.* Some DCOs' product specifications reference both the 2021 and 2006 ISDA Definitions whereas other DCOs' product specifications refer only to the 2021 ISDA Definitions (or reference both only with respect to certain swaps).

[99] The Commission provided an opportunity for comment prior to adopting its requirement to clear CHF-denominated interest rate swaps. Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 39506 at 39508 (June 16, 2016); *see also* Second Determination, 81 FR 71205.

SOR–VWAP swaps in 2016.[100] At this time, MAS has not yet implemented mandatory clearing for SGD SORA OIS.

1. Data Analysis

Against this regulatory backdrop, clearing rates for CHF SARON OIS and SGD SORA OIS are already high. The Commission estimates that more than 97% of notional transacted in these rates each month between November 2021 and April 2022 was cleared.[101]

Furthermore, the Commission estimates that, as of April 29, 2022, there was $1,497 billion in outstanding notional in CHF SARON OIS, whereas there was $282 billion in outstanding notional in CHF LIBOR fixed-to-floating swaps.[102] Similarly, the Commission estimates that, as of April 29, 2022, there was $558 billion in outstanding notional in SGD SORA OIS, and $248 billion in outstanding notional in SGD SOR–VWAP fixed-to-floating swaps.[103] In comparison, as of January 28, 2022, there was $1,730 billion in outstanding notional in CHF SARON OIS and $686 billion in outstanding notional in CHF LIBOR fixed-to-floating swaps.[104] Further, estimates as of the same date indicate there was $449 billion in outstanding notional in SGD SORA OIS and $307 billion in outstanding notional in SGD SOR–VWAP fixed-to-floating swaps.[105]

Comparing the January and April 2022 month-end estimates, there is a slight decline in outstanding notional in CHF SARON OIS, but a steep decline in outstanding notional for CHF LIBOR fixed-to-floating swaps. With respect to the SGD rates, there is a decline in outstanding notional for SGD SOR–VWAP fixed-to-floating swaps roughly proportional to the increase in outstanding notional for SGD SORA OIS. The Commission believes these numbers demonstrate that CHF LIBOR and SGD SOR–VWAP are steadily being replaced by their corresponding RFRs.

Based on this data, it would appear that, since the time the Commission issued its NPRM, the CHF interest rate swap market has moved from comprising roughly one-half LIBOR swaps to only approximately one-fifth LIBOR swaps. Additionally, while SGD SOR–VWAP is anticipated to continue until June 30, 2023, the transition to SGD SORA is well underway. Data presented in tables 2 and 3 below further illustrate that the CHF LIBOR and SGD SOR–VWAP swap markets have rapidly diminished as markets shift to swaps referencing RFRs. The Commission estimates that, in April 2022, there were no CHF LIBOR fixed-to-floating swap transactions, and 39 SGD SOR–VWAP fixed-to-floating swap transactions (comprising $2 billion notional). The Commission also estimates that, in April 2022, there were 1,913 CHF SARON OIS transactions (comprising $91 billion notional) and 3,277 SGD SORA OIS transactions (comprising $124 billion notional).

2. Consideration of Comments

In response to the NPRM, ISDA commented that the Commission should delay the update of the CHF-denominated interest rate swap clearing requirement until such time as the Swiss authorities issue a clearing mandate. The requirement to clear interest rate swaps denominated in Swiss francs has been in place under U.S. law since 2016.

With regard to SGD-denominated interest rate swaps, the Commission did not receive any comments. Nor is the Commission aware of any concerns on the part of its fellow authorities with regard to update the clearing requirement to include SGD SORA OIS. The requirement to clear interest rate swaps denominated in SGD has been in place under U.S. law since 2016.

3. Inclusion of CHF SARON OIS and SGD SORA OIS

The Commission is unaware of any risk-related or operational concerns that have arisen with regard to this requirement. In addition, to delay updating the Commission's existing interest rate swap clearing requirement for swaps denominated in these two currencies would limit the scope of the Commission's existing clearing requirement. It also would risk introducing unnecessary market confusion by unexpectedly changing the scope of the interest rate swap market that is required to be cleared.

Swiss and European authorities generally have indicated that they are reviewing this matter and may act to require clearing of CHF SARON OIS under the laws of their respective jurisdictions at some point in the future. The Commission proceeded in 2016 under the Second Determination and now updates those regulations to further the extensive work pursuant to a public-private partnership that has taken place to prepare the interest rate swap markets for IBOR conversions. While Singaporean authorities have not yet amended their regulations, a similar justification exists with regard to updating the SGD-denominated interest rate swap clearing requirement.

D. RFR–IBOR Basis Swaps

Based on responses to the RFI, as well as ACLI's comment, the Commission is not adding any new requirements to clear RFR-linked basis swaps at this time. These swaps are used primarily to move out of IBOR swap positions and into RFR swap positions.[106] The Commission recognizes the added flexibility RFR-linked basis swaps offer market participants, but will continue to monitor their use as the IBOR transition process reaches its conclusion. Such monitoring will focus on volumes of RFR-linked basis swaps after the date on which IBOR rates cease publication.

V. Determination Analysis for RFR OIS

The Commission is amending its interest rate swap clearing requirement to include OIS referencing RFRs by adopting a new clearing requirement determination. The Commission has completed a review of the current RFR OIS offered for clearing and has considered the specific statutory factors required to make a new clearing requirement determination.

A. General Description of Information Considered

CME, LCH, and Eurex provided the Commission with regulation § 39.5(b)

[100] Second Determination, 81 FR 71205; MAS, MAS Requires OTC Derivatives to be Centrally Cleared to Mitigate Systemic Risk, May 2, 2018, available at *https://www.mas.gov.sg/news/media-releases/2018/mas-requires-otc-derivatives-to-be-centrally-cleared-to-mitigate-systemic-risk;* MAS, Response to Feedback Received: Draft Regulations for Mandatory Clearing of Derivatives Contracts, May 2, 2018, at 4, available at *https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2018-May-02-Response-to-consultation-on-draft-regs-on-mandatory-clearing-of-derivatives/Response-to-Feedback-on-Draft-Regulations-for-Mandatory-Clearing-of-Derivatives-Contracts.pdf.*

[101] The data referenced is from Commission's weekly swaps report data. In the NPRM, the Commission estimated that more than 98% of notional transacted in these rates in each of November 2021, December 2021, and January 2022 was cleared. NPRM, 87 FR 32914–32915.

[102] These outstanding notional figures are based on data for swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations. Commission staff compiled, processed, and reviewed the data presented in this rulemaking.

[103] *Id.*

[104] NPRM, 87 FR 32915.

[105] *Id.*

[106] RFR-linked basis swaps offered for clearing are generally RFR–IBOR basis swaps. *See* ACLI's RFI response letter (''We also do not believe that SOFR–LIBOR basis swaps should be added to the clearing requirement due to low liquidity and limitations on electronic execution. We expect SOFR–LIBOR basis swaps to require bilateral OTC treatment for their limited and dwindling use cases.''); ISDA's RFI response letter (''Due to low liquidity, we think SOFR–LIBOR basis swaps should not be subject to mandatory clearing.''). RFI response letters are available at *https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.*

submissions relating to RFR OIS.[107] In addition to the DCOs' submissions, the Commission looks to the ability of each DCO to clear RFR OIS, DCO swap data, swap data repository (SDR) data, publicly available data, the rule frameworks and risk management policies of each DCO, and information provided through public comment.

This clearing requirement determination is distinguishable from prior determinations insofar as it responds to a public and private sector, consensus-driven market event that has resulted, or will result, in liquidity shifting to new benchmark rates from rates that have become, or will soon become, unavailable. In that sense, central clearing in the RFR OIS markets, which rely on benchmark rates that are less susceptible to manipulation, may offer unique benefits that prior interest rate swap market clearing did not.[108] As a result, and in light of the quick pace of market adoption and DCOs' willingness to provide clearing for a wide variety of RFR swaps, the RFR interest rate swap markets are prepared for this clearing requirement determination.

B. Consistency With DCO Core Principles Under Section 2(h) of the CEA

Section 2(h)(2)(D)(i) of the CEA requires the Commission to determine whether a clearing requirement determination is consistent with core principles for DCOs set forth in section 5b(c)(2) of the CEA.[109] CME, LCH, and Eurex are registered DCOs, and currently clear the RFR OIS subject to this rulemaking. CME, LCH, and Eurex are required to comply with the DCO core principles (and applicable Commission regulations) with respect to the RFR OIS subject to this determination. These DCOs also are subject to the Commission's examination and risk surveillance programs.

The Commission believes that CME, LCH, and Eurex will be able to maintain compliance with the DCO core principles and applicable Commission regulations following adoption of this clearing requirement determination. For the reasons discussed below, the Commission has determined that subjecting any of the RFR OIS to required clearing is unlikely to impair CME's, LCH's, or Eurex's ability to comply with the DCO core principles, along with applicable Commission regulations.[110]

While exempt DCOs are not subject to the DCO core principles *per se,* the Commission determined that each was subject to comparable, comprehensive supervision and regulation by its home country regulator before granting such DCOs an exemption from registration, as required by the CEA.[111] With regard to the two exempt DCOs that offer RFR OIS for clearing, namely, JSCC and HKEX, the Commission expects that both DCOs will continue to comply with their home country law and regulations for purposes of this clearing requirement determination for RFR OIS.

As outlined in the summary of comments, the Commission's conclusions regarding the DCOs' ability to remain in compliance with applicable regulations, as well as sound risk management practices, is supported by commenters.[112] No commenter raised any concern regarding a registered or an exempt DCO maintaining its ability to clear the interest rate swaps that it offers for clearing. The Commission also notes the importance of its ongoing examination and risk surveillance programs for all registered DCOs, as well as its ability to work with fellow authorities to ensure DCOs located outside the United States remain in compliance with the highest standards. In 2016, the Commission explained the rigor of the DCO registration and exemption processes, along with subsequent examination and risk surveillance scrutiny that DCOs receive. These processes remain in place and have been enhanced over the intervening years.[113]

Clearing the RFR OIS swaps subject to this determination does not pose financial or legal risks that are materially distinguishable from those posed by the IBOR interest rate swaps that the Commission required to be cleared in 2012 and 2016 and that DCOs have been offering for clearing for over a decade. For additional information regarding the ability of DCOs and exempt DCOs to clear these swaps, see the discussion of Factor II in the Commission's determination analysis below.

C. Conclusions Regarding Consideration of Section 2(h)'s Five Statutory Factors

Set forth below is the Commission's consideration of the five factors set forth in section 2(h)(2)(D)(ii) of the CEA as they relate to all OIS being added to the interest rate swap clearing requirement, which includes OIS (i) denominated in USD and referencing SOFR; (ii) denominated in GBP and referencing SONIA; (iii) denominated in CHF and referencing SARON; (iv) denominated in JPY and referencing TONA; (v) denominated in EUR and referencing €STR; and (vi) denominated in SGD and referencing SORA.[114]

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[107] Regulation § 39.5(b) submissions from DCOs are available on the Commission's website, *www.cftc.gov,* under DCO Swaps Submissions.

[108] A discussion of the costs and benefits of this rulemaking appears in section VII below.

[109] 7 U.S.C. 2(h)(2)(D)(i). The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk, among other subjects. 7 U.S.C. 7a–1(c)(2). The Commission implemented the core principles through regulations that are applicable to registered DCOs. 17 CFR part 39.

[110] In their public comments, each DCO stated that requiring clearing of USD SOFR and other RFR OIS would not negatively affect their ability to comply with the DCO core principles and applicable Commission regulations. *See* RFI response letters from CME, LSEG, and Eurex, and NPRM comment letter from CME.

[111] The Commission may exempt a DCO from registration if it determines that the DCO is subject to comparable, comprehensive supervision by appropriate government authorities in its home country. The Commission determined that JSCC demonstrated compliance with the requirements of the CEA with which it must comply in order to be eligible for an exemption from registration as a DCO. JSCC Order of Exemption from Registration, Oct. 26, 2015, at 1, available at *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/jsccdcoexemptorder10-26-15.pdf;* JSCC Amended Order of Exemption from Registration, May 15, 2017, at 1, available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/jsccdcoexemptamdorder5-15-17.pdf.* Likewise, HKEX is an exempt DCO that the Commission determined has demonstrated compliance with the requirements of the CEA. OTC Clearing Hong Kong Limited Order of Exemption from Registration, Dec. 21, 2015, at 1, available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/otccleardcoexemptorder12-21-15.pdf.*

[112] *See, e.g.,* comment letters from CME, CCP12, Citadel, ISDA, JSCC, and MFA.

[113] Second Determination, 81 FR 71207–71208. In particular, Commission staff monitors the risks posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk with the objective (1) to identify positions in cleared products subject to the Commission's jurisdiction that pose significant financial risk; and (2) to confirm that these risks are being appropriately managed.

[114] The Commission is conducting this analysis only with respect to the swaps that are being added to the clearing requirement under this determination. Removing swaps that are no longer offered for clearing from Commission regulation § 50.4 is not considered in this analysis.

1. Factor (I)—Outstanding Notional Exposures and Trading Liquidity

Liquidity has shifted, and continues to shift, from swaps referencing IBORs to swaps referencing RFRs. The first of the five factors under section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider ''the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data'' related to ''a submission made [by a DCO].'' [115] The Commission reviewed data from multiple sources, including but not limited to data from SDRs, data from DCOs, and other, publicly available data (*e.g.,* data published by ISDA). For purposes of this rulemaking, the Commission principally considered notional exposures and trading liquidity based on the Commission's own collected data.

a. Outstanding Notional Exposures and Trading Liquidity

The Commission reviewed data to determine whether there is an active market for the swap, including whether there is a measurable amount of notional exposure and whether the swap is traded regularly as reflected by trade count. The data presented in the NPRM and below indicates that there is sufficient outstanding notional exposure and trading liquidity in RFR OIS to support a clearing requirement determination.[116] Specifically, the data generally demonstrates that there is significant activity in new USD SOFR, GBP SONIA, EUR €STR, CHF SARON, JPY TONA, and SGD SORA OIS trading. The Commission compiled the data used in tables 2–5 below from transaction data collected under part 45 of the Commission's regulations.[117] This analysis also supports a DCO's ability to adequately risk manage the swap.

In Table 2 below, the Commission provides estimates of notional transacted by month for various categories of RFR OIS, and IBOR fixed-to-floating and basis swaps, for the period beginning November 1, 2021, and ending April 30, 2022. The data in Table 2 generally indicates significant, and relatively steady or increasing, amounts of notional transacted in RFR OIS from November 2021 through April 2022. The data also illustrates that there was comparatively little notional transacted during the same time period in fixed-to-floating swaps referencing IBORs that ceased publication or became nonrepresentative in December 2021 and January 2022.

Significant amounts of notional were transacted in USD LIBOR fixed-to-floating swaps. In the NPRM, the Commission observed that while notional traded per month in USD SOFR OIS nearly doubled between December 2021 and January 2022, the amount of such notional transacted in January 2022 was still less than half that of the amount of notional transacted during the same month in USD LIBOR fixed-to-floating swaps. However, as shown below, in April 2022, notional transacted in USD SOFR OIS outpaced notional transacted in USD LIBOR fixed-to-floating swaps. Thus, while the transition of liquidity from USD LIBOR fixed-to-floating swaps to USD SOFR OIS is not yet complete, it is well underway.

TABLE 2—ESTIMATED NOTIONAL TRANSACTED

[USD billions] [118]

Product	November 2021	December 2021	January 2022	February 2022	March 2022	April 2022
USD SOFR OIS	$2,384	$2,011	$3,918	$5,008	$6,439	$4,807
USD LIBOR Fixed-to-Floating Swaps	6,674	4,409	9,598	6,708	6,480	4,470
USD LIBOR–LIBOR Basis Swaps	1,049	602	292	476	626	490
EUR €STR OIS	3,394	2,022	3,488	7,716	7,706	7,371
EUR EONIA OIS	2	8	0	5	0	7
CHF SARON OIS	208	108	130	152	164	91
CHF LIBOR Fixed-to-Floating Swaps	62	0	0	0	0	0
GBP SONIA OIS	5,852	3,151	4,149	4,956	4,458	2,629
GBP LIBOR Fixed-to-Floating Swaps	340	205	2	2	1	0
JPY TONA OIS	425	360	377	434	576	1,372
JPY LIBOR Fixed-to-Floating Swaps	45	15	0	2	2	1
SGD SORA OIS	74	41	119	97	156	124
SGD SOR Fixed-to-Floating Swaps	8	3	5	9	5	2

Table 3 that follows this paragraph provides estimates of trade counts for the same categories of RFR and IBOR swaps during the same six-month period. The data in Table 3 indicates that, with regard to RFR OIS, monthly trade count generally increased or was relatively steady between November 2021 and April 2022, with an especially pronounced increase in the number of USD SOFR OIS transactions. Conversely, trade counts for swaps referencing IBORs that ceased or became nonrepresentative in December 2021 and January 2022 dropped off precipitously by January 2022. While there were still a significant number of USD LIBOR fixed-to-floating swap transactions during the six-month period that Table 3 measures, the monthly trade count for such transactions declined significantly during that period. Similarly, the monthly trade count for SGD SOR–VWAP fixed-to-floating swaps declined significantly between November 2021 and April 2022.

[115] 7 U.S.C. 2(h)(2)(D)(ii).

[116] Data considered includes all material presented in the NPRM along with updated information presented in this final rule.

[117] The data presented in these tables is the same as the data used to create the Commission's weekly swaps report. This data represents only those swaps that are reported to the CFTC's registered SDRs by swap market participants. The Commission's weekly swaps report currently incorporates data from three SDRs (CME Group SDR, DTCC Data Repository, and ICE Trade Vault). The raw SDR data has been filtered to represent, as accurately as possible, the market-facing trades that occur and excludes certain inter-affiliate transactions. For more information about the data components in the weekly swaps report, please visit the CFTC's web page available at: *https://www.cftc.gov/MarketReports/SwapsReports/index.htm.*

[118] The data in Table 2 is based on the Commission's weekly swaps report data. In this table, a notional figure of $0 billion indicates that the notional transacted during a given time period was less than $1 billion.

TABLE 3—ESTIMATED TRADE COUNT [119]

Product	November 2021	December 2021	January 2022	February 2022	March 2022	April 2022
USD SOFR OIS	18,484	19,110	41,728	45,696	66,644	54,439
USD LIBOR Fixed-to-Floating Swaps	48,245	29,309	30,749	25,061	27,284	20,184
USD LIBOR–LIBOR Basis Swaps	1,025	831	329	384	690	477
EUR €STR OIS	8,415	5,420	8,962	14,222	16,957	12,341
EUR EONIA OIS	7	1	0	3	0	3
CHF SARON OIS	2,698	1,574	2,283	2,775	3,380	1,913
CHF LIBOR Fixed-to-Floating Swaps	390	19	0	0	0	0
GBP SONIA OIS	24,275	12,913	17,654	21,139	21,396	14,656
GBP LIBOR Fixed-to-Floating Swaps	2,061	1,286	12	33	5	2
JPY TONA OIS	5,311	4,639	5,141	6,227	7,859	6,692
JPY LIBOR Fixed-to-Floating Swaps	577	69	9	26	22	17
SGD SORA OIS	2,422	1,846	3,794	3,715	4,652	3,277
SGD SOR Fixed-to-Floating Swaps	197	94	69	143	77	39

Table 4 thatfollows this paragraph presents estimates of the percentage of notional cleared for the RFR OIS subject to this determination, based on notional transacted by month during the period beginning November 1, 2021, and ending April 30, 2022. The data in Table 4 illustrates that, with respect to the RFR OIS, significant amounts of notional are already being cleared voluntarily. The proportion of notional transacted each month from November 2021 through April 2022 that was cleared was consistently high—approaching 100%—with regard to OIS referencing each of USD SOFR, GBP SONIA, EUR €STR, CHF SARON, JPY TONA, and SGD SORA.

TABLE 4—ESTIMATED PERCENTAGE OF NOTIONAL CLEARED

[Based on notional transacted by month] [120]

OIS	November 2021 (%)	December 2021 (%)	January 2022 (%)	February 2022 (%)	March 2022 (%)	April 2022 (%)
USD SOFR	96.3	94.9	95.1	96.0	95.3	96.2
GBP SONIA	98.8	98.7	97.8	98.1	98.2	97.6
EUR €STR	99.0	99.2	97.6	99.0	98.4	98.9
CHF SARON	99.6	98.1	99.2	98.9	99.7	98.4
JPY TONA	96.6	98.7	98.0	98.1	98.5	99.3
SGD SORA	98.2	98.6	98.7	97.9	98.0	98.9

Table 5 that follows this paragraph presents a breakdown of notional transacted and trade count for the period beginning April 1, 2022 and ending April 30, 2022, by tenor, for the relevant RFR OIS. Table 5 illustrates that RFR OIS are being cleared across a wide range of maturities. By notional and trade count, most clearing activity occurs in RFR OIS dated between three months and 15 years. However, with respect to USD SOFR and GBP SONIA OIS in particular, there is also significant clearing activity in swaps dated 15 years or greater.

TABLE 5—ESTIMATED CLEARED NOTIONAL AND TRADE COUNT BY TENOR

[April 2022 transaction data] [121]

OIS	Tenor	Notional cleared (USD billions)	Trade count
USD SOFR	7 days–3 months	$282	384
	3–6 months	230	463
	6 months–1 year	211	853
	1–5 years	1,900	13,507
	5–15 years	1,736	27,698
	>15 years	264	8,752
GBP SONIA	7 days–3 months	548	351
	3–6 months	624	391
	6 months–1 year	509	364
	1–5 years	407	3,101
	5–15 years	410	7,508
	>15 years	66	2,600
EUR €STR	7 days–3 months	735	364
	3–6 months	3,128	1,491

[119] The data in Table 3 is based on the Commission's weekly swaps report data.

[120] The data in Table 4 is based on the Commission's weekly swaps report data.

[121] The data in Table 5 is based on the Commission's weekly swaps report data. Tenor length is approximate. In Table 5, a notional figure of $0 billion USD indicates that the notional transacted during a given time period was less than $1 billion.

TABLE 5—ESTIMATED CLEARED NOTIONAL AND TRADE COUNT BY TENOR—Continued

[April 2022 transaction data] [121]

OIS	Tenor	Notional cleared (USD billions)	Trade count
	6 months–1 year	2,300	1,318
	1–5 years	831	4,440
	5–15 years	260	3,652
	>15 years	33	817
CHF SARON	7 days–3 months	5	3
	3–6 months	6	7
	6 months–1 year	10	29
	1–5 years	27	417
	5–15 years	40	1,298
	>15 year	2	146
JPY TONA	7 days–3 months	3	3
	3–6 months	14	25
	6 months–1 year	10	30
	1–5 years	121	944
	5–15 years	1,182	3,646
	>15 years	33	1,887
SGD SORA	7 days–3 months	6	29
	3–6 months	4	20
	6 months–1 year	12	86
	1–5 years	75	1,383
	5–15 years	26	1,720
	>15 years	0	5

In addition to this transaction–level data, Table 6 that follows this paragraph presents open swaps data illustrating outstanding notional in the RFR OIS subject to this determination.

TABLE 6—OUTSTANDING NOTIONAL AS OF APRIL 29, 2022 [122]

OIS	Outstanding notional (USD billions)
USD SOFR	$16,104
GBP SONIA	21,885
EUR €STR	16,099
CHF SARON	1,497
JPY TONA	4,035
SGD SORA	558

Finally, to demonstrate that clearing has expanded beyond the short–dated maturities for USD SOFR fixed–to–floating swaps, in particular, the data in Table 7 that follows this paragraph reflects the total volumes of cleared outstanding notional by tenor for USD LIBOR fixed–to–floating swaps and USD SOFR OIS. The Commission has determined that the data collectively indicates sufficient outstanding notional exposures and regular trading activity in RFR OIS for purposes of demonstrating the liquidity necessary for DCOs to risk manage these products and to support a clearing requirement. The Commission anticipates that RFR OIS notional exposures and trading activity will increase over time as markets continue to adopt RFR OIS in place of swaps referencing IBORs that have, or will by mid–2023, become unavailable. In addition to the extensive data presented and analyzed in this rulemaking, and as discussed in detail below, the Commission is basing this determination on its ongoing supervision of DCOs and its monitoring of the cleared interest rate swap market for purposes of risk surveillance.

TABLE 7—OUTSTANDING NOTIONAL AS OF APRIL 26, 2022 [123]

Swap class	Tenor	Notional cleared (USD billions)
USD LIBOR Fixed–to–Floating Swaps	0–1 months	$67
	>1 month to 3 months	247
	>3 months to 1 year	901
	>1–3 years	1,674
	>3–5 years	703

[122] The data in Table 6 represents swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations.

[123] The data in Table 7 represents swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations.

TABLE 7—OUTSTANDING NOTIONAL AS OF APRIL 26, 2022 [123]—Continued

Swap class	Tenor	Notional cleared (USD billions)
	>5–7 years	439
	>7–10 years	379
	>10–15 years	233
	>15–25 years	276
	>25–35 years	124
	>35 years	14
USD SOFR OIS	0–1 months	12
	>1 month to 3 months	121
	>3 months to 1 year	807
	>1–3 years	1,274
	>3–5 years	282
	>5–7 years	123
	>7–10 years	149
	>10–15 years	59
	>15–25 years	62
	>25–35 years	44
	>35 years	5

b. Pricing Data

The Commission regularly reviews pricing data for the RFR OIS subject to this determination and has found that these OIS are capable of being priced off of deep and liquid markets. Commission staff regularly receives and reviews margin model information from DCOs that includes particular procedures that they follow to ensure that market liquidity exists in order to close out a position in a stressed market, including the time required to determine a price.[124] Because of the stability of access to pricing data from these markets, the pricing data for the OIS that are the subject of this determination is generally viewed as being reliable. Based on this information, the Commission has determined that there is adequate pricing data to support required clearing of RFR OIS.

In addition, as part of their regulation § 39.5(b) submissions, the registered DCOs that clear the RFR OIS subject to this determination provided information to support the Commission's conclusion that there exists adequate pricing data to justify a clearing requirement determination. In its regulation § 39.5(b) submissions, CME provided data regarding transaction volumes and market participation, and LCH provided information on daily volumes, and noted that pricing data for each of the RFR OIS that it clears is available from brokers. LCH also noted the range of maturities for which quotes can be obtained from brokers. In its submissions to the Commission, Eurex provided relevant language from its FCM Regulations and Clearing Conditions regarding determination of daily pricing. Eurex stated that it believes its reliance on Reuters for pricing data is accurate because it is a readily available and conventional source. Eurex noted that it also can receive pricing data from Bloomberg and has multiple backup sources.

c. Comments Received Regarding Factor (I)

Commenters provided support for the conclusion that sufficient liquidity and pricing data exists in RFR OIS markets to withstand stressed market conditions. Commenters also supported the DCOs' representations that adequate pricing data exists for DCO risk and default management of swaps referencing RFRs. CCP12 noted that SOFR liquidity improved materially in the past 12 months as a function of SOFR First and subsequent restrictions on new USD LIBOR activity that began on January 1, 2022. Citadel agreed that the data in the NPRM clearly demonstrates that there are significant outstanding notional amounts in USD SOFR OIS, and that trading in USD SOFR OIS continues to increase. Citadel also cited more recent data demonstrating that trading in USD SOFR OIS has steadily increase since January 2022, noting that over half of the USD interest rate derivatives market references SOFR as of May 2022. Citadel stated that this data demonstrates that significant outstanding notional exposures, trading liquidity, and adequate pricing data are present in the USD SOFR OIS market to support a clearing requirement determination.

CME stated that adequate pricing data for risk and default management purposes is available across all stated termination date ranges, and stated that CME is capable of offering uninterrupted clearing services for all instruments it clears even during times of market stress.

JSCC likewise noted that the JPY swaps market has now fully transitioned away from JPY LIBOR interest rate swaps and that as of the end of April 2022, JPY TONA OIS accounted for 97% of DV01 traded in the under two-year tenor category, in the interest rate derivatives market. Additionally, JSCC stated that, because the JPY swaps market has fully migrated from JPY LIBOR interest rate swaps to JPY TONA OIS, JSCC believes there is adequate pricing data in a liquid market across different tenors for DCO risk and default management of JPY TONA OIS. JSCC also regularly holds default management fire drills to verify that its default management process is robust and would be capable of managing a default in stressed market conditions.

Based on the data presented and analyzed above, and in light of the comments received, the Commission has determined that there are sufficient outstanding notional exposures, trading liquidity, and pricing information for the RFR OIS subject to this rulemaking to support a clearing requirement determination.

[124] As discussed further below, Commission staff receives and reviews margin model information from the registered DCOs that clear these swaps, including information regarding how those DCOs would ensure that liquidity exists in order to exit a position in a stressed market. For purposes of the first statutory factor, the Commission considers possible periods of market stress, particularly when assessing whether there is sufficient liquidity and pricing data. Second Determination, 81 FR 71210 (noting that the Commission considered ''the effect a new clearing mandate will have on a DCO's ability to withstand stressed market conditions'' as part of its analysis in connection with the Second Determination).

2. Factor (II)—Availability of Rule Framework, Capacity, Operational Expertise and Resources, and Credit Support Infrastructure

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to consider the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the classes of swaps on terms that are consistent with current material terms and trading conventions. Based on their regulation § 39.5(b) submissions, as well as ongoing oversight, the Commission has determined that each of the registered DCOs has developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps they currently clear, including the RFR OIS subject to this rulemaking, on terms that are consistent with the material terms and trading conventions on which those swaps are being traded. The Commission subjects each of the registered DCOs to ongoing review, risk surveillance, and examination to ensure compliance with the CEA's core principles and Commission regulations, including with respect to the submitted swaps.[125]

Each of the registered DCOs has procedures pursuant to which they regularly review their RFR OIS clearing in order to confirm or adjust margin and other risk management tools. When reviewing each of the registered DCOs' risk management tools, the Commission considers whether the DCO is able to manage risk during stressed market conditions to be one of the most significant considerations. Each of the registered DCOs has developed detailed risk management practices, including a description of risk factors considered when establishing margin levels.[126] The Commission reviews and oversees each of the registered DCOs' risk management practices and development of margin models. Margin models are further refined by stress testing and daily back testing. The Commission also considers stress testing and back testing when assessing whether each of the registered DCOs can clear swaps safely during stressed market conditions.

The registered DCOs clearing the RFR OIS subject to this determination design and conduct stress tests, and Commission staff monitors development of these stress tests. Each of the registered DCOs also conducts reverse stress tests to ensure that their default funds are sized appropriately and to ascertain whether any changes to their financial resources or margin models are necessary.[127] Commission staff monitors markets in real-time and also performs stress tests against the DCOs' margin models and may recommend changes to a margin model. The registered DCOs conduct back testing on a daily basis to ensure that the margin models capture market movements for member portfolios.[128]

Before offering a new product for clearing, each of the DCOs considers stress tests and back testing results in determining whether it has sufficient financial resources to offer new clearing services. The Commission also reviews initial margin models and default resources to ensure that the DCOs can risk manage their portfolio of products offered for clearing. This combination of stress testing and back testing in anticipation of offering swaps for clearing provides the registered DCOs with greater certainty that their offerings will be risk-managed appropriately. The process of stress testing and back testing also gives DCOs practice incorporating new swaps into their models. In addition to the Commission's surveillance and oversight, each of the registered DCOs continues to monitor and test their margin models over time so that they can operate effectively in stressed and non-stressed market environments. Registered DCOs review and validate their margin models regularly.[129]

Each DCO monitors and manages credit risk exposure by asset class, clearing member, account, or individual customer. They manage credit risk by establishing position and concentration limits based on product type or counterparty. These limits reduce potential market risks so that DCOs are better able to withstand stressed market conditions. Each of the DCOs monitors exposure concentrations and may require additional margin deposits for clearing members with weak credit scores, with large or concentrated positions, with positions that are illiquid or exhibit correlation with the member itself, and/or where the member has particularly large exposures under stress scenarios. DCOs also can call for additional margin, on top of collecting initial and variation margin, to meet the current DCO exposure and protect against stressed market conditions.[130]

[125] In order to be registered with the Commission, a DCO must comply with the DCO core principles under section 5b of the CEA and applicable Commission regulations. Once a DCO is registered with the Commission, Commission staff periodically examine each DCO to determine whether the DCO is maintaining compliance with the CEA and Commission regulations. In addition, Commission staff monitors the risks posed to and by DCOs, clearing members, and market participants, and conducts independent stress testing.

[126] *E.g.,* historical volatility, intraday volatility, seasonal volatility, liquidity, open interest, market concentration, and potential moves to default. For additional information, each of CME, LCH, and Eurex has published a document outlining its compliance with the Principles for Financial Market Infrastructures (PFMI) published by the Committee on Payments and Market Infrastructures (CPMI; formerly, CPSS) and IOSCO. CPSS–IOSCO Principles for Financial Market Infrastructure (PFMI), Apr. 16, 2012, available at *https://www.bis.org/cpmi/publ/d101.htm. See* CME, CME Clearing: PFMI Disclosure, Nov. 30, 2021, available at *https://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf;* LCH PFMI Self-Assessment 2020, available at *https://www.lch.com/system/files/media_root/CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20of%20LCH%20LTD_1.pdf;* and Eurex Clearing AG, Assessment of Eurex Clearing AG's compliance against the PFMI and disclosure framework associated to the PFMI, Feb. 16, 2021, available at *https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf635c63c/data/cpss-iosco-pfmi_assessment_2020_en.pdf.*

[127] Reverse stress testing uses plausible market movements that could deplete guaranty funds and cause large losses for top clearing members. For example, CME, LCH, and Eurex may use scenarios for stress testing and reverse stress testing that capture, among other things, historical price volatilities, shifts in price determinants and yield curves, multiple defaults over various time horizons, and simultaneous pressures in funding and asset markets.

[128] Back testing tests margin models to determine whether they are performing as intended, and checks whether margin models produce margin coverage levels that meet the DCO's established standards. Back testing helps CME, LCH, and Eurex determine whether their clearing members satisfy the required margin coverage levels and liquidation timeframe.

[129] Exempt DCOs, such as JSCC and HKEX, are subject to oversight by their home country regulators, along with regulations regarding risk management. For instance, JSCC is subject to the supervision of JFSA. JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, at 19, available at *https://www.jpx.co.jp/jscc/en/company/cimhll0000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf.* In granting JSCC's order of exemption, the Commission determined that JSCC is subject to comparable, comprehensive supervision and regulation by its home country regulator. *See* JSCC Order of Exemption from Registration, Oct. 26, 2015, at 1, available at *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/jsccdcoexemptorder10-26-15.pdf;* JSCC Amended Order of Exemption from Registration, May 15, 2017, at 1, available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/jsccdcoexemptamdorder5-15-17.pdf.* Among other requirements, JSCC must provide the Commission with an annual certification that it continues to observe the PFMI in all material respects, and the Commission must receive annually, at JSCC's request, a certification from JFSA that JSCC is in good regulatory standing. Likewise, HKEX is overseen by HKMA, which provides ongoing supervision, and must meet the same requirements for an exempt DCO as JSCC. *See* HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, available at *https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en.*

[130] As a general matter, any DCO offering RFR OIS for clearing, including exempt DCOs, would follow

Continued

In support of its ability to clear RFR OIS subject to this determination, CME's regulation § 39.5(b) submissions cite to its rulebook to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are traded. LCH's submissions state that it has a well-developed rule framework and support infrastructure for clearing interest rate swaps, which it leverages to offer clearing services for RFR OIS. Eurex's submissions state that Eurex has a well-developed rule framework and support infrastructure for clearing RFR OIS. Eurex further states that it has the appropriate risk management, operations, and technology capabilities to ensure that it is able to liquidate positions in such swaps in an orderly manner in the event of a clearing member default, and that the RFR OIS are subject to margin and clearing fund requirements set forth in Eurex's FCM Regulations and Clearing Conditions.

Commenters supported these positions. In particular, Citadel commented that it is clear that market participants, including FCMs, have the operational and technological infrastructure in place to support the clearing of USD SOFR OIS, pointing out that almost all USD SOFR OIS transactions are cleared. Citadel stated that this significant voluntary clearing activity demonstrates that market participants are confident in current DCO offerings.

For all of these reasons, the Commission has determined that there are available rule frameworks, capacity, operational expertise and resources, and credit support infrastructures, consistent with material terms and trading conventions, to support the required clearing of the RFR OIS subject to this clearing requirement determination. The application of DCO risk management practices to the RFR OIS subject to this clearing requirement determination should ensure that the swaps subject to this rulemaking can be cleared safely, even during times of market stress.[131]

this risk management approach with regard to offering these swaps for clearing.

[131] For additional information related to this factor, please see the public disclosures made by CME, Eurex and LCH. CME, CME Clearing: Principles for Financial Market Infrastructures Disclosure, Nov. 30, 2021, available at *https://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf;* LCH Ltd., CPMI—IOSCO Self-Assessment 2020, Mar. 31, 2020, available at *https://www.lch.com/system/files/media_root/CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20of%20LCH%20LTD_1.pdf;* Eurex, ''Assessment of Eurex Clearing AG's compliance against the CPMI–IOSCO Principles for financial market infrastructures (PFMI) and the disclosure framework associated to the PFMIs,'' Feb. 28, 2022, available at *https://www.eurex.com/resource/blob/2973806/422b675a412d96e3c8cf97a570b899a2/data/cpss-iosco-pfmi_assessment_2021_en.pdf.* As explained above, similar disclosures are available for JSCC and HKEX.

[132] JSCC Comment Letter.

[133] CME RFI Letter.

[134] LSEG RFI Letter.

[135] Citadel RFI Letter.

[136] TD Bank RFI Letter. *See also* Tradeweb RFI Letter (''The swap clearing and execution requirements under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act have increased investor protections, improved market liquidity, and reduced systemic risk, especially in the dealer-to-customer market. It will be critical for the CFTC to maintain these market improvements as new swap transactions increasingly utilize alternative risk-free reference rates . . . .'').

[137] ACLI's concerns about use of FCMs and allocation of capital for purposes of margin are discussed below.

3. Factor (III)—Effect on the Mitigation of Systemic Risk

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to consider the effect of the clearing requirement on the mitigation of systemic risk in light of the size of the market for such contract and the resources of the DCO available to clear the contract. As presented in the data and discussion above, the Commission has concluded that the market for each RFR OIS subject to this determination is significant, and mitigating counterparty credit risk through clearing likely will reduce systemic risk in the interest rate swap market generally. While not every individual RFR OIS market has large outstanding notional exposures, each such market is important, and as liquidity shifts from IBOR swaps to RFR OIS, continuity of clearing for RFR OIS serves to reduce systemic risk.

In its regulation § 39.5(b) submissions, CME explains the benefits of centralized clearing, including freer counterparty credit lines, enhanced risk management, operational efficiencies, and ease of offsetting risk exposures. LCH's submissions note that clearing avoids complex bilateral relationships, provides for default management, and enhances transparency into the risks posed by swap positions. Eurex's submissions highlight the benefits of reduction of counterparty risk, margin and collateral efficiencies, protections for customer assets, and legal certainty. Each DCO's submissions indicate that they maintain adequate resources to clear the swaps that are the subject of this rulemaking. Additionally, JSCC noted that it has been clearing JPY TONA OIS since 2014 ''without facing any challenge from a governance, rule framework, operational, resourcing, or credit support infrastructure perspective.'' [132]

CME commented on the RFI that mitigation of systemic risk is one of the key advantages of centralized clearing over bilateral arrangements.[133] Similarly, LSEG stated that ''a clearing requirement will mitigate systemic risk, making sure that USD SOFR risk moves from the bilateral space to the cleared market to the necessary extent.'' [134] In its RFI response, Citadel noted that ''[a]pplying a clearing requirement to OTC derivatives referencing SOFR will ensure these markets develop as centrally-cleared markets,'' and further noted that ''central clearing provides greater systemic risk mitigation than bilateral margining for uncleared swaps.'' [135] TD Bank agreed that a clearing requirement for USD SOFR swaps ''might increase the clearing rate and therefore mitigate[] systemic risk even more,'' but TD Bank also noted that the ''bulk'' of USD SOFR swaps are already voluntarily cleared.[136]

Commenters on the NPRM further supported these positions. CME, Citadel, ISDA, and MFA each described the importance of central clearing as a means of mitigating systemic risk. ACLI also noted the importance of central clearing.[137] CME stated that the significant and rapid adoption of voluntary clearing of RFR OIS demonstrates the beneficial effects on mitigation of systemic risk in these products, noting that high levels of voluntary clearing mean that there is already a wide range of clearing members supporting clearing of these products. CME stated that it has sufficient diversity in clearing members, as well as the capability to default manage RFR OIS portfolios, regardless of the introduction of a clearing requirement. JSCC stated that amendments to the current interest rate swap clearing requirement to include swaps with RFRs would maintain the momentum in the shift from bilateral to cleared markets, which would enhance safety and transparency, and result in a reduction of systemic risk.

Centrally clearing the RFR OIS subject to this rulemaking through a registered or exempt DCO should reduce systemic risk by providing counterparties with daily mark-to-market valuations upon which to exchange variation margin pursuant to the DCO's risk management framework and requiring posting of initial margin to cover potential future exposures in the event of a default. In

addition, swaps transacted through a DCO are secured by the DCO's guaranty fund and other available financial resources, which are intended to cover extraordinary losses that would not be covered by initial margin.

Central clearing was developed and designed to handle significant concentration of risk. Each of the DCOs that clears the RFR OIS covered by this rulemaking has a procedure for closing out and/or transferring a defaulting clearing member's positions and collateral.[138] Transferring customer positions to solvent clearing members in the event of a default is critical to reducing systemic risk. DCOs are designed to withstand defaulting positions and to prevent a defaulting clearing member's loss from spreading further and triggering additional defaults. To the extent that introduction of an RFR OIS clearing requirement increases the number of clearing members and market participants in the interest rate swap market, then DCOs may find it easier to transfer positions from defaulting clearing members if there is a larger pool of potential clearing members to receive the positions.[139]

Each DCO has experience risk managing interest rate swaps, and the Commission believes that the DCOs have the necessary financial resources available to clear the RFR OIS that are the subject of this determination. In addition, the application of DCO risk management practices to the RFR OIS subject to this clearing requirement determination should ensure that the swaps subject to this rulemaking can be cleared safely.

The RFR OIS data presented in this rulemaking indicates varying levels of activity, measured by outstanding notional amounts and trade counts. The Commission acknowledges that the data comes from various, limited periods of time that do not explicitly include periods of market stress. However, the Commission concludes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in these RFR OIS to provide the liquidity necessary for DCOs to successfully risk manage these products and to support the adoption of a clearing requirement.

Accordingly, the Commission determines that these DCOs would be able to manage the risk posed by clearing the RFR OIS required to be cleared pursuant to this determination. In addition, the central clearing of the RFR OIS that are added under this rulemaking serves to mitigate counterparty credit risk, thereby potentially reducing systemic risk. Having considered the comments and the likely effect on the mitigation of systemic risk, the Commission is issuing this determination to add these RFR OIS to the clearing requirement.

4. Factor (IV)—Effect on Competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to consider the effect on competition, including appropriate fees and charges applied to clearing. Of particular concern to the Commission is whether this determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power.[140] Market power is viewed as the ability to raise prices, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.[141]

The Commission has identified one putative service market as potentially affected by this clearing determination: a DCO service market encompassing those clearinghouses that currently clear the RFR OIS subject to this determination.[142] This clearing requirement potentially could impact competition within the affected market. Of particular importance to whether any such impact is positive or negative, is: (1) whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant price increase above competitive levels would prove unprofitable because users of the interest rate swap products and DCO clearing services would substitute other clearing services coexisting in the same market(s); and (2) the potential for new entry into this market. The availability of substitute clearing services to compete with those encompassed by this determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anti-competitive behavior.

Any competitive import likely would stem from the fact that the determination and regulations would remove the alternative of not clearing for RFR OIS subject to this rulemaking. The determination does not specify who may or may not compete to provide clearing services for the RFR OIS subject to this rulemaking, as well as those not required to be cleared.

Removing the choice to enter into a swap without submitting it for clearing under this rulemaking is not determinative of negative competitive impact. Other factors, including the availability of other substitutes within the market or potential for new entry into the market, may constrain market power. The Commission does not foresee that the determination constructs barriers that would deter or impede new entry into a clearing services market,[143] and the Commission anticipates this determination might foster an environment conducive to new entry. For example, the clearing determination may reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.[144] Moreover, to the extent that there are high rates of voluntary clearing in the RFR OIS subject to this determination already, a regulatory requirement to clear such swaps provides additional certainty that those high rates of clearing remain constant.

Respondents to the RFI who provided feedback regarding the potential effect on competition due to a modified clearing requirement did not identify any potential negative effects. To the contrary, Citadel stated that applying a clearing requirement to OTC derivatives referencing USD SOFR would increase liquidity and competition, citing, among

[138] For further discussion of treatment of customer and swap counterparty positions, funds, and property in the event of the insolvency of a DCO or one or more of its clearing members, please see Factor (V)—Legal certainty in the event of insolvency, in section V.C below.

[139] The Commission recognizes that with high rates of voluntary clearing RFR OIS at this time, the likelihood of adding additional clearing members and market participants in these swaps is limited.

[140] First Determination, 77 FR 74313; Second Determination, 81 FR 71220.

[141] First Determination, 77 FR 74313 (discussing market power as described under U.S. Department of Justice guidelines). *See generally* U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines (Horizontal Merger Guidelines) at section 1 (Aug. 19, 2010), available at *https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf.*

[142] First Determination, 77 FR 74298; Second Determination, 81 FR 71220. The DCO service market includes the registered and exempt DCOs that currently offer RFR OIS for clearing.

[143] However, the Commission recognizes that (1) to the extent the clearing services market for the interest rate swaps identified in this rulemaking, after foreclosing uncleared swaps, would be limited to a concentrated few participants with highly aligned incentives, and (2) the clearing services market is insulated from new competitive entry through barriers (*e.g.,* high sunk capital cost requirements, high switching costs to transition from embedded incumbents, and access restrictions), the determination could have a negative competitive impact by increasing market concentration.

[144] *See, e.g.,* Horizontal Merger Guidelines, section 9.2 (entry likely if it would be profitable which is in part a function of ''the output level the entrant is likely to obtain'').

other research, a study that found that ''the Commission's clearing and trading reforms led to a significant reduction in execution costs in the USD interest rate swap market, with market participants saving as much as $20 million–$40 million per day.'' [145] RFI response letters from LSEG, Eurex, JSCC, and TD Bank similarly stated that they did not identify potential competition-related concerns.[146]

For the reasons described above and in light of the comments received, the Commission concludes that it has considered the effect of the updated clearing requirement on competition and found that it potentially could impact competition within the affected market, but anticompetitive behavior is likely to be constrained and demand for clearing services is expected to grow. Accordingly, the Commission reaffirms its conclusion stated in the NPRM that its consideration of competitiveness is sufficient to modify the existing interest rate swap clearing requirement to include the RFR OIS subject to this rulemaking.

5. Factor (V)—Legal Certainty in the Event of Insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to consider the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is issuing this clearing requirement determination based on its view that there is reasonable legal certainty regarding the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, including RFR OIS, in the event of the insolvency of the relevant DCO or one or more of the DCO's clearing members.

The Commission believes that, in the case of a clearing member insolvency at CME, where the clearing member is the subject of a proceeding under the U.S. Bankruptcy Code, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) along with parts 22 and 190 of the Commission's regulations would govern the treatment of customer positions.[147] Pursuant to section 4d(f) of the CEA, 7 U.S.C. 4d(f), a clearing member accepting funds from a customer to margin a cleared swap must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and part 190 of the Commission's regulations, the customer's interest rate swap positions, carried by an insolvent FCM, would be deemed ''commodity contracts.'' [148] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent CME from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the RFR OIS subject to this determination.[149] Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.07) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and part 190 would govern the bankruptcy of a DCO where the DCO is the subject of a proceeding under the U.S. Bankruptcy Code, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to LCH, the Commission understands that in general the default of an LCH clearing member would be governed by LCH's rules, and LCH would be permitted to close out and/or transfer positions of a defaulting clearing member. The Commission further understands that, under applicable law, LCH's rules governing a clearing member default would supersede insolvency laws in the clearing member's jurisdiction. For an FCM based in the United States and clearing at LCH, the applicable law as a general matter, would be the U.S. Bankruptcy Code and part 190 of the Commission's regulations. According to LCH's regulation § 39.5(b) submissions, the insolvency of LCH itself would be governed by English insolvency law, which protects the enforceability of the default-related provisions of LCH's rulebook, including in respect of compliance with applicable provisions of the U.S. Bankruptcy Code and part 190 of the Commission's regulations. LCH has obtained, and made available to the Commission, legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members.[150]

On December 20, 2018, the Commission issued permission for Eurex to begin clearing swap transactions on behalf of customers of FCMs.[151] According to Eurex's regulation § 39.5(b) submissions, Eurex observes the PFMI. Eurex represented

[145] Citadel RFI response letter.

[146] LSEG RFI letter (''LCH does not believe that adopting a clearing requirement for a new product that references an alternative reference rate, or expanding the scope of an existing clearing requirement to cover additional maturities would create conditions that increase or facilitate an exercise of market power over clearing services by any DCO. Any clearing requirement that applies equally to all DCOs that provide clearing services for a product would not adversely affect competition.''); Eurex RFI letter (''Eurex Clearing believes there is healthy competition currently in the market for the clearing of swaps referencing the RFRs and, previously, the LIBORs. Eurex Clearing does not believe that adopting a clearing requirement for a new product that references an RFR or expanding the scope of the Clearing Requirement to cover additionally maturities would cause [adverse effects related to competition or an increase in the cost of clearing services].''); JSCC RFI letter (''In relation to TONA OIS, it has been accepted for clearing at 3 registered DCOs . . . . Therefore, we believe that replacing JPY–LIBOR with TONA OIS would not change (i) the existing competition for clearing services of JPY swaps nor (ii) the cost of clearing services, in any regard.''); and TD Bank RFI letter (''We do not perceive these issues [related to adverse competitive effects or increasing costs of clearing services] to come'' as a result of a clearing requirement for a new product that references an alternative reference rate or expanding the scope of the clearing requirement to cover additional maturities).

[147] An FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act). Under Title II, different rules would apply to the resolution of an FCM or DCO. Discussion in this section relating to what might occur in the event an FCM or DCO defaults or becomes insolvent describes procedures and powers that exist in the absence of a Title II receivership.

[148] If an FCM is registered as a broker-dealer, certain issues related to its insolvency proceeding would be governed by the Securities Investor Protection Act, as well.

[149] Claims seeking payment for the administration of customer property would share this priority.

[150] Letters of counsel on file with the Commission.

[151] Commission Letter Nos. 18–30, 18–31, and 18–32. Additionally, in responding to the RFI, Eurex noted that, with respect to Eurex clearing members that are FCMs and that clear swaps under Eurex's U.S. regulatory framework, Eurex's FCM Regulations ''foresee a clear process for a potential porting of client-related transactions to a replacement clearing member following the termination of a clearing member.'' Eurex RFI Letter. In the event that the termination is based on an Insolvency Termination Event, as defined in Eurex's FCM Regulations, Eurex will seek to coordinate with the CFTC and bankruptcy trustee with respect to porting the positions. This procedure applies to all cleared products. However, Eurex noted that following IBOR conversion events, it no longer clears any trades where obtaining new GBP LIBOR, JPY LIBOR, or CHF LIBOR fixings (or reliance on the relevant fallback provisions) would be necessary. *Id.*

that in February 2015, it published an assessment of its compliance with the PFMI, which was reviewed and validated by an independent outside auditor. The assessment concluded that Eurex fully complies with the PFMI, and Eurex's default management procedures were assessed to be certain in the event of its or a clearing member's insolvency with regard to the treatment of customer and counterparty positions and collateral. Such certainty continues to be reflected in Eurex's most recent PFMI assessment.[152] According to Eurex's regulation § 39.5(b) submissions, a potential insolvency of Eurex Clearing, and the operation of default management procedures under Eurex's Clearing Conditions, would be governed by German law, with the exception of certain FCM Regulations and Clearing Conditions that relate to cleared swaps customer collateral that are governed by U.S. law.[153]

In response to the NPRM, CME stated that the legal framework on which it operates complies with DCO Core Principle R and regulation § 39.27(b) (requiring legal certainty of clearing arrangements). CME stated that its legal framework is sound, tested, and provides a high degree of assurance that it will be able to conduct its clearing and settlement activities on an ongoing basis, including managing a clearing member default, and that its legal framework also provides arrangements for the failure of a DCO. CME stated that the U.S. Bankruptcy Code and part 190 of the Commission's regulations provide safe harbors that protect a DCO's right to immediately enforce its interest in the collateral it holds to margin positions and to guarantee performance of its clearing members' obligations.

Finally, as exempt DCOs, JSCC and HKEX demonstrate they are subject to ongoing comparable, comprehensive supervision by their home country regulator with regard to legal certainty in the event of insolvency.[154] Both exempt DCOs maintain disclosures discussing the ways in which they comply with the PFMI, including principles related to legal certainty in the event of insolvency.[155] Principle 1 of the PFMI provides that a CCP should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities, in all relevant jurisdictions.[156] Among other key considerations for this factor, ''[t]he legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions.'' [157] The PFMI also provide that a CCP should have effective and clearly defined rules and procedures to manage a participant default.[158] JSCC's and HKEX's PFMI disclosures provide, among other information, a discussion of the applicable law and legal basis for their clearing activities, as well as the way in which their rules address insolvency events.[159]

Lastly, JSCC provided information regarding how it would address a default by a clearing member under its rules,[160] including information regarding the treatment of certain RFR swaps for default management purposes. Specifically, JSCC described the process by which it offered JPY TIBOR–TONA basis swaps as a way to transition away from IBOR swaps without incident.[161] JSCC's comment supported the Commission's conclusions regarding the bankruptcy regime under Japanese law, as well as customer protection through global bankruptcy regimes for exempt DCOs.

JSCC's comment also recommended that the Commission reconsider its restrictions on exempt DCOs offering clearing services for U.S. customers in order to allow U.S. customers access non-U.S. swap markets. The Commission issued JSCC an order of exemption from registration as a DCO in 2015.[162] This order remains in place, and JSCC is providing non-client clearing services to U.S.-based entities pursuant to this order. As exempt DCOs, both JSCC and HKEX are not permitted to offer clearing services for U.S. customers. JSCC's additional comments regarding exempt DCOs and client clearing are beyond the scope of this rulemaking.[163]

The Commission received no other comments related to legal certainty in the event of insolvency. For the reasons described above and in light of the comments received, the Commission reaffirms its conclusion stated in the NPRM that reasonable legal certainty exists in the event of the insolvency of each of the relevant DCOs or one or more of their clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property to modify the interest rate swap clearing requirement to include the RFR OIS subject to this rulemaking.

VI. Implementation Schedule

The Commission phased in the First Determination according to the schedule contained in regulation § 50.25.[164] Under this schedule, implementation was phased in by the type of market participant. The phase-in occurred over a 270-day period following publication of the final rule in the **Federal Register**. The Commission phased in its Second Determination based on the first compliance date for market participants in non-U.S. jurisdictions pursuant to a schedule in regulation § 50.26.[165] The decision to adopt one implementation date for all market participants was driven by the fact that most market

[152] Eurex Clearing AG, Assessment of Eurex Clearing AG's compliance against the PFMI and disclosure framework associated to the PFMI, available at *https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf635c63c/data/cpss-iosco-pfmi_assessment_2020_en.pdf.*

[153] For example, in the case of an insolvency termination event, as defined in Eurex's Clearing Conditions, the relevant FCM clearing member would be subject to an insolvency proceeding pursuant to applicable U.S. law, and Eurex would seek to coordinate with the Commission and the bankruptcy trustee (or comparable person responsible for administering the proceeding) with respect to the transfer of FCM client transactions and eligible margin assets allocated to the relevant FCM client. *Id.* at 100.

[154] Exempt DCOs are not permitted to clear swaps for U.S. customers pursuant to regulation § 39.6(b)(1). Accordingly, this discussion of JSCC's and HKEX's insolvency regimes does not address issues related to U.S. customer clearing.

[155] JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, available at *https://www.jpx.co.jp/jscc/en/company/cimhll0000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf;* and HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, available at *https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en.*

[156] PFMI, Principle 1.

[157] PFMI, Principle 1, Key consideration 1.

[158] PFMI, Principle 13.

[159] JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, at 19–24, 83–91, available at *https://www.jpx.co.jp/jscc/en/company/cimhll0000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf;* and HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, at 20–21, 58–60, available at *https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en.*

[160] *See* JSCC's relevant PFMI disclosures.

[161] JSCC RFI letter (stating that, for default management purposes, JPY TIBOR–TONA basis swaps will be treated in the same manner as cleared JPY TONA OIS. JSCC noted that creation of these basis swaps was a temporary measure and the basis swaps will expire at the settlement of the rates that were fixed prior to the end of 2021).

[162] The order was amended in 2017.

[163] JSCC's interest in providing clearing services for U.S. customers would be considered by the Commission as a separate matter of DCO registration. As the Commission explained in the Second Determination, exempt DCOs ''could apply to the Commission for DCO registration in order to clear for U.S. customer accounts should they decide to pursue that line of business at any time in the future.'' Second Determination, 81 FR 71221. Section VII contains additional discussion of JSCC's comment regarding the benefits of exempt DCOs offering client clearing.

[164] Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012).

[165] Second Determination, 81 FR 71227—71228.

participants were already clearing the swaps subject to the Second Determination, as well as the successful implementation of the 2012 clearing requirement determination over a nine-month period in 2013.[166] In both cases, the Commission took into account global efforts in support of central clearing for swaps and input from market participants regarding implementation.

In arriving at an appropriate implementation schedule, the Commission considered the fact that EUR EONIA and non-USD LIBOR rates have now entirely ceased publication or become nonrepresentative,[167] DCOs have largely completed IBOR swap conversions, and many market participants already clear the vast majority of RFR OIS subject to this rulemaking. The Commission also considered recent and anticipated changes to interest rate swap clearing requirements in other jurisdictions. Additionally, the Commission considered comments received in response to the RFI and NPRM. While some commenters recommended that the Commission proceed through an interim final rule process, other responses asked for longer periods of time for market participants to come into compliance with proposed rule changes.

Significantly, no DCOs offering OIS for clearing identified any operational challenges with regard to prompt implementation of the RFR OIS clearing requirement. During its IBOR conversion processes, LCH has not encountered any operational challenges nor have its members identified any issues related to proprietary or customer clearing. [168] In addition, the Commission is not aware of any operational or other issues that are likely to impede other DCOs' conversion plans. Comments from CME and JSCC similarly support this conclusion. Smooth DCO conversion from USD LIBOR interest rate swaps to USD SOFR OIS will facilitate smooth implementation of the modified clearing requirement.

A. Overview of Changes to Regulation § 50.26(a)

As stated above, these final amendments to part 50 will become legally effective 30 days after publication of the final rule in the **Federal Register**. However, the implementation schedule discussed below accounts for non-U.S. jurisdictions' mandatory clearing timelines and incorporates feedback from DCOs and market participants. In this manner, the Commission seeks to provide flexibility and facilitate efficient implementation of the amendments.

The implementation date of the requirement to clear RFR OIS for which the corresponding IBOR rate has ceased publication or become nonrepresentative will be the same as the effective date of the final rulemaking, *i.e.* 30 days after publication in the **Federal Register**. However, the implementation date for the requirement to clear OIS referencing USD SOFR and SGD SORA will be October 31, 2022.

Amendments to remove clearing requirement rules for IBOR swaps from regulation § 50.4(a) will be implemented in two stages. For the removal of the requirement to clear all interest rate swaps for which the IBOR rate has ceased publication or become nonrepresentative,[169] the implementation date will be the same as the effective date of the final rulemaking, *i.e.* 30 days after publication in the **Federal Register**. However, for the reasons discussed below, the removal of the requirement to clear USD LIBOR and SGD SOR–VWAP swaps will be implemented on July 1, 2023.

B. Consideration of Comments on Implementation

The majority of commenters supported the Commission's proposal to implement the final rulemaking 30 days after publication in the **Federal Register**. These commenters, including AIMA, CCP12, Citadel, CME, and MFA, pointed to the extremely high rates of voluntary clearing and overall industry preparedness as support for that view.[170] These commenters also largely agreed with the Commission's proposal to remove swaps referencing USD LIBOR and SGD SOR–VWAP from existing regulations effective July 1, 2023.

By contrast, ACLI stated that implementation of the USD SOFR OIS clearing requirement should be delayed until June 30, 2023, which would coincide with the date USD LIBOR swaps are removed from the clearing requirement. In ACLI's view, this alignment would create an incentive for market participants concerned about clearing trades to move from USD LIBOR to USD SOFR swaps, thereby supporting overall LIBOR transition objectives.

ISDA recommended a date that would promote ''efficient implementation'' of the amended rules for all RFR OIS and suggested October 31, 2022, as such a date. In ISDA's view, this date would serve two purposes: (1) harmonizing with Bank of England's proposed implementation date for its USD SOFR OIS clearing requirement; and (2) avoiding unnecessary strain on market participants' resources and operational capabilities. ISDA also recommended March 6, 2023, as the date for removal of the requirement to clear interest rate swaps referencing USD LIBOR.[171]

C. EUR €STR, GBP SONIA, CHF SARON, and JPY TONA OIS Implementation

CME, LCH, Eurex, and JSCC have completed their conversion plans for all cleared EUR EONIA and non-USD LIBOR swaps into RFR OIS. Moreover, EUR EONIA and non-USD LIBOR interest rate swaps are generally no longer offered for clearing.[172] Beyond ISDA, discussed above, no commenter raised concerns specifically about a 30-day implementation period for requiring clearing of the OIS referencing EUR €STR, GBP SONIA, CHF SARON, and JPY TONA, which are the alternative reference rates corresponding to these IBORs.

Non-USD LIBOR rates ceased publication or became nonrepresentative at the end of 2021, and EUR EONIA ceased publication in early 2022. In many instances, non-U.S. jurisdictions have updated their clearing mandates to reflect this fact already, and market participants are voluntarily clearing the vast majority of the OIS subject to this rulemaking. By adding these OIS to the clearing requirement as

[166] *Id.* at 71227.

[167] Remaining USD LIBOR settings, as well as SGD SOR–VWAP settings, will cease publication or become nonrepresentative after June 30, 2023.

[168] LSEG RFI Letter (stating that the implementation date be set ''not too far from the completion of the Commission's review'' in order to ''reduce uncertainty in the market and limit the risk of bifurcation of liquidity between the cleared and uncleared market for the LIBOR rates that ceased on December 31, 2021 and their respective replacement rates.''). Comments from CME and JSCC support this concern about splitting liquidity.

[169] This includes removing all interest rate swaps referencing non-USD LIBOR and EUR EONIA from regulations §§ 50.4(a) and 50.26 30 days after publication of the final rules. The Commission is removing IBOR swaps from regulation § 50.4, with swaps referencing non-USD LIBOR and EUR EONIA removed 30 days after publication of the final rule in the **Federal Register**. Removal of clearing requirement rules for interest rate swaps referencing USD LIBOR and SGD SOR–VWAP will be implemented on July 1, 2023.

[170] *See* section III above for additional information regarding comments received.

[171] *See* summary of comments in section III above.

[172] Clearing services also are no longer available for EUR LIBOR swaps, but these swaps are not subject to required clearing under regulation § 50.4(a).

promptly as possible, the final rules modify the existing clearing requirement to reflect the cessation or loss of representativeness of EUR EONIA and non-USD LIBOR swaps.

Given the overwhelming amount of voluntary clearing, reflecting a significant volume of the outstanding market for these OIS, and the fact that DCOs no longer offer EUR EONIA and non-USD LIBOR interest rate swaps for clearing, the Commission is adopting its implementation schedule for required clearing of EUR €STR, GBP SONIA, CHF SARON, and JPY TONA OIS as proposed. Accordingly, rules requiring clearing of these OIS will be implemented 30 days after publication of the final rules in the **Federal Register**. If this date falls on a Saturday, Sunday, or U.S. Federal public holiday, the date will be the next available business day when markets are open in the United States.

D. USD SOFR and SGD SORA OIS Implementation

To the extent practicable, the Commission believes that an implementation schedule for these modified rules should provide flexibility for market participants and further the Commission's goals of harmonizing its clearing requirement rules with those abroad. Commenters generally supported the Commission's efforts to implement a modified clearing requirement in a manner that provides certainty and fosters further international harmonization with regard to swap clearing requirements. Over the years, commenters have applauded Commission efforts to work cooperatively with regulators in other jurisdictions while responding to the operational needs of market participants in a flexible manner.

Recognizing all these factors and striking a middle ground, the Commission is adjusting its proposed implementation schedule with respect to clearing requirement rules for OIS referencing USD SOFR and SGD SORA to reflect input from commenters and align with Bank of England's proposed implementation date for mandatory clearing of USD SOFR OIS under UK law. Accordingly, the implementation date for required clearing of USD SOFR and SGD SORA OIS will be October 31, 2022.

E. Removal of Rules for Swaps No Longer Offered for Clearing

In addition to adding certain RFR OIS to the clearing requirement, these amendments modify the existing clearing requirement to reflect the cessation or loss of representativeness of certain IBORs. For purposes of this rulemaking, all relevant LIBOR settings with the exception of overnight, one-month, three-month, six-month, and 12-month USD LIBOR, and EUR EONIA, have ceased publication or become nonrepresentative.

As discussed above, DCOs no longer offer these IBOR swaps for clearing. In addition, regulators in the United States and other jurisdictions have called on market participants to transfer their swap positions from IBORs to RFRs, with corresponding liquidity shifting, and continuing to shift, from swaps referencing these IBORs to swaps referencing RFRs. No commenter raised concerns regarding removing the requirement to clear swaps referencing IBOR rates that have ceased publication or become nonrepresentative.

For these reasons, the Commission will implement the rules removing all interest rate swaps referencing EUR EONIA, GBP LIBOR, CHF LIBOR, and JPY LIBOR as proposed. Accordingly, the implementation date for the removal of these swaps from regulation § 50.4 shall be 30 days after publication of the final rule in the **Federal Register**. If this date falls on a Saturday, Sunday, or U.S. Federal public holiday, the date will be the next available business day when markets are open in the United States.

F. Removal of USD LIBOR and SGD SOR–VWAP Swap Clearing Requirement

In the interests of international harmonization and in alignment with many commenters, the Commission will retain its existing requirement to clear swaps referencing USD LIBOR and SGD SOR–VWAP until July 1, 2023. International authorities are in the process of updating their clearing mandates to reflect the fact that USD LIBOR will cease publication or become nonrepresentative after June 30, 2023. Bank of England has indicated that existing clearing mandates will remain in place until near the time USD LIBOR ceases publication.

Remaining USD LIBOR settings will cease publication or become nonrepresentative after June 30, 2023. SGD SOR–VWAP, which relies on USD LIBOR as an input, will also cease after June 30, 2023. The Commission expects that there will be no new interest rate swaps referencing USD LIBOR entered into on or after July 1, 2023. In anticipation of USD LIBOR ceasing publication, DCOs will continue to conduct conversion events to replace all outstanding USD LIBOR swaps with USD SOFR OIS, and will cease offering clearing services for USD LIBOR swaps.

International authorities are in the process of updating their clearing mandates to reflect the fact that USD LIBOR will cease publication or become nonrepresentative after June 30, 2023. Bank of England's recent proposal indicated support for leaving its existing clearing mandates in place until close to the time that USD LIBOR ceases publication or becomes non-representative. Bank of England proposed removing its USD LIBOR interest rate swap clearing requirement ''around the same time as a number of CCPs contractually convert'' USD LIBOR swaps and remove these swaps from clearing eligibility.[173]

Last year, ESMA adopted regulatory technical standards that removed its existing USD LIBOR clearing obligation and added a requirement to clear USD SOFR OIS (seven days to three years).[174] ASIC has not yet proposed changes to its USD LIBOR interest rate swap clearing requirement, and has indicated it may be waiting for the finalization of changes to the Commission's part 50 interest rate swap clearing rules before doing so.[175]

As noted above, commenters, including AIMA, Citadel, CME, and MFA, were generally supportive of the Commission's proposal to retain USD LIBOR and SGD SOR–VWAP swap clearing requirements until July 1, 2023, while ISDA suggested March 6, 2023 or, in the alternative, the first conversion date at any registered or exempt DCO clearing USD LIBOR swaps.

Setting a specified date for the removal of the Commission's USD LIBOR (and SGD SOR–VWAP) interest rate swap clearing requirement will provide clarity to the interest rate swap market as a whole. Removing the USD LIBOR and SGD SOR–VWAP interest rate swap clearing requirement on July 1, 2023, also reflects both international coordination and input from the public. Retaining these clearing requirement rules until such time as USD LIBOR is

[173] Bank of England SOFR Proposal.

[174] In choosing to replace its USD LIBOR interest rate swap clearing requirement with a USD SOFR OIS clearing requirement, ESMA stated, ''ESMA believes it is important to be consistent for the [clearing obligation] with the communication made by ESMA and other EU authorities, as well as the communications made by several other authorities in other jurisdictions and at the international level who expect entities to stop referencing LIBOR (including USD LIBOR) by the end of the year. If ESMA and other regulators[']] expectations are fulfilled, there should no longer be material liquidity in OTC interest rate derivatives referencing USD LIBOR from the start of next year. Therefore, the liquidity criteria of the [European Market Infrastructure Regulation] procedure would no longer be met at the end of the year. Following from this, ESMA is proposing to remove the USD LIBOR classes from the clearing obligation and the RTS has been modified accordingly.'' ESMA Final Report.

[175] ASIC Derivative Transaction Rules.

no longer available also serves to continue to mitigate systemic risk while there remains outstanding USD LIBOR swap activity. In addition, by not tying the removal of its USD LIBOR (and SGD SOR–VWAP) interest rate swap clearing requirement to any particular DCOs' conversion plans, the Commission is not signaling a preferred DCO conversion plan.

Lastly, the Commission observes that its clearing requirement for interest rate swaps referencing EUR EONIA and non-USD LIBOR has remained in place for months after the DCO conversion events for those rates, and the Commission is unaware of any market difficulties resulting from those rules remaining in place, despite U.S. market participant activity throughout global interest rate swap markets.

The Commission will continue to monitor the use of interest rate swaps referencing USD LIBOR and SGD SOR–VWAP as the IBOR transition process concludes.

G. Technical Changes

As a technical amendment, because the Commission is removing certain interest rate swaps from regulation § 50.4, it is also removing those same swaps from regulation § 50.26. The Commission is changing this regulation for consistency and to eliminate any confusion that might arise if different swap products are included in regulations §§ 50.4 and 50.26. Additionally, the Commission is making technical revisions related to the formatting of the table of compliance dates for required clearing of credit default swaps in regulation § 50.26.

VII. Cost Benefit Considerations

A. Statutory and Regulatory Background

Amended regulation § 50.4(a) identifies certain swaps that are required to be cleared under section 2(h)(1)(A) of the CEA in addition to those required to be cleared by existing regulations §§ 50.2 and 50.4(a), and removes certain other swaps from the clearing requirement. These clearing requirement amendments are designed to update the Commission's regulations in light of the interest rate swap market's move away from use of swaps referencing IBORs to swaps referencing RFRs. Currently, most RFR OIS are being cleared voluntarily, so the amended regulation largely serves to ensure that the swap market under the Commission's jurisdiction continues to clear all RFR OIS subject to this clearing requirement determination. The continued central clearing of RFR OIS may limit the counterparty risk associated with such swaps, thereby mitigating the possibility of such risks having a systemic impact, which might cause or exacerbate instability in the financial system. In addition, required clearing of RFR OIS would reflect the global effort to rely on benchmark rates that are less susceptible to manipulation.

This determination is consistent with one of the fundamental premises of the Dodd-Frank Act and the 2009 commitments adopted by the G20 nations: the use of central clearing can reduce systemic risk. The following discussion is a consideration of the costs and benefits of the Commission's action in this rulemaking, pursuant to the regulatory requirements discussed above.

B. Overview of Swap Clearing

1. How Clearing Reduces Risk

When a bilateral swap is cleared, the DCO becomes the counterparty to each original swap counterparty. This arrangement mitigates counterparty risk to the extent that the DCO may be a more creditworthy counterparty than the original swap counterparties. Central clearing reduces the interconnectedness of market participants' swap positions because the DCO, an independent third party that takes no market risk, guarantees the collateralization of swap counterparties' exposures. DCOs have demonstrated resilience in the face of past market stress.

The Commission anticipates that DCOs will continue to be some of the most creditworthy swap counterparties because, among other things, they are able to monitor and manage counterparty risk effectively through (1) collection of initial and variation margin associated with outstanding swap positions; (2) marking positions to market regularly, usually multiple times per day, and issuing margin calls when the margin in a customer's account has dropped below predetermined levels that the DCO sets; (3) adjusting the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying product; and (4) closing out swap positions if margin calls are not met within a specified period of time.

2. The Clearing Requirement and Role of the Commission

With the passage of the Dodd-Frank Act, Congress gave the Commission the responsibility for determining which swaps would be required to be cleared pursuant to section 2(h)(1)(A) of the CEA. Since 2012, there is ample evidence that the interest rate swap market has been moving toward increased use of central clearing in response to both market incentives and clearing requirements.[176] Now with the IBOR transition completed for most LIBOR rates and with most RFR OIS already being voluntarily cleared, as discussed further below, it is possible that the effect of this rulemaking will be limited to ensuring that market participants continue to clear the RFR OIS that are subject to this clearing requirement determination.[177] The Commission has determined that the costs and benefits related to the required clearing of the RFR OIS to be added under this determination are attributable, in part to (1) Congress's stated goal of reducing systemic risk by, among other things, requiring clearing of swaps; and (2) the Commission's exercise of its discretion in selecting swaps or classes of swaps to achieve those ends.

C. Consideration of the Costs and Benefits of the Commission's Action

1. CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation under the CEA or issuing certain orders.[178] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors). Accordingly, the Commission considers the costs and benefits associated with the clearing requirement determination in light of the Section 15(a) Factors. In the sections that follow, the Commission considers: (1) The costs and benefits of required clearing for the

[176] Second Determination, 81 FR 71210; BIS, ''Statistical release: OTC derivatives at end-December 2020,'' May 12, 2021, at 4, Graph 4, available at *https://www.bis.org/publ/otc_hy2105.pdf* (charting central clearing rates for interest rate swaps from 2012 to 2020 and noting a particularly significant rise during the 2012–2015 period). CCP12 and CME also discussed the adoption of central clearing in their RFI responses.

[177] It is possible that some market participants might respond to the requirement that RFR OIS be cleared by decreasing their use of such swaps, particularly if the cost of clearing increases in the future relative to the cost of not clearing. Thus, there is some uncertainty regarding how the determination will affect the quantity of swaps that are cleared.

[178] 7 U.S.C. 19(a).

RFR OIS to be added under this determination as well as the costs and benefits of removing certain swaps from required clearing; (2) the alternatives contemplated by the Commission and their costs and benefits; and (3) the impact of required clearing for the swaps subject to this determination and listed in amended regulation § 50.4(a) in light of the Section 15(a) Factors.

The Commission is considering these costs and benefits against a baseline of the current set of interest rates swaps subject to the clearing requirement adopted under regulation § 50.4. This determination adds specified RFR OIS to the clearing requirement and it removes certain swaps referencing IBORs from the clearing requirement.

In most cases, this will be a simultaneous exchange: as an IBOR swap is removed from the clearing requirement, an RFR swap is added. This is the case for almost all non-USD LIBOR and non-SGD SOR–VWAP interest rate swaps. (For the existing GBP SONIA OIS clearing requirement, the termination date range will be extended to include 7 days to 50 years.) However, for USD SOFR OIS and SGD SORA OIS there will be a delay in this substitution. The Commission is adopting a clearing requirement for USD SOFR and SGD SORA OIS that will be implemented on October 31, 2022, but it is not removing the requirement to clear USD LIBOR and SGD SOR–VWAP interest rate swaps until July 1, 2023. Thus, the requirement to clear USD LIBOR and SGD SOR–VWAP swaps will coexist with requirement to clear USD SOFR and SGD SORA OIS for approximately eight months. The period includes the planned DCO conversion processes.

As explained above, almost all RFR OIS that are subject to this determination are cleared voluntarily today, so the percentage of such swaps that would be cleared following implementation of this rulemaking is unlikely to increase materially. The Commission's analysis below compares amendments in this rulemaking to the clearing requirement in effect today. The costs and benefits discussed below are, for the most part, already accounted for in the market through the current industry practice of high levels of RFR OIS clearing.

The swap market functions internationally with (i) transactions that involve U.S. firms and DCOs occurring across different international jurisdictions; (ii) some entities organized outside of the United States that are, or may become, Commission registrants or registered entities; and (iii) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, this discussion of costs and benefits refers to the effects of the determination on all relevant swaps activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, commerce of the United States, pursuant to section 2(i) of the CEA.[179]

2. Costs and Benefits of Required Clearing Under the Final Rule

Market participants may incur certain costs in order to clear the RFR OIS included in this determination. For example, to the extent that there are market participants entering into RFR OIS that are not already clearing interest rate swaps voluntarily or pursuant to the Commission's prior clearing requirement determinations, such market participants may incur certain startup and ongoing costs related to developing technology and infrastructure, updating or creating new legal agreements, service provider fees, and collateralization of the cleared positions.[180] The costs of collateralization, on the other hand, are likely to vary depending on whether an entity is subject to capital and margin requirements for uncleared swaps,[181] and the differential between the cost of capital for the assets they use as collateral and the returns realized on those assets.

As noted above, almost all RFR OIS subject to this determination are already cleared voluntarily, and market participants currently clearing RFR OIS already realize the benefits of clearing. The Commission believes that this determination will ensure that the percentage of RFR OIS that are cleared remains high in the future and that these benefits continue to be realized. These benefits include reduced and standardized counterparty credit risk, increased transparency, and easier swap market access for market participants who are required to clear. Together, these benefits contribute significantly to the stability and efficiency of the financial system, but they are difficult to quantify with any degree of precision.

While there may be a benefit to removing certain swaps from required clearing, such as fewer costs to market participants who no longer have to submit such swaps to clearinghouses, in this instance, the reason the Commission is removing certain swaps referencing IBORs from the clearing requirement is because they are, with limited exceptions, no longer offered for clearing. The swap rates that the Commission is removing from the clearing requirement, other than USD LIBOR and SGD SOR–VWAP, should no longer be available or used by market participants, pursuant to broad international consensus and industry progress, as described above.[182] Therefore, removing these swaps referencing IBORs from the clearing requirement should not impose additional costs on market participants and should result in the benefit of market and regulatory certainty. There may be no meaningful benefit to market participants from this removal because they generally cannot clear these swaps today. However, there may be benefits associated with the effort to reach broad consensus around the transition away from IBORs.

Any potential costs associated with this determination should be viewed in light of the fact that each new RFR OIS that is required to be cleared is already widely cleared voluntarily, and stands in the place of an IBOR swap that is already subject to required clearing and is being removed from required clearing under this rulemaking.[183]

[179] Pursuant to section 2(i) of the CEA, activities outside of the United States are not subject to the swap provisions of the CEA, including any rules prescribed or regulations promulgated thereunder, unless those activities either ''have a direct and significant connection with activities in, or effect on, commerce of the United States''; or contravene any rule or regulation established to prevent evasion of a CEA provision enacted under the Dodd-Frank Act. 7 U.S.C. 2(i).

[180] These per-entity costs would vary widely depending on the needs of such market participants. Costs likely would be lower for market participants who already clear interest rate swaps covered by the Commission's prior clearing requirement determinations. The opposite would be true for market participants that start clearing because of the determination. However, given the high rates of voluntary clearing, there are likely to be few, if any, new participants. In addition, these market participants may have otherwise incurred costs associated with margining their uncleared swaps with bilateral counterparties, as well as incurring other costs associated with bilateral uncleared swaps, such as startup or ongoing costs related to developing technology and infrastructure, and updating or creating new legal agreements related to their uncleared swap positions. Moreover, operational costs for these market participants would increase based on the number of different counterparties with whom they enter into uncleared swaps.

[181] The Commission's capital and margin requirements for uncleared swaps are codified in subpart E of part 23 of the Commission's regulations.

[182] Regulators in the United States and internationally have called on market participants to cease new USD LIBOR activity.

[183] As explained in section VI, the Commission is requiring clearing of USD SOFR and SGD SORA OIS beginning on October 31, 2022. Rules removing the requirement to clear swaps referencing USD

Continued

Liquidity tied to IBORs has shifted, and will continue to shift, to RFRs as those IBORs are discontinued or become nonrepresentative. That shift has occurred, and continues to occur, as a result of numerous market events, including DCO conversions of IBOR swaps to RFR swaps, the operation of contractual fallbacks, and new use of RFRs in parallel with declining liquidity in IBOR swaps. The RFR OIS subject to this determination are already widely cleared so that the costs associated with clearing these swaps are already being incurred. In the NPRM, the Commission stated that the additional cost of compliance for market participants would be *de minimis* and invited comment on all aspects of the costs and benefits associated with this rulemaking, including the extent to which such costs are already being incurred.

3. Overview of Comments Received

As stated above, the Commission received 12 comment letters following publication of the NPRM, and almost all of these commenters supported the rulemaking. Some commenters specifically addressed the costs and benefits of the proposed rule. This summary of the comments is divided into categories of costs and benefits, but all commenters accounted for the fact that the Commission's rulemaking updates rather than materially expands or alters the underlying interest rate swap clearing requirement.

Commenters made several key points regarding *costs* associated with this rulemaking. ACLI stated that mandatory clearing elevates concentration of risk in CCPs and FCMs insofar as when a large FCM faces financial difficulties, then end-users clearing swaps through the FCM face elevated credit risk, and in the event of an FCM default may have difficulty porting positions on short notice. ACLI also stated that the process of negotiating new FCM arrangements, completing operational setup, and porting positions from one FCM to another takes significant time and is operationally burdensome. Finally, ACLI stated that some smaller life insurers may have difficulty finding FCMs that will take on their business at competitive costs.[184]

The potential costs of using FCMs identified by ACLI are not increased by this rulemaking. As ACLI acknowledges, these potential costs are associated with central clearing as a general matter, and are applicable as much to RFR OIS as to IBOR swaps (and other types of swaps) that are required to be cleared. Additionally, ACLI did not submit data regarding the number of life insurers who might need establish a business relationship with an FCM or associated costs resulting from an RFR OIS clearing requirement.[185]

CCP12 stated that the overall cost of the transition to non-USD RFR IRS has already been borne by the market and so the introduction of clearing requirements for these swaps should not increase the cost of clearing. JSCC stated that JPY TONA OIS is accepted for clearing at three registered DCOs (CME, LCH, and Eurex) and one exempt DCO (JSCC), and that, therefore, replacing JPY LIBOR with JPY TONA OIS in regulation § 50.4 would not change the cost of clearing services in any regard.

Commenters made several key points regarding *benefits* associated with this rulemaking. AIMA stated that voluntary clearing is not a substitute for mandatory clearing and mandatory clearing provides an array of market improvements and benefits. These benefits include increasing the availability of client clearing offerings, consolidating liquidity, and providing clients with confidence that there will be sufficient liquidity to properly manage risk.

CCP12 stated that the benefits of central clearing and the voluntary market move towards CCP clearing of RFR swaps is consistent with the 2009 Pittsburgh G20 commitments, which supports the Commission's appropriate decision to require clearing for RFR swaps. CME stated that the benefits of central clearing include CCP risk management protections, multilateral netting, and reduced capital requirements for exposures to DCOs. CME stated that these benefits have incentivized, and will continue to incentivize, voluntary clearing ahead of any clearing requirement determination. JSCC stated that the proposal would harmonize the CFTC's interest rate swap clearing requirement with those of other jurisdictions, which would lower operational and compliance burdens for market participants active across multiple jurisdictions.

JSCC also stated that the benefits of the proposal would be significantly enhanced if the CFTC's swap customer clearing regime, which currently limits clearing to DCOs registered with the CFTC through CFTC-registered FCMs, is reviewed with an eye toward giving U.S. customers expanded access to non-U.S. swap markets cleared by non-U.S. exempt DCOs. JSCC contended that, under the current regime, these non-U.S. exempt DCOs are subject to comparable and comprehensive supervision and regulation by their home country regulators, but U.S. customers are not able to access their clearing services because registration with the CFTC would require application of the U.S. Bankruptcy Code and the relevant CFTC regulations to the local operations of non-U.S. exempt DCOs. This application of U.S. law may create legal conflicts in some jurisdictions. JSCC recommended that the Commission prioritize a review of these restrictions for U.S. customers with a view toward allowing U.S. customers to access non-U.S. swap markets.

a. Technology, Infrastructure, and Legal Costs

Market participants already clearing swaps may incur costs in making necessary changes to technology systems if they are not yet clearing RFR OIS. Such market participants may incur costs if they need to implement technology to connect to FCMs that will clear their transactions.[186] Market participants who do not currently have established clearing relationships with an FCM will have to set up and maintain such a relationship in order to clear swaps that are required to be cleared. Market participants who transact a limited number of swaps per year likely will be required to pay monthly or annual fees that FCMs charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions.

As a general matter, it is likely that most market participants already complied with prior clearing requirements and that the incremental burdens associated with clearing any of the new RFR OIS should be minimal, especially given that these products are intended to replace already widely

LIBOR and SGD SOR–VWAP will be implemented on July 1, 2023.

[184] ACLI stated that practical solutions to allow end-users to directly clear at CCPs do not currently exist, and there are significant operational and regulatory hurdles to their creation. This issue is beyond the scope of this rulemaking.

[185] As discussed more fully below, FCMs are currently being used to facilitate clearing of RFR OIS swaps for clients; therefore, the Commission anticipates that there will be no additional costs in establishing a business relationship between current clients and their FCMs.

[186] As stated in the NPRM, the Commission does not have the information necessary to determine either the costs associated with entities that need to establish relationships with one or more FCMs or the costs associated with entities that already have relationships with one or more FCMs but need to revise their agreements. The Commission requested commenters provide the necessary data where available. No commenter provided data in response to this request.

cleared swaps,[187] and most market participants already will have undertaken the steps necessary to move away from the use of IBOR swaps in the cleared interest rate swap market.[188] Any new costs, including legal costs, are likely to depend on the specific business needs of each entity and therefore would vary widely among market participants.

In the NPRM, the Commission requested comment, including any quantifiable data and analysis, on the changes that market participants would have to make to their technological and legal infrastructures in order to clear the RFR OIS subject to the proposed determination.[189] No commenter provided any such data. As described above, ACLI stated that small life insurers may have to establish new clearing relationships with FCMs and face other potential costs and risks of central clearing, but did not offer specific examples or data. Given that this final rulemaking constitutes an update to reflect the end of certain IBOR swaps and the market-wide shift to alternative RFR OIS, rather than an expansion of the interest rate swap clearing requirement, and in light of the high rates of voluntary clearing in the RFR OIS subject to this determination, it is unlikely that new clearing arrangements will need to be made for most, if not all, interest rate swap market participants.

b. Ongoing Costs Related to FCMs and Other Service Providers

In addition to costs associated with technological and legal infrastructures, market participants transacting in RFR OIS subject to the determination face ongoing costs associated with fees charged by FCMs. DCOs typically charge FCMs an initial transaction fee for each cleared interest rate swap its customers enter, as well as an annual maintenance fee for each open position. The Commission understands that customers that occasionally transact in swaps are typically required to pay a monthly or annual fee to each FCM.[190] Because most RFR OIS are already cleared these costs are largely being incurred by market participants.

As discussed above, it is difficult to predict precisely how the requirement to clear RFR OIS will promote the use of swap clearing, as compared to the use of clearing that would occur in the absence of the requirement. However, as presented by the data above, voluntary clearing rates are so high that the percentage of swaps that would be cleared pursuant to the rule is unlikely to increase materially. The estimated percentage of USD SOFR OIS (based on monthly notional transacted) that were cleared in April 2022 was approximately 96 percent.[191] Some RFR OIS will continue to be uncleared pursuant the exceptions and exemptions set out in subpart C of part 50 of the Commission's regulations.

The Commission anticipates that a similar percentage of RFR OIS subject to this determination will continue to be cleared given that subpart C of part 50 has not changed. Because the clearing percentages for non-USD RFR OIS are even higher than for USD SOFR OIS, the increase in clearing as a result of this rule also will likely be *de minimis.* Any increase in the use of clearing due to this determination would lead in most cases to an incremental increase in the transaction costs noted above. However, because most market participants already undertook the steps necessary to accommodate the clearing of swaps subject to required clearing, the Commission anticipates that the burden associated with clearing RFR OIS should be *de minimis.*

c. Costs Related to Collateralization of Cleared Swap Positions

Market participants that enter into RFR OIS subject to the amended rule will be required to post initial margin at a DCO. The Commission understands that the RFR OIS subject to this clearing requirement determination already are being widely cleared on a voluntary basis, and so any additional amounts of initial margin that market participants would be required to post to a DCO as a result of this determination likely would be relatively small. In reaching this view, the Commission considered situations where (1) uncleared RFR OIS may be otherwise collateralized; [192] (2) uncleared RFR OIS between certain swap dealers and ''financial end-users'' are, or will be, subject to initial and variation margin requirements under the Commission's margin regulations for uncleared swaps; [193] (3) the pricing of certain uncleared swaps may account for implicit contingent liabilities and counterparty risk; (4) not all RFR OIS will necessarily be eligible for clearing if they have terms that prevent them from being cleared; [194] and (5) certain entities may elect an exception or exemption from the clearing requirement.[195]

[187] In responding to the RFI, TD Bank noted that the implementation of new clearing requirements to address the transition from IBORs to RFRs ''should not materially increase costs'' (but should be ''forecasted appropriately to allow firms to become operationally ready''). TD Bank RFI Letter. JSCC noted that ''DCOs and market participants have already incurred significant costs to transition LIBOR swaps denominated in non-USD currencies to alternative reference rates'' and stated that JSCC ''[does] not believe there would be any additional costs to be borne by DCOs and market participants if the CFTC includes alternative reference rates, such as TONA OIS, in the Clearing Requirement.'' JSCC RFI Letter. ISDA stated that ''[w]hile the changes in [the clearing requirement] will have a cost attached . . . these costs are part of the overall cost of LIBOR transition and spread across multiple jurisdictions.'' ISDA RFI Letter. ISDA noted that for institutional clients, additional costs ''will be incremental as opposed to something completely new and potentially prohibitive,'' but also noted that ''[f]or smaller less sophisticated counterparties who do not have to currently clear, [a new clearing requirement] could be a significant cost that could deter them from hedging using swaps.'' *Id.* ISDA requested that the Commission ''not enact a [clearing requirement] . . . in a way that increases cost, for instance by providing [a] short notice period that would require the implementation of tactical solutions to meet short deadlines.'' *Id.* ACLI encouraged the Commission to ''consider whether the marginal risk mitigation benefits of an expanded clearing requirement outweigh the costs of compliance'' in light of uncleared swap margin rules. ACLI RFI Letter.

[188] *E.g.,* Tradeweb RFI Letter (''In effect, the CFTC is not expanding the existing clearing determinations, rather it will be applying the existing IBOR determinations to contracts based on the new RFRs.''); Citadel RFI Letter (''As noted above, OTC derivatives referencing SOFR are currently being cleared by DCOs in material volumes, demonstrating that the rule frameworks and operational infrastructure already exist to support a clearing requirement. Significant voluntary clearing demonstrates the confidence market participants have in the current DCO offerings.''); Eurex RFI Letter (''Eurex Clearing does not believe that adopting a clearing requirement for swaps referencing SOFR would be any hindrance to trading activity in those swaps. Any such clearing requirements for the RFRs, if adopted, were already in effect for the IBOR-based rates being replaced.'').

[189] The Commission further requested comment on how many market participants, if any, may have to establish new relationships with FCMs, or significantly upgrade those relationships based on the clearing requirement proposal. The Commission also requested comment regarding the fee structures of FCMs in general, and in particular as they relate to the clearing of the types of RFR OIS covered by the proposed rule. No commenter provided specific feedback on these matters.

[190] As stated in the NPRM, the Commission does not have current information regarding such fees and requested that commenters provide the necessary data where available. No commenter provided such data.

[191] This estimate is based on swaps transacted after the most recent revisions to subpart C of part 50 went into effect (on or after December 30, 2020), so it captures all applicable exemptions from the swap clearing requirement.

[192] *E.g.,* under the terms of a credit support annex.

[193] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 71246 (Nov. 9, 2020). Swap dealers that are banks are subject to capital and margin rules promulgated by U.S. prudential authorities.

[194] For example, if such swaps do not meet the specifications set forth in revised regulation § 50.4(a).

[195] *See* subpart C of part 50 (Exceptions and Exemptions to the Clearing Requirement).

The Commission acknowledges that market participants who are not clearing voluntarily and not otherwise required to post margin or collateral may incur costs related to funding collateral once they are required to clear. The greater the funding cost relative to the rate of return on the asset used as initial margin, the greater the cost of procuring collateral.[196] Quantifying this cost with any precision is challenging because different entities may have different funding costs and may choose assets with different rates of return.

In the NPRM, the Commission requested comments on all aspects of quantifying the cost of funding initial margin that would be required to be posted at a DCO pursuant to the proposed rule. ACLI commented on the ability of life insurers to be able to choose how to allocate financial resources as between cleared and uncleared interest rate swaps. In ACLI's view this choice should rest with life insurers.[197]

ACLI did not assert or provide any evidence that life insurers are choosing to clear the RFR OIS subject to this rulemaking at a lower rate than they would if such swaps were subject to required clearing, nor that life insurers are clearing these swaps at a lower rate than they cleared swaps referencing the corresponding IBOR rates. Data presented in Table 4 above, indicates there is an overwhelming preference for clearing in the RFR OIS market. The Commission estimates that more than 94% of notional transacted each month between November 2021 and April 2022 in non-inter-affiliate trades in USD SOFR OIS has been cleared, with clearing rates for other RFR OIS subject to this rulemaking approaching 100%.

Regarding the requirement to post cash collateral, ACLI stated that posting such collateral to a clearinghouse could pose liquidity risk for life insurers if they were required to liquidate higher-yielding securities for cash. ACLI did not provide any quantifiable data in support of this comment. As ACLI acknowledged in its comment, the requirement to post cash collateral is imposed by DCOs and FCMs.[198] To the extent some life insurers could face greater collateralization costs if required to clear RFR OIS, those costs are not imposed by this rulemaking.

As explained in prior clearing requirement determinations, the CEA directs the Commission to consider whether swaps should be required to be cleared. In 2012 and 2016, the Commission issued rules requiring the clearing of certain interest rate swaps. Additionally, in issuing its 2016 clearing requirement determination, the Commission noted specific benefits offered by central clearing over bilateral margining in terms of mitigation of systemic risk for swaps that are sufficiently standardized and meet the Commission's suitability requirements, including applicability to a wider set of counterparties and the security offered by a DCO's guaranty fund and other resources.[199] In this rulemaking the Commission is updating its 2012 and 2016 rules to account for the IBOR transition.[200]

Additionally, the Commission recognizes that the new initial margin amounts required to be posted to DCOs for cleared RFR OIS will, for entities required to post initial margin under the uncleared swap margin regulations, replace the initial margin amount that has been, or will be, required to be posted to their swap counterparties, pursuant to the uncleared swap margin regulations. The uncleared swap margin regulations require swap dealers and certain ''financial end-users'' to post and collect initial and variation margin for uncleared swaps, subject to various conditions and limitations.[201]

The Commission anticipates that initial margin required to be posted for a cleared swap to be added under this determination typically will be less than the initial margin that would be required to be posted for uncleared swaps pursuant to the uncleared swap margin regulations. Whereas the initial margin requirement for cleared swaps must be established according to a margin period of risk of at least five days,[202] under the uncleared swap margin regulations, the minimum initial margin requirement is set with a margin period of risk of 10 days or, under certain circumstances, less or no initial margin for inter-affiliate transactions.[203] Phase-in of the initial margin requirements for uncleared swaps began on September 1, 2016, and will be fully implemented by September 1, 2022. The requirement for entities subject to uncleared swap margin regulations to exchange variation margin was fully implemented on March 1, 2017.

With respect to swaps added to the clearing requirement under this determination, but not subject to the uncleared swap margin regulations, the Commission believes that the new initial margin amounts to be deposited will displace costs that are currently embedded in the prices and fees for transacting the swaps on an uncleared and uncollateralized basis, rather than add a new cost. Entering into a swap is costly for any market participant because of the default risk posed by its counterparty. When a market participant faces a DCO, the DCO accounts for that counterparty credit risk by requiring the market participant to post collateral, and the cost of capital for the collateral is part of the cost that is necessary to maintain the swap position.

When a market participant faces a swap dealer or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Typically, counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps.[204] Additionally, because the counterparty credit risk that the implicit line of credit

[196] Certain entities, such as pension funds and asset managers, may use as initial margin assets that they already own. In such cases, market participants would not incur funding costs in order to post initial margin.

[197] ACLI also stated that requirement to post cash collateral to a clearinghouse could pose liquidity risk for life insurers (*e.g.,* those that may need to liquidate higher-yielding securities for cash), despite the benefits of a reduction in counterparty credit risk, and that the application of bilateral uncleared margin requirements decreases the risk-mitigation benefits of required clearing.

[198] While Commission regulation § 39.13(g)(10) provides that DCOs may accept as initial margin certain non-cash assets, DCOs (and FCMs) may impose more stringent collateral requirements.

[199] *See* Second Determination, 81 FR 71219.

[200] In the NPRM, the Commission also requested comment on funding costs that market participants may face due to interest rates on bonds issued by a sovereign nation that also issues the currency in which the RFR OIS subject to the proposed determination is denominated. By way of background, CME, LCH, and Eurex accept as initial margin bonds issued by several sovereigns, and market participants may post such bonds as initial margin under this rulemaking. No commenter addressed this issue.

[201] *See generally* subpart E of part 23 of the Commission's regulations. The swap clearing requirement under part 50 of the Commission's regulations applies to a broader scope of market participants than the uncleared swap margin regulations. For example, under subpart E of part 23, a ''financial end-user'' that does not have ''material swaps exposure'' (as defined by regulation § 23.151) is not required to post initial margin, but such an entity may be subject to the swap clearing requirement. 17 CFR 23.151.

[202] Commission regulation § 39.13(g)(2)(ii)(c), 17 CFR 39.13(g)(2)(ii)(c).

[203] Commission regulations §§ 23.154(b)(2)(i) and 23.159. *See generally* Margin and Capital Requirements for Covered Swap Entities, 80 FR 77840 (Nov. 3, 2015).

[204] It has been argued that the cash flows of an uncollateralized swap (*i.e.,* a swap with an implicit line of credit) are over time substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit. *See generally* Antonio S. Mello & John E. Parsons, Margins, Liquidity, and the Cost of Hedging, MIT Center for Energy and Environmental Policy Research, May 2012, available at *http://dspace.mit.edu/bitstream/handle/1721.1/70896/2012-005.pdf?sequence=1.*

creates is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation, the charge for each should be the same as well.[205] This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit.[206] This observation applies to capital costs associated with both initial margin and variation margin.

The amended rule also may result in added operational costs for those few market participants who are not already clearing these swaps voluntarily. With uncleared swaps, under some circumstances, counterparties may agree not to collect variation margin until certain thresholds are reached thereby reducing or eliminating the need to exchange daily variation margin.[207] By contrast, DCOs collect and pay variation margin daily and sometimes more frequently. Increased required clearing therefore may increase certain operational costs associated with paying variation margin to the DCO.[208]

The amended rule may result in slight additional costs for clearing members in the form of guaranty fund contributions that are held by the DCO. However, it also could decrease guaranty fund contributions for certain clearing members. Once the determination takes effect, there may be market participants who currently trade swaps bilaterally who would have to either become clearing members of a DCO or submit such swaps for clearing through an existing clearing member. A market participant who becomes a direct clearing member must make a guaranty fund contribution, while a market participant who clears its swaps through a clearing member may pay higher fees if the clearing member passes the costs of the guaranty fund contribution to its customers. While the addition of new clearing members and new customers for existing clearing members may result in an increase in guaranty fund requirements, it should be noted that if (1) new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.

In the NPRM, the Commission requested comment regarding the total amount of additional collateral that would be posted due to required clearing of the RFR OIS covered by the proposed determination. The Commission also invited comment, and the provision of quantifiable data and analysis, regarding (1) the cost of capital and returns on capital for that collateral, (2) the effects of required clearing on the capital requirements for financial institutions, and (3) the costs and benefits associated with operational differences related to the collateralization of uncleared versus cleared swaps.

As discussed above, only ACLI raised the issue of allocation of capital as between cleared and uncleared interest rate swaps. ACLI did not provide specific data in support of its comment. Life insurers are not eligible to elect an exception or exemption from the swap clearing requirement under the section 2(h)(7)(C) of the CEA, as implemented by subpart C of part 50 of the Commission's regulations. Similarly, life insurers entering into bilateral swaps with swap dealers are considered to be financial entities for purposes of margin requirements under part 23 of the Commission's regulations.[209] As explained above, the potentially greater collateralization costs for life insurance companies required to clear RFR OIS flow from the requirements of individual DCOs and FCMs rather than the Commission's determination that certain RFR OIS are required to be cleared.

Moreover, the CEA and Commission rules direct the Commission to determine which swaps are required to be cleared.[210] Maintaining updated rules is important, particularly where, as here, benchmarks become unavailable and liquidity shifts into swaps referencing new rates.

3. Benefits of Clearing

As noted above, there are significant benefits to central clearing of swaps. These benefits include reducing and standardizing counterparty credit risk, improving market transparency, and promoting access to clearing services. Specifically, there are important risk mitigation benefits of clearing RFR OIS that replace IBOR swaps (which are removed from the clearing requirement under this rulemaking). In addition, requiring the central clearing of RFR OIS promotes regulatory continuity and cross-border harmonization of clearing requirements.

The Commission believes that while the requirement to margin uncleared swaps mitigates counterparty credit risk, such risk is mitigated further for swaps that are cleared through a central counterparty. Moreover, the determination applies to a larger set of market participants than the uncleared swaps margin requirements. Thus, to the extent that the determination to add RFR OIS to the clearing requirement leads to increased clearing overall, these benefits are likely to result. As is the case for the costs noted above, it is likely that the use of clearing will not increase materially as a result of the amended rule, but implementing a clearing requirement helps ensure the benefits of the rule continue to be realized as market participants continue to clear RFR OIS.

The amended rule's requirement that certain swaps be cleared is intended to ensure that market participants face a DCO, and therefore, face a highly creditworthy counterparty. As discussed above, DCOs are some of the most creditworthy counterparties in the swap market because of the risk management tools they have available. The Commission recognizes that the beneficial value of adding RFR OIS to the clearing requirement may be lessened, in part, because the swap volumes that will be subject to a new clearing requirement are expected to be shifting from one set of swaps (IBORs) to another (RFRs) rather than a straightforward addition of new swap

[205] *Id.* Mello and Parsons state, ''[h]edging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted.'' *Id.* at 12. They also note that, ''[t]o a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package.'' *Id.* at 15–16.

[206] But note that the cost may be greater for uncleared swaps as the initial margin is computed on a counterparty by counterparty basis, whereas in the clearing context, there is most likely greater opportunity for netting exposures at the DCO.

[207] However, part 23 regulations require the mandatory exchange of variation margin under certain circumstances. 17 CFR 23.151 and 23.153.

[208] However, exchange of variation margin will lower the build-up of current exposure.

[209] 17 CFR 23.151 (defining ''financial end user''). ACLI stated that the benefits of central clearing are reduced by the requirement to margin uncleared swaps entered into with swap dealers. Central clearing provides a number of benefits over bilateral margining of uncleared swaps, including, in the case of required clearing, use of central clearing by a broad set of market participants, ensuring that market participants face a highly creditworthy counterparty, and the availability of DCO default and risk management resources and processes.

[210] Section 2(h) of the CEA and 17 CFR 39.5.

products to the clearing requirement.[211] Moreover, as noted, these benefits are already being realized for the large majority of these swaps that are cleared voluntarily.

In the NPRM, the Commission requested comment on the benefits of the proposed rule, such as the expected magnitude of such benefits and whether the rule would further international harmonization of swap clearing requirements. As explained throughout the preamble, many commenters noted the benefits of central clearing for interest rate swaps generally and the importance of international harmonization for the IBOR transition in particular.

One commenter, JSCC, stated that the benefits of the proposal would be enhanced if the Commission's swap customer clearing regime is reviewed in order to provide U.S. customers with expanded access to non-U.S. swap markets cleared by non-U.S. DCOs. JSCC stated that, under the current regime, exempt DCOs are subject to comparable and comprehensive regulation by their home country regulators, but U.S. customers are not able to access their clearing services. Currently, DCO registration is limited to registered DCOs and FCMs because registration with the CFTC requires application of the U.S. Bankruptcy Code and the relevant CFTC regulations. As explained above, because this issue is outside the scope of this rulemaking, this benefit is not applicable.

Lastly, with regard to the benefits of clearing, the current high rates of voluntary clearing for the RFR OIS subject to this rulemaking reflect the high value that market participants place on central clearing. Amending the interest rate swap clearing requirement to remove IBOR swaps and add RFR OIS will ensure the continuation of these benefits, including by shifting market activity into RFR OIS markets and away from IBOR swap markets.

D. Costs and Benefits of the Amendments as Compared to Alternatives

The final rule accounts for the market importance of the RFR OIS subject to this clearing requirement determination and the fact that these swaps already are widely cleared. The Commission believes that these interest rate swaps should be required to be cleared because they are widely used and infrastructure for clearing and risk management of these swaps already exists.

DCOs, FCMs, and market participants already have experience clearing the swaps subject to this determination. Because of the wide use of these swaps and their importance to the market, and because these swaps are already successfully being cleared, the Commission is adding RFR OIS to the interest rate swap clearing requirement. The Commission believes that RFR OIS should be added to the swap clearing requirement after analyzing the factors under section 2(h)(2)(D) of the CEA, in order to promote consistency with its regulatory counterparts in other jurisdictions and to ensure that the benefits of required clearing accrue to the RFR OIS that replace IBOR swaps no longer offered for clearing.

The Commission considered alternative implementation scenarios for this RFR OIS clearing requirement. Specifically, the Commission considered the implementation plan for removing existing requirements to clear USD LIBOR and SGD SOR–VWAP swaps 30 days after publication of the final rule in the **Federal Register** instead of on July 1, 2023.

As discussed in section VI, the Commission modified its implementation plan in response to input from commenters. For example, rather than going into effect 30 days after the final rules are published, the requirement to clear USD SOFR OIS and SGD SORA OIS will be implemented on October 31, 2022.

In declining to delay implementation of the proposed requirement to clear USD SOFR and SGD SORA OIS until July 1, 2023, the Commission considered the alternative in light of whether there is sufficient outstanding notional and liquidity (or pricing data) to support requiring clearing of USD SOFR OIS out to 50 years, and SGD SORA OIS out to 10 years. Both the data discussed with regard to Factor I in section V above and input from commenters support the Commission's decision to require these swaps be cleared and implement the clearing requirement on October 31, 2022. Proceeding with this alternative reflects a compromise approach that harmonizes with international counterparts and incorporates feedback from market participants.

Similarly, the Commission accounted for market input when declining to adjust the implementation plan for removing the requirements to clear interest rate swaps referencing IBORs. For the reasons discussed above, removal of USD LIBOR and SGD SOR–VWAP swaps from the existing interest rate swap clearing requirement will not take place 30 days after the final rules go into effect, but will remain in place until the underlying IBOR rates upon which the swap is based cease publication or become nonrepresentative.

Finally, the Commission considered an alternative scenario in which it did not adopt any new clearing requirement for RFR OIS. Under this alternative, the cost to the market would be an increased risk of uncleared swaps (and the associated financial stability risks) should market participants decide to clear less in the future. This cost may be significant because of the potential effect on the market-wide effort to replace IBOR swaps with RFR swaps, but may be mitigated given the current high level of clearing. The benefit of not adopting any new clearing requirements would be a savings experienced by market participants that would not be required to clear new swaps referencing an RFR and that would not otherwise find it beneficial to do so. However, given the high rate of voluntary clearing, any cost savings in the aggregate would be *de minimis,* and it is likely that many, if not most market participants entering into the RFR OIS subject to this determination find it beneficial to clear such swaps. In light of this, and in the absence of significant change in the interest rate swap markets, the Commission determined not to pursue this alternative.

E. Section 15(a) Factors

The Commission anticipates that the amendments to add certain swaps to the clearing requirement while removing others will result in a slight increase in the already high use of clearing, although it is impossible to quantify with certainty the extent of that increase.[212] This section discusses the expected results from an overall increase, or maintenance at high levels, in swap clearing based on factors set forth in section 15(a) of the CEA.

1. Protection of Market Participants and the Public

The required clearing of the RFR OIS added under this rulemaking should ensure the reduction of counterparty risk for market participants that clear those swaps, because they will be required to face the DCO rather than another market participant that lacks the full set of risk management tools that the DCO possesses. This also should reduce uncertainty in times of market stress because, for cleared trades, market participants facing a DCO would not be concerned with the impact of such stress on the solvency of their original

[211] As discussed in section IV.A above.

[212] It is possible that the level of clearing overall may remain similar if the use of swaps referencing RFRs replaces the use of swaps referencing IBORs.

counterparty. By requiring clearing of RFR OIS, all of which are already available for clearing and predominantly cleared voluntarily, the Commission aims to further encourage a smooth transition away from IBORs. More specifically, the Commission expects that the registered DCOs currently clearing these RFR OIS will clear a slightly increased volume of swaps that they already understand and have experience managing.[213] Similarly, FCMs may realize slightly increased customer and transaction volume as a result of the requirement, but would not have to simultaneously learn how to operationalize clearing for the covered interest rate swaps.

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes, which sometimes require several months or longer to resolve. Potential future exposures can grow significantly and even beyond the amount of initial margin posted during that time, leaving one of the two counterparties exposed to counterparty credit risk. DCOs virtually eliminate valuation disputes for cleared swaps, as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants who transact in swaps that are cleared. Because most RFR OIS are cleared voluntarily, these protections are currently being widely realized by market participants. Requiring clearing under part 50 of the Commission's regulations ensures that they continue to be realized.

As noted above, while required clearing of RFR OIS may result in certain costs for market participants (*e.g.,* costs related to establishing and maintaining relationships with FCMs), the incremental burdens associated with clearing the RFR OIS subject to this determination should be *de minimis* because most market participants already will have had experience complying with prior clearing requirements, the determination effectively replaces IBORs already subject to the clearing requirement with RFR OIS, and there is existing widespread voluntary clearing of RFR OIS.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

Swap clearing, in general, reduces uncertainty regarding counterparty risk in times of market stress and promotes liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses by exiting positions effectively and efficiently when necessary in order to manage risk during a time of market stress. In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being cleared through a smaller number of clearinghouses, clearing facilitates increased netting. This reduces the amount of collateral that a party must post in margin accounts. As discussed above, in formulating this determination, the Commission considered a number of specific factors that relate to the financial integrity of the swap markets. Specifically, the Commission assessed whether the registered DCOs that clear RFR OIS have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear these swaps on terms that are consistent with the material terms and trading conventions on which the contract is then traded.[214] The Commission also considered the resources of DCOs to handle additional clearing during stressed and non-stressed market conditions, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.

Also, as discussed above, bilateral swaps create counterparty risk that may lead market participants to discriminate among potential counterparties based on their creditworthiness. Such discrimination is expensive and time consuming insofar as market participants must conduct due diligence in order to evaluate a potential counterparty's creditworthiness. Requiring certain types of swaps to be cleared reduces the number of transactions for which such due diligence is necessary, thereby contributing to the efficiency of the swap markets.

In adopting a clearing requirement for RFR OIS, the Commission must consider the effect on competition, including appropriate fees and charges applied to clearing. There are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in an anti-competitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry opportunity for competitors.[215] Because most of these swaps are cleared voluntarily, these effects on efficiency, competitiveness, and financial integrity are, to a large degree, currently being realized. Requiring clearing ensures that they continue to be realized.

3. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. By making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it. Because most of these swaps are cleared voluntarily, these effects on price discovery are currently being realized. Requiring clearing ensures that they continue to be realized.

As discussed above, CME, LCH, and Eurex obtain adequate pricing data for the interest rate swaps that they clear. Each of these DCOs establishes a rule framework for its pricing methodology and rigorously tests its pricing models to ensure that its risk management regime is as sound as possible.

4. Sound Risk Management Practices

If a firm enters into uncleared and uncollateralized swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures. Even for uncleared swaps that are subject to the Commission's uncleared swap margin regulations, some counterparty credit risk remains.[216] As stated above, when a

[213] *See* CME RFI Letter (''CME Clearing currently accepts OIS referencing SOFR, SARON, €STR, SONIA and TONA . . . . CME Clearing is therefore already in a position to support a Clearing Requirement in relation to these swaps.''); LSEG (noting RFR OIS that LCH already clears and discussing significant recent increases in liquidity in certain swaps, particularly swaps referencing JPY TONA and USD SOFR); Eurex RFI Letter (''Eurex Clearing has a well-developed rule framework, compliance process and procedures, and support infrastructure to support clearing of swaps referencing the RFRs and already offers clearing of these swaps. Eurex Clearing has leveraged and will continue to leverage this operational capacity for the clearing of swaps referencing the RFRs and has the appropriate risk management, operations, technology, and compliance capabilities in place to continue to provide for compliance with all CEA core principles for DCOs.''). *See also* JSCC RFI Letter (noting that JSCC has been clearing JPY TONA OIS since 2014 and that because ''JPY swap market liquidity has already fully transitioned from IRS referencing LIBOR to TONA OIS,'' there is ''no concern for DCOs to accept [JPY TONA OIS] for clearing.''). *See* also CME and JSCC comment letters.

[214] *See* section V above.

[215] Issues related to competition also are considered in sections V and VIII.

[216] For example, there is a small risk of a sudden price move so large that a counterparty would be unable to post sufficient variation margin to cover

Continued

swap is cleared the DCO becomes the counterparty facing each of the two original participants in the swap. This standardizes and reduces counterparty risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared and would not be cleared voluntarily, the requirement enhances their risk management practices by reducing their counterparty risk.

In addition, to the extent that required clearing reduces or deters a potential increase in bilateral trading, it reduces the complexity of unwinding or transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission anticipates that they are much more likely to function in a manner that enables rapid transfer of defaulted positions than legal processes that would surround the enforcement of bilateral contracts for uncleared swaps.[217]

Central clearing has evolved since the 2009 G20 Pittsburgh Summit, when G20 leaders committed to central clearing of all standardized swaps.[218] The percentage of the swap market that is centrally cleared has increased significantly, clearinghouses have expanded their offerings, and the range of banks and other financial institutions that submit swaps to clearinghouses has broadened. At the same time, the numbers of swap clearinghouses and swap clearing members has remained highly concentrated. This has created concerns about a concentration of credit and liquidity risk at clearinghouses that could have systemic implications.[219]

However, the Commission believes that DCOs are capable of risk managing the swaps that are the subject of this determination. Moreover, because most of the RFR OIS to be added to the clearing requirement are already cleared voluntarily, the Commission anticipates that the extent to which this determination will increase the credit risk and liquidity risk that is concentrated at DCOs will be relatively small.

The Commission requested comment on the extent to which the determination would increase the credit risk and liquidity risk that is concentrated at DCOs. As discussed above, ACLI raised concerns about concentrating credit and liquidity risk in DCOs. Other commenters, including CCP12 and two DCOs, responded to questions and provided an explanation to account for such concerns.[220] The Commission believes that this clearing requirement determinations fully accounts for those issues.

5. Other Public Interest Considerations

In September 2009, the President and other leaders of the G20 nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.[221] The Commission believes that this clearing requirement determination is consistent with the G20's commitment and reflects the Commission's ongoing confidence in central clearing for swaps and other derivatives. As discussed throughout this rulemaking, central clearing of derivatives by DCOs can serve the public interest in numerous ways.

VIII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether their rules have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.[222] This determination will not affect any small entities, as the RFA uses that term. Only eligible contract participants (ECPs) may enter into swaps, unless the swap is listed on a designated contract market (DCM),[223] and the Commission has determined that ECPs are not small entities for purposes of the RFA.[224] This determination affects only ECPs because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation, not the operation of any clearing requirement determination. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [225] imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. This rulemaking will not require a new collection of information from any persons or entities, and there are no existing information collections related to this final rule.

C. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anti-competitive means of achieving the objectives of the CEA, as well as the policies and purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[226] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission did not identify any anti-competitive effects in the NPRM.[227] The Commission requested comment regarding its analysis about the possible anti-competitive effects of the proposal and whether there are any other specific public interests to be protected by the antitrust laws in this context.[228] The

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the loss, which may exceed the amount of initial margin posted, and could be forced into default.

[217] Sound risk management practices are critical for all DCOs, especially those offering clearing for interest rate swaps given the size and interconnectedness of the global interest rate swap market. The Commission considered whether each regulation § 39.5(b) submission under review was consistent with the DCO core principles. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. This determination also considers the effect on the mitigation of systemic risk in the interest rate swap market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[218] The G20 Leaders Statement made in Pittsburgh is available at *http://www.g20.utoronto.ca/2009/2009communique0925.html.*

[219] *See* Dietrich Domanski, et al., ''Central clearing: Trends and current issues,'' BIS Quarterly Review, Dec. 2015, available at *https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf;* U.S. Department of the Treasury, Office of Financial Research, Financial Stability Report, at 35 (Nov. 2018), available at *https://www.federalreserve.gov/publications/files/financial-stability-report-201811.pdf;* Umar Faruqui, et al., ''Clearing risks in OTC derivatives markets: the CCP-bank nexus,'' at 77–79 (2018), available at *https://www.bis.org/publ/qtrpdf/r_qt1812h.pdf.*

[220] *See* section III above.

[221] The G20 Leaders Statement made in Pittsburgh is available at *http://www.g20.utoronto.ca/2009/2009communique0925.html.*

[222] 5 U.S.C. 601 *et seq.*

[223] Section 2(e) of the CEA, 7 U.S.C. 2(e).

[224] Opting Out of Segregation, 66 FR 20740 at 20743 (Apr. 25, 2001).

[225] 44 U.S.C. 3507(d).

[226] Section 15(b) of the CEA, 7 U.S.C. 15(b).

[227] As discussed above and in the NPRM, the Commission identified one potential anti-competitive effect; however, the Commission determined that the amendments would not have an anti-competitive effect and in fact, may result in positive market effects. *See* section V.C.4 and 87 FR 32924.

[228] NPRM, 87 FR 32933.

Commission did not receive any comments in response to this particular request.

The Commission confirms its determination that this final rule is not anti-competitive and has no anti-competitive effects. Given this determination, the Commission has not identified any less anti-competitive means of achieving the purposes of the CEA.

D. Congressional Review Act

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

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 50 as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 2(h), 6(c), and 7a–1, as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 2. Effective September 23, 2022, in § 50.4, revise paragraph (a) to read as follows:

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

TABLE 1 TO PARAGRAPH (a)

Specification	Fixed-to-floating swap class									
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Hong Kong Dollar (HKD).	Mexican Peso (MXN).	Norwegian Krone (NOK).	Polish Zloty (PLN).	Singapore Dollar (SGD).	Swedish Krona (SEK).	U.S. Dollar (USD).
2. Floating Rate Indexes.	BBSW	CDOR	EURIBOR	HIBOR	TIIE–BANXICO.	NIBOR	WIBOR	SOR–VWAP.	STIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 30 years.	28 days to 30 years.	28 days to 50 years.	28 days to 10 years.	28 days to 21 years.	28 days to 10 years.	28 days to 10 years.	28 days to 10 years.	28 days to 15 years.	28 days to 50 years.
4. Optionality	No	No	No	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No	No	No	No.

TABLE 2 TO PARAGRAPH (a)

Specification	Basis swap class		
1. Currency	Australian Dollar (AUD)	Euro (EUR)	U.S. Dollar (USD).
2. Floating Rate Indexes	BBSW	EURIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years	28 days to 50 years.
4. Optionality	No	No	No.
5. Dual Currencies	No	No	No.
6. Conditional Notional Amounts	No	No	No.

TABLE 3 TO PARAGRAPH (a)

Specification	Forward rate agreement class				
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK).	Swedish Krona (SEK)	U.S. Dollar (USD).
2. Floating Rate Indexes.	EURIBOR	WIBOR	NIBOR	STIBOR	LIBOR.
3. Stated Termination Date Range.	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years	3 days to 3 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No.

TABLE 4 TO PARAGRAPH (a)

Specification	Overnight index swap class								
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Singapore Dollar (SGD).	Sterling (GBP).	Swiss Franc (CHF).	U.S. Dollar (USD).	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes	AONIA–OIS	CORRA–OIS.	€STR	SORA	SONIA	SARON	FedFunds	SOFR	TONA.
3. Stated Termination Date Range.	7 days to 2 years	7 days to 2 years.	7 days to 3 years.	7 days to 10 years.	7 days to 50 years.	7 days to 30 years.	7 days to 3 years.	7 days to 50 years.	7 days to 30 years.
4. Optionality	No	No	No	No	No	No	No	No	No.

TABLE 4 TO PARAGRAPH (a)—Continued

Specification									
5. Dual Currencies	No	No	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No	No	No.

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■ 3. Effective July 1, 2023, § 50.4 is further amended by revising paragraph (a) to read as follows:

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

TABLE 1 TO PARAGRAPH (a)

Specification	Fixed-to-floating swap class							
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Hong Kong Dollar (HKD).	Mexican Peso (MXN).	Norwegian Krone (NOK).	Polish Zloty (PLN).	Swedish Krona (SEK).
2. Floating Rate Indexes	BBSW	CDOR	EURIBOR	HIBOR	TIIE–BANXICO	NIBOR	WIBOR	STIBOR.
3. Stated Termination Date Range.	28 days to 30 years.	28 days to 30 years.	28 days to 50 years.	28 days to 10 years.	28 days to 21 years.	28 days to 10 years.	28 days to 10 years.	28 days to 15 years.
4. Optionality	No	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No	No.

TABLE 2 TO PARAGRAPH (a)

Specification	Basis swap class	
1. Currency	Australian Dollar (AUD)	Euro (EUR).
2. Floating Rate Indexes	BBSW	EURIBOR.
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years.
4. Optionality	No	No.
5. Dual Currencies	No	No.
6. Conditional Notional Amounts	No	No.

TABLE 3 TO PARAGRAPH (a)

Specification	Forward rate agreement class			
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK)	Swedish Krona (SEK).
2. Floating Rate Indexes	EURIBOR	WIBOR	NIBOR	STIBOR.
3. Stated Termination Date Range.	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No.

TABLE 4 TO PARAGRAPH ([a])

Specification	Overnight index swap class								
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Singapore Dollar (SGD).	Sterling (GBP).	Swiss Franc (CHF).	U.S. Dollar (USD).	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes	AONIA–OIS	CORRA–OIS.	€STR	SORA	SONIA	SARON	FedFunds	SOFR	TONA.
3. Stated Termination Date Range.	7 days to 2 years.	7 days to 2 years.	7 days to 3 years.	7 days to 10 years.	7 days to 50 years.	7 days to 30 years.	7 days to 3 years.	7 days to 50 years.	7 days to 30 years.
4. Optionality	No	No	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No	No	No.

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■ 4. Effective September 23, 2022, revise § 50.26 to read as follows:

§ 50.26 Swap clearing requirement compliance dates.

(a) *Compliance dates for interest rate swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(a) are specified in the following table.

TABLE 1 TO PARAGRAPH ([a])

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating	Euro (EUR) EURIBOR	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	U.S. Dollar (USD) LIBOR.	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	Australian Dollar (AUD) BBSW.	28 days to 30 years ...	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Canadian Dollar (CAD) CDOR.	28 days to 30 years ...	All entities July 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Hong Kong Dollar (HKD) HIBOR.	28 days to 10 years ...	All entities August 30, 2017.
Interest Rate Swap	Fixed-to-Floating	Mexican Peso (MXN) TIIE–BANXICO.	28 days to 21 years ...	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Norwegian Krone (NOK) NIBOR.	28 days to 10 years ...	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Polish Zloty (PLN) WIBOR.	28 days to 10 years ...	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Singapore Dollar (SGD) SOR–VWAP.	28 days to 10 years ...	All entities October 15, 2018.
Interest Rate Swap	Fixed-to-Floating	Swedish Krona (SEK) STIBOR.	28 days to 15 years ...	All entities April 10, 2017.
Interest Rate Swap	Basis	Euro (EUR) EURIBOR	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	U.S. Dollar (USD) LIBOR.	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	Australian Dollar (AUD) BBSW.	28 days to 30 years ...	All entities December 13, 2016.
Interest Rate Swap	Forward Rate Agreement.	Euro (EUR) EURIBOR	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement.	U.S. Dollar (USD) LIBOR.	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement.	Polish Zloty (PLN) WIBOR.	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Norwegian Krone (NOK) NIBOR.	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Swedish Krona (SEK) STIBOR.	3 days to 3 years	All entities April 10, 2017.
Interest Rate Swap	Overnight Index Swap	Euro (EUR) €STR	7 days to 3 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Singapore Dollar (SGD) SORA.	7 days to 10 years	All entities October 31, 2022.
Interest Rate Swap	Overnight Index Swap	Sterling (GBP) SONIA	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
	.....	.....	2 years + 1 day to 3 years.	All entities December 13, 2016.
	.....	.....	3 years + 1 day to 50 years.	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Swiss Franc (CHF) SARON.	7 days to 30 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) FedFunds.	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
	.....	.....	2 years + 1 day to 3 years.	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) SOFR.	7 days to 50 years	All entities October 31, 2022.
Interest Rate Swap	Overnight Index Swap	Australian Dollar (AUD) AONIA–OIS.	7 days to 2 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	Canadian Dollar (CAD) CORRA–OIS.	7 days to 2 years	All entities July 10, 2017.

TABLE 1 TO PARAGRAPH (a)—Continued

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Overnight Index Swap	Yen (JPY) TONA	7 days to 30 years	All entities September 23, 2022.

(b) *Compliance dates for credit default swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(b) are specified in the following table.

TABLE 2 TO PARAGRAPH (b)

Swap asset class	Swap class subtype	Indices	Tenor	Clearing requirement compliance date
Credit Default Swap ...	North American untranched CDS indices.	CDX.NA.IG	3Y, 5Y, 7Y, 10Y	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Credit Default Swap ...	North American untranched CDS indices.	CDX.NA.HY	5Y	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Credit Default Swap ...	European untranched CSD indices.	iTraxx Europe	5Y, 10Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap ...	European untranched CSD indices.	iTraxx Europe Crossover.	5Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap ...	European untranched CSD indices.	iTraxx Europe HiVol ...	5Y	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.

■ 5. Effective July 1, 2023, § 50.26 is further amended by revising paragraph (a) to read as follows:

§ 50.26 Swap clearing requirement compliance dates.

(a) *Compliance dates for interest rate swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(a) are specified in the following table.

TABLE 1 TO PARAGRAPH (a)

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating	Euro (EUR) EURIBOR	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	Australian Dollar (AUD) BBSW.	28 days to 30 years ...	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Canadian Dollar (CAD) CDOR.	28 days to 30 years ...	All entities July 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Hong Kong Dollar (HKD) HIBOR.	28 days to 10 years ...	All entities August 30, 2017.
Interest Rate Swap	Fixed-to-Floating	Mexican Peso (MXN) TIIE–BANXICO.	28 days to 21 years ...	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Norwegian Krone (NOK) NIBOR.	28 days to 10 years ...	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Polish Zloty (PLN) WIBOR.	28 days to 10 years ...	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Swedish Krona (SEK) STIBOR.	28 days to 15 years ...	All entities April 10, 2017.
Interest Rate Swap	Basis	Euro (EUR) EURIBOR	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	Australian Dollar (AUD) BBSW.	28 days to 30 years ...	All entities December 13, 2016.
Interest Rate Swap	Forward Rate Agreement.	Euro (EUR) EURIBOR	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement.	Polish Zloty (PLN) WIBOR.	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Norwegian Krone (NOK) NIBOR.	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Swedish Krona (SEK) STIBOR.	3 days to 3 years	All entities April 10, 2017.

TABLE 1 TO PARAGRAPH (a)—Continued

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Overnight Index Swap	Euro (EUR) €STR	7 days to 3 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Singapore Dollar (SGD) SORA.	7 days to 10 years	All entities October 31, 2022.
Interest Rate Swap	Overnight Index Swap	Sterling (GBP) SONIA	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
	.....	.....	2 years + 1 day to 3 years.	All entities December 13, 2016.
	.....	.....	3 years + 1 day to 50 years.	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Swiss Franc (CHF) SARON.	7 days to 30 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) FedFunds.	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
	.....	.....	2 years + 1 day to 3 years.	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) SOFR.	7 days to 50 years	All entities October 31, 2022.
Interest Rate Swap	Overnight Index Swap	Australian Dollar (AUD) AONIA–OIS.	7 days to 2 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	Canadian Dollar (CAD) CORRA–OIS.	7 days to 2 years	All entities July 10, 2017.
Interest Rate Swap	Overnight Index Swap	Yen (JPY) TONA	7 days to 30 years	All entities September 23, 2022.

* * * * *

Issued in Washington, DC, on August 12, 2022, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, and Mersinger voted in the affirmative. Commissioner Pham concurred. No Commissioner voted in the negative.

Appendix 2—Statement of Commissioner Kristin N. Johnson

In the fall of 2008, global financial markets reeled as evidence emerged indicating that market participants failed to effectively manage risks in the then-unregulated $400 trillion (notional) swaps market. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed the Commodity Futures Trading Commission (Commission) to develop and implement formal rules, and bring the swaps market under the ambit of the Commission's authority.[1] The Commission introduced clearing requirements, a vital regulatory tool that has increased transparency and promoted market integrity.

Clearing Requirements

To determine which swaps are subject to clearing requirements, the Commission examines several transaction-based risk factors.[2] In accordance with this approach, the Commission later determined that swaps that reference Interbank Offered Rates, or IBORs, including most notably the London Interbank Offered Rate—LIBOR, would be subject to clearing requirements. For decades, these global benchmark interest rates have served as the dominant rate setting standards for market participants around the world. Market participants have employed these reference rates to determine interest rates that impact financial agreements in almost every sector of the economy—including significant volumes of swaps and futures contracts, commercial and personal consumer loans, and home mortgages.[3] U.S. Dollar LIBOR, for example, has for decades served as the basis for the settlement of the three-month Eurodollar futures contract listed on the Chicago Mercantile Exchange—one of the most liquid financial derivatives contract that has ever traded.[4] Significant notional amounts of swaps and loans also referenced U.S. Dollar LIBOR.[5]

Transition to Alternative Reference Rates

Even though the clearing requirement for LIBOR and other IBORs have reduced certain risks arising from the origination and trading of swaps, the clearing requirement did not eliminate risks inherent in the manner these reference rates were calculated. Determinations of LIBOR and other IBORs were based on submissions received from a relatively small and select panel of major banks. These rates were calculated and published daily for several different currencies by the British Banker's Association. While the rates were intended to reflect the cost to the banks of borrowing unsecured funds, evidence revealed through a number of enforcement actions brought by the CFTC over the past decade

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, tit. VII, 124 Stat. 1376, 1641 (2010).

[2] *See* Commodity Exchange Act sec. 2(h)(2)(D)(ii), 7 U.S.C. 2(h)(2)(D)(ii) (setting forth the five factors to be considered when making a clearing requirement determination).

[3] *See* Notice of Proposed Rulemaking, Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 87 FR 32898 at 32899–32900 (May 31, 2022); CFTC Release No. 6289–12, CFTC Orders Barclays to pay $200 Million Penalty for Attempted Manipulation of and False Reporting concerning LIBOR and Euribor Benchmark Interest Rates (June 27, 2012), *https://www.cftc.gov/PressRoom/PressReleases/6289-12.*

[4] *Id.*

[5] *Id.*

demonstrated marked manipulation of the submitted rates.[6] In order to protect investors from this misconduct and to preserve market integrity, the CFTC and other regulators, including the Bank of England, have been overseeing a market transition away from LIBOR and other IBORs to replacement rates based primarily on risk free rate overnight index swaps (RFR OIS).[7] In addition, as a result of the enforcement actions and other market shifts, the volume of interbank lending transactions upon which these rates were calculated has declined, leading to additional concerns regarding the integrity and reliability of the rates.[8] As a result, the Commission seeks to amend its Part 50 clearing requirements to remove all LIBOR and related IBOR interest rate swap clearing requirements and introduce clearing requirements for swaps referencing the corresponding replacement RFR OIS.

The comments received in response to our notice of proposed rulemaking earlier this year support this proposal. Moreover, this final rule represents the culmination of years of work by the Commission as well as its counterparts across the globe to ensure a more reliable, more transparent set of interest rate benchmarks. In collaboration with our international colleagues' efforts in jurisdictions around the world, the Commission's efforts to adopt and implement this final rule serves to preserve the stability and integrity of our markets and to reduce the systemic risks that precipitated the financial crisis. Accordingly, I support the Commission's modification of its clearing requirements and transition from LIBOR and other IBORs to the RFR OISs.

Appendix 3—Statement of Commissioner Christy Goldsmith Romero

I support the Commission's amended clearing requirement for swaps referencing rates less susceptible to manipulation than the London Interbank Offered Rate (''LIBOR'') because it promotes market integrity and supports the risk-mitigating benefits of central clearing. I thank the CFTC staff for their work on this and other efforts to support the transition away from LIBOR.

[6] 87 FR 32899–32900.

[7] *Id.* at 32901; *see also* CFTC, CFTC Market Risk Advisory Committee Adopts SOFR First Recommendation at Public Meeting, July 13, 2021, *https://www.cftc.gov/PressRoom/PressReleases/8409-21.*

[8] 87 FR 32899–32901.

Clearing Requirement

The 2008 financial crisis revealed how over-the-counter derivatives could render market participants vulnerable to the weaknesses of their counterparties and leave the markets and regulators in the dark about risks. Pre-crisis, risks were hidden, and firms were vulnerable to interconnected and complex, bilateral transactions. This contributed to the failure of many banks and financial institutions. American households paid the price, left with the catastrophic consequences of a near meltdown of the U.S. financial system, a housing crisis, the inability to access credit, and an unprecedented government bailout.

One of the most critical reforms in the Dodd-Frank Act was a framework to channel swaps through central clearing, thereby reducing risk and increasing transparency across U.S. financial markets. The CFTC has been a global leader in driving swaps trading into centralized clearing, and coordinating with international regulators in a globally harmonized approach.

Central clearing has lived up to its promise. The markets, investors, end users, and regulators have benefited from increased visibility into swap exposures and from reduced interconnectedness and complexity.

LIBOR Transition

Reliable and sound benchmark rates promote market integrity and protect the American public. A decade ago, allegations of LIBOR manipulation led to investigations by government authorities, including the CFTC, that resulted in billions of dollars of penalties and other sanctions. These investigations revealed that a handful of dominant players profited from manipulating LIBOR and markets, including U.S. mortgage markets. Here again, American households paid the price.

Through significant coordinated efforts across the public and private sectors, great progress has been made to transition towards sounder, alternative reference rates—namely, overnight, so-called ''nearly risk-free'' reference rates. Today's final rule amends the CFTC's swap clearing requirement to account for the continuing shift in liquidity to these more reliable rates. Market reliance on USD LIBOR has already considerably decreased, and we have experienced significant liquidity in, and voluntary clearing of, swaps referencing the Secured Overnight Financing Rate (''SOFR''). We aim to bolster and accelerate this shift and ensure the risk-mitigating benefits of clearing continue to be realized in the evolving interest-rate swaps markets.

The final rule also reflects the CFTC's longstanding priority of harmonizing with international regulators. The certainty of the CFTC's timeline for adding interest rate swaps referencing USD SOFR to its clearing requirement, and for removing interest rate swaps referencing USD LIBOR, should assist international regulators who are also revising clearing requirements for these swaps.

Given the global nature of financial markets, international coordination is necessary in order for the LIBOR transition to be successful. International coordination will also help to ensure that central clearing remains a cornerstone of post-crisis financial reforms.

Appendix 4—Concurring Statement of Commissioner Caroline D. Pham

I respectfully concur with the final rule updating the CFTC's interest rate swap clearing requirement regulations. Pursuant to the Commodity Exchange Act (CEA) and the Commission's regulations, subject to Commission determination, certain interest rate swaps are required to be submitted for clearing to a derivatives clearing organization (DCO) registered under the CEA or a DCO exempted from registration under the CEA.[1] The final rule updates this set of interest rate swaps required to be cleared in light of the global transition from reliance on certain interbank offered rates (IBORs) such as the London Interbank Offered Rate (LIBOR), to alternative reference rates, which are predominantly overnight, nearly risk-free reference rates (RFRs). This rulemaking is an essential part of that transition. I commend the CFTC staff for their work here, as well as for their leadership in a historic global effort by the CFTC alongside other regulators, international bodies such as IOSCO and FSB, cross-jurisdictional working groups, financial market infrastructures, swap dealers, other market participants, and more, to reform the global interest rate swap market and benchmarks.

I would like to note, however, a few points. I believe in international harmonization and a practical approach wherever possible.

First, with those principles in mind, we should not impose a clearing requirement for CHF Swiss Average Rate Overnight (SARON) swaps or SGD Singapore Overnight Rate Average (SORA) swaps until the Swiss

[1] Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

authorities or Singaporean authorities, respectively, adopt their own swap clearing requirements for those swaps.[2]

Second, absent a compelling reason otherwise, I would support an October 31, 2022 effective date, rather than 30 days after publication in the **Federal Register**, for the overnight index swaps (OIS) referencing RFRs covered by the rulemaking, consistent with the Bank of England's proposed effective date.[3] This would be consistent with principles of international harmonization and also would recognize the implementation requirements associated with any rule changes. For example, as raised by commenters, complying with new clearing requirements requires market participants to ''adapt systems; create and run internal training; issue client communications; and develop and implement control frameworks, internal governance; and address unique jurisdictional requirements where they exist.'' [4] We should recognize and take a practical approach to the very real implementation issues and operational challenges like these which necessitate sufficient planning and time.

Finally, I note two issues relating to the IBOR transition that are identified as beyond the scope of the rulemaking. These relate to trade execution requirements and to post-trade risk reduction.[5] We should consider these issues further as appropriate.

[FR Doc. 2022–17736 Filed 8–23–22; 8:45 am]

BILLING CODE 6351–01–P

[2] *Cf.* Comment No. 69489, Urlich Karl, International Swaps and Derivatives Association, Inc. (June 30, 2022).

[3] Derivatives clearing obligation—modifications to reflect USD interest rate benchmark reform: Amendments to BTS 2015/2205, Bank of England (June 9, 2022), available at *https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment.*

[4] Comment No. 69489, Urlich Karl, International Swaps and Derivatives Association, Inc. (June 30, 2022).

[5] *See* Notice of Final Rulemaking, Section III.C.

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Part IV

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2011–0023; Amdt. No. 192–132]

RIN 2137–AF39

Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas transmission pipelines. This final rule addresses several lessons learned following the Pacific Gas and Electric Company incident that occurred in San Bruno, CA, on September 9, 2010, and responds to public input received as part of the rulemaking process. The amendments in this final rule clarify certain integrity management provisions, codify a management of change process, update and bolster gas transmission pipeline corrosion control requirements, require operators to inspect pipelines following extreme weather events, strengthen integrity management assessment requirements, adjust the repair criteria for high-consequence areas, create new repair criteria for non-high consequence areas, and revise or create specific definitions related to the above amendments.

DATES: The final rule is effective May 24, 2023. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 24, 2023. The incorporation by reference of other publications listed in this rule was approved by the Director of the Federal Register on July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Technical questions: Steve Nanney, Senior Technical Advisor, by telephone at 713–272–2855. General information: Robert Jagger, Senior Transportation Specialist, by telephone at 202–366–4361.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule concludes a decade-long effort by PHMSA to amend its regulations governing onshore natural gas transmission pipelines in response to the tragic September 9, 2010, incident at a Pacific Gas and Electric Company (PG&E) gas transmission pipeline in San Bruno, CA, which resulted in the death of 8 people, injuries to more than 60 other people, and the destruction or damage of over 100 homes. PHMSA expects the new requirements in this final rule will reduce the frequency and consequences of failures and incidents from onshore natural gas transmission pipelines through earlier detection of threats to pipeline integrity, including those from corrosion or following extreme weather events. The safety enhancements in this final rule, therefore, are expected to improve public safety, reduce threats to the environment (including, but not limited to, reduction of greenhouse gas emissions released during natural gas pipeline incidents), and promote environmental justice for minority populations, low-income populations, and other underserved and disadvantaged communities that are located near interstate gas transmission pipelines.

Although the Federal Pipeline Safety Regulations (49 Code of Federal Regulations (CFR) parts 190 through 199; PSR) applicable to gas transmission and gathering pipeline systems set forth in parts 191 and 192 have increased the level of safety associated with the transportation of gas, serious safety incidents continue to occur on gas transmission and gathering pipeline systems, resulting in serious risks to life and property. In its investigation of the 2010 PG&E incident, the National Transportation Safety Board (NTSB) found among several causal factors that PG&E had an inadequate integrity management (IM) program that failed to detect and repair or remove a defective pipe section on its gas transmission line.[1] PG&E based its IM program on incomplete and inaccurate pipeline information, which led to, among other issues, faulty risk assessments, improper assessment method selections, and internal assessments of the program that were superficial and resulted in no meaningful improvement.[2]

Prior to the PG&E incident, PHMSA had initiated an advance notice of proposed rulemaking (ANPRM) to seek comment on whether the IM requirements in part 192 should be changed and whether other issues related to pipeline system integrity should be addressed by strengthening or expanding non-IM requirements.

[1] NTSB, NTSB/PAR–11–01, ''Pipeline Accident Report: Pacific Gas and Electric Company, Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010'' (2011) (NTSB Incident Report on San Bruno).

[2] NTSB Incident Report on San Bruno at 107–115.

PHMSA published the ANPRM on August 25, 2011.[3]

Based on the comments on the ANPRM, PHMSA published a notice of proposed rulemaking (NPRM) on April 8, 2016, to seek public comments on proposed changes to the PSR governing transmission and gathering lines.[4] A summary of those proposed changes pertaining to this rulemaking, corresponding stakeholder feedback, and PHMSA's responses to stakeholder feedback on the individual provisions, is provided below in section III of this document (Discussion of NPRM Comments, GPAC Recommendations, and PHMSA Response).

PHMSA determined that the most efficient way to manage the proposals in the NPRM was to divide them into three separate final rule actions. The first of these final rules was published on October 1, 2019, and addressed topics primarily relating to congressional mandates and safety recommendations, including maximum allowable operating pressure (MAOP) reconfirmation and material properties verification, the expansion of integrity assessments beyond high-consequence areas (HCA), the consideration of seismicity, in-line inspection (ILI) launcher and receiver safety, MAOP exceedance reporting, and strengthened requirements for assessment methods (2019 Gas Transmission Rule).[5] Provisions related to gas gathering pipelines were addressed in a separate rulemaking.[6] This rulemaking finalizes the remaining provisions from the NPRM as outlined below.

B. Summary of the Major Provisions of the Final Rule

To reduce the risks of pipeline incidents, PHMSA is amending the PSR applicable to gas transmission pipelines to improve the protection of the public, property, and the environment; close regulatory gaps; and adopt additional safety measures to improve safety inside and outside of HCAs. Specifically, PHMSA is making changes to clarify the IM requirements; improve the management of change (MOC) process; strengthen corrosion control requirements; provide parameters for inspections following extreme weather events; strengthen requirements related to the IM assessment methods; and improve the repair criteria for pipeline anomalies. PHMSA is also amending certain definitions in part 192 in support of these provisions.

PHMSA is modifying the IM regulations by adding specificity to the data integration language. The final rule establishes several pipeline attributes that must be included in an operator's risk analysis when an operator determines what threats are applicable to a pipeline segment. PHMSA is also explicitly requiring that operators integrate analyzed information into their IM programs and is requiring that data be verified and validated. Additionally, PHMSA is issuing requirements for applying knowledge gained through an operator's IM program, including provisions for analyzing interacting threats, potential failures, and worst-case incident scenarios from the initial failure to incident termination. Several of these items were proposed in response to NTSB findings following the PG&E incident that suggested pipeline operators were often not conducting data analysis, data integration, threat identification, and risk assessment in the manner originally intended and specified in subpart O of part 192.

Similarly, following the PG&E incident, PHMSA, informed by (inter alia) the NTSB's evaluation of the incident and ANPRM comments, determined that the existing MOC requirements and industry practices were not sufficient[7] and looked to align the regulatory requirements with the standards outlined in American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) B31.8S.[8] Specifically, this final rule requires each operator of an onshore gas transmission pipeline to develop and follow a MOC process, as outlined in ASME/ANSI B31.8S, section 11, that addresses technical, design, physical, environmental, procedural, operational, maintenance, and organizational changes to the pipeline or processes, whether permanent or temporary.

This final rule also improves and updates the corrosion control requirements for gas transmission pipeline operators. Based on lessons PHMSA has learned following several pipeline failures, and following PHMSA's workshop on pipeline construction in Fort Worth, TX, on April 23, 2009,[9] PHMSA determined that construction practices, including the installation of pipe in-ditch, can result in damaged coating that can compromise corrosion control. Therefore, this rule requires that operators perform assessments to identify suspected damage promptly after backfilling and then remediate any coating damage found. Further, PHMSA has noted that the existing regulations were not always effective at eliminating deficiencies in cathodic protection[10] corrosion control or at preventing incidents from internal corrosion. Therefore, this rule strengthens the requirements for internal and external corrosion controls related to monitoring requirements and surveys. PHMSA also determined that additional prescriptive preventive and mitigative (P&M) measures are needed for managing electrical interference currents.

Extreme weather has been a contributing factor in several pipeline failures. PHMSA issued Advisory Bulletins in 2015, 2016, and 2019 to communicate the potential for damage to pipeline facilities caused by severe flooding, including actions that operators should consider taking to ensure the integrity of pipelines in the event of flooding, river scour, river channel migration, and earth movement.[11] As PHMSA has noted in another series of Advisory Bulletins, hurricanes are also capable of causing extensive damage to both offshore and inland pipelines.[12]

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[3] ''Safety of Gas Transmission Pipelines,'' 76 FR 53086 (Aug. 25, 2011).

[4] ''Safety of Gas Transmission and Gathering Pipelines,'' 81 FR 20722 (Apr. 8, 2016).

[5] ''Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments,'' 84 FR 52180 (Oct. 1, 2019).

[6] ''Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulations of Large, High-Pressure Lines, and Other Related Amendments,'' 86 FR 63266 (Nov. 15, 2021) (Gas Gathering Final Rule).

[7] See 81 FR 20796; NTSB Incident Report on San Bruno at 95–97 (concluding that the probable cause of the PG&E incident was PG&E's inadequate quality assurance and quality control in 1956 during its Line 132 relocation project, and noting that PG&E had poor quality control during a pipe installation project that later failed in 2008 in Rancho Cordova, CA).

[8] ASME/ANSI ''B31.8S–2004: Supplement to B31.8 on Managing System Integrity of Gas Pipelines'' (Jan. 14, 2005).

[9] *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=58.*

[10] Cathodic protection is a technique used to control corrosion by making the metal pipe a cathode of an electrochemical cell. Essentially, the pipeline is connected to a more easily corroded metal that acts as an anode. That ''sacrificial anode'' metal corrodes instead of the metal that is being protected. For pipelines, passive galvanic cathodic protection is often not adequate, and an external direct current (DC) electrical power source is used to provide sufficient current.

[11] ''Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding, River Scour, and River Channel Migration,'' 80 FR 19114 (Apr. 9, 2015); ''Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding, River Scour, and River Channel Migration,'' 81 FR 2943 (Jan. 19, 2016); ''Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards,'' 84 FR 18919 (May 2, 2019).

[12] ''Potential for Damage to Pipeline Facilities Caused by the Passage of Hurricane Ivan,'' 69 FR 57135 (Sept. 23, 2004); ''Pipeline Safety Advisory: Potential for Damage to Pipeline Facilities Caused by the Passage of Hurricane Katrina,'' 70 FR 53272 (Sept. 7, 2005); ''Pipeline Safety: Potential for

Continued

Because of the frequency and severe consequences of these events,[13] operators must protect the public from pipeline risks in the event of a natural disaster or extreme weather. While many prudent operators might voluntarily perform inspections following such events, the potential risk to public safety and environment merits codification of those practices in regulatory requirements. Therefore, PHMSA is amending the PSR to require that operators commence inspection of their potentially affected facilities within 72 hours after the operator determines the affected area can be safely accessed following the cessation of an extreme weather event such as a hurricane, landslide, flood; a natural disaster, such as an earthquake; or another similar event that has the likelihood to damage infrastructure. If an operator finds an adverse condition during the inspection, the operator must take appropriate remedial action to ensure the safe operation of the pipeline.[14]

PHMSA is also strengthening the standards for performing pipeline assessments by incorporating by reference certain consensus standards for both stress corrosion cracking (NACE International Standard Practice 0204–2008, ''Stress Corrosion Cracking Direct Assessment Methodology'' (2008) (NACE 0204–2008)) and internal corrosion direct assessments (NACE International Standard Practice 0206–2006, ''Internal Corrosion Direct Assessment Methodology for Pipelines Carrying Normally Dry Natural Gas'' (2006) (NACE SP0206–2006)). Operators are already required to assess the condition of gas transmission pipelines in HCAs and certain non-HCAs periodically in accordance with §§ 192.710, 192.921, and 192.937. When the initial IM regulations creating subpart O were issued in 2003 (2003 IM rule), industry standards did not exist for these types of assessments.[15] By incorporating by reference the standards subsequently published by NACE International,[16] PHMSA is ensuring greater consistency, accuracy, and quality when operators perform these assessments.

This final rule also updates the existing repair criteria for HCAs by incorporating criteria for additional anomaly types such as crack anomalies, certain corrosion metal loss defects, and certain mechanical damage defects. Such revisions will provide greater assurance that operators will repair injurious anomalies and defects before those defects grow to a size that causes a leak or rupture. PHMSA also is finalizing explicit repair criteria for non-HCAs. Prior to this final rule, there were only general requirements in the regulations for operators to perform repairs in non-HCAs. The content of the non-HCA repair criteria being finalized in this rule is consistent with the criteria for HCAs; however, PHMSA has provided longer timeframes for the remediation of conditions that are not categorized as ''immediate'' conditions to provide operators the ability to prioritize remediating anomalous conditions in HCAs where consequences of a pipeline failure may be greater.

The various changes in this rule have also prompted additions and changes to certain definitions in part 192. PHMSA has created or made changes to the following terms: ''close interval survey,'' ''distribution center,'' ''dry gas or dry natural gas,'' ''hard spot,'' ''in-line inspection (ILI),'' ''in-line inspection tool or instrumented internal inspection device,'' ''transmission line,'' and ''wrinkle bend.''

C. Costs and Benefits

PHMSA has prepared an assessment of the benefits and costs of the final rule as well as reasonable alternatives. PHMSA estimates the annual costs of the rule to be approximately $17 million, calculated using a 7 percent discount rate. The costs reflect improvements made to the MOC process, additional corrosion control requirements, the provisions related to inspections following extreme weather events, and the changes made to the repair criteria. PHMSA finds that the other final rule requirements will not result in incremental costs.

PHMSA is posting the Regulatory Impact Analysis (RIA) for this rule in the public docket. PHMSA has determined that the regulatory amendments adopted in this final rule will improve public safety, reduce threats to the environment (including, but not limited to, reduction of methane emissions contributing to the climate crisis), and promote environmental justice for minority populations, low-income populations, and other underserved and disadvantaged communities. PHMSA finds the regulatory amendments adopted in this final rule are technically feasible, reasonable, cost-effective, and practicable because the public safety, environmental, and equity benefits of its regulatory amendments described herein and within its supporting documents (including the RIA and environmental assessment, each available in the docket for this rulemaking) will justify any associated costs and demonstrate and the superiority of the final rule compared to alternatives.

II. Background

A. Overview

On September 9, 2010, a 30-inch-diameter natural gas transmission pipeline, owned and operated by PG&E, ruptured in a residential neighborhood in San Bruno, CA. The rupture produced a crater approximately 72 feet long by 26 feet wide. The segment of pipe that ruptured weighed approximately 3,000 pounds, was 28 feet long, and was found 100 feet south of the crater. When the escaping gas ignited, the resulting fire killed 8 people, injured approximately 60 more, destroyed or damaged 108 homes, and caused the evacuation of over 300 people. In its pipeline accident report for the incident, the NTSB determined that the probable cause of the incident was PG&E's inadequate quality control and assurance when it relocated the line in 1956 and its inadequate IM program. The NTSB determined that PG&E's IM program was deficient and ineffective because it was based on incomplete and inaccurate pipeline information, did not consider how the pipeline's design and materials contributed to the risk of a pipeline failure, and failed to consider the presence of previously identified welded seam cracks as part of its risk assessment. These deficiencies resulted in the selection of an assessment method that could not detect welded seam defects and led to internal assessments of PG&E's IM program that were superficial and resulted in no improvements. Ultimately, this inadequate IM program failed to detect and repair or replace the defective pipe section.

Damage to Pipeline Facilities Caused by the Passage of Hurricanes,'' 76 FR 54531 (Sept. 1, 2011) (alerting operators to the potential for damage from Hurricane Ivan).

[13] For the impacts of climate change on precipitation; droughts, floods, and wildfire; and extreme storms, see U.S. Global Change Research Program, ''Climate Science Special Report: Fourth National Climate Assessment, Volume 1,'' at ch. 7–9 (2017).

[14] PHMSA notes that these part 192 amendments are consistent with similar provisions adopted for part 195 for hazardous liquid pipelines. See ''Pipeline Safety: Safety of Hazardous Liquid Pipelines,'' 84 FR 52260 (Oct. 1, 2019).

[15] ''Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines): Final Rule,'' 68 FR 69778 (Dec. 15, 2003).

[16] In 2021, NACE International merged with the Society for Protective Coatings, becoming the Association for Materials Protection and Performance (AMPP). They will continue to be referred to as NACE International throughout this document.

In response to this incident, Congress, the NTSB, and the Government Accountability Office (GAO) called for PHMSA to improve IM and address other weaknesses and gaps in the PSR. As described in more detail in the sections that follow, this is the second of three planned rulemakings that are the culmination of this rulemaking initiative.

B. Advance Notice of Proposed Rulemaking

On August 25, 2011, PHMSA published an ANPRM to seek public comments regarding potential revisions to the PSR pertaining to the safety of gas transmission and gathering pipelines. PHMSA requested comments on 122 questions spread across 15 broad issues involving IM and non-IM requirements. The issues related to IM requirements included whether the definition of an HCA should be revised and whether additional restrictions should be placed on the use of certain pipeline assessment methods. The issues related to non-IM requirements included whether revised requirements were needed for mainline valve spacing and actuation, whether requirements for corrosion control should be strengthened, and whether new regulations were needed to govern the safety of gas gathering lines and underground natural gas storage facilities. Based on the comments received on several of the ANPRM topics, PHMSA developed specific proposals for some of those topics in an NPRM that was the basis for this final rule.

C. Notice of Proposed Rulemaking and Subsequent Final Rule

On April 8, 2016, PHMSA published an NPRM seeking public comments on proposed revisions to the PSR pertaining to the safety of onshore gas transmission pipelines and gas gathering pipelines. PHMSA considered the comments it received from the ANPRM and proposed new pipeline safety requirements and revisions of existing requirements in several major topic areas. A summary of the NPRM proposals and topics pertinent to this rulemaking, the comments received on those specific proposals, and PHMSA's response to the comments received, is provided under section III (Discussion of NPRM Comments, GPAC Recommendations, and PHMSA Response).

On October 1, 2019, PHMSA promulgated a subset of the rules proposed in the NPRM by issuing the first of three planned final rules. In that rule, PHMSA addressed gas transmission pipelines and established minimum Federal safety standards for MAOP reconfirmation, pipeline physical material properties verification, the expansion of integrity assessments beyond HCAs, the consideration of seismicity in an operator's risk assessment and P&M measures, ILI tool launcher and receiver safety, MAOP exceedance reporting, and strengthened requirements for IM assessment methods.

This final rule, the second of three planned rules, finalizes several proposed amendments in the NPRM related to gas transmission pipelines, including provisions related addressing repair criteria, IM improvements, cathodic protection, MOC processes, and other related amendments. A separate rulemaking, dealing with the safety of onshore gas gathering pipelines, was the subject of a final rule published on November 15, 2021, and extended reporting and safety requirements to certain gathering pipelines that were formerly not subject to Federal safety oversight. PHMSA estimated in that Gas Gathering Final Rule that there were over 400,000 miles of gas gathering pipelines that were not subject to minimum Federal pipeline safety standards, including basic incident and mileage reporting. The Gas Gathering Final Rule extended annual and incident reporting requirements to all gathering pipelines and defined a new category of ''Type C'' gathering pipelines to address the safety of larger-diameter, higher-pressure onshore gathering pipelines that were formerly unregulated. The scope of the requirements for Type C gas gathering pipelines are risk-based; basic damage prevention provisions apply to all Type C gas gathering pipelines while other safety requirements apply to larger-diameter Type C gas gathering pipelines or those Type C gas gathering pipelines that are located near buildings intended for human occupancy.

III. Discussion of NPRM Comments, Gas Pipeline Advisory Committee Recommendations, and PHMSA Response

The comment period for the NPRM ended on July 7, 2016. PHMSA received approximately 300 submissions to the docket containing thousands of comments on the NPRM. Submissions were received from the NTSB; groups representing the regulated pipeline industry; groups representing public interests, including environmental groups; State utility commissions and regulators; members of Congress; individual pipeline operators; and private citizens. PHMSA also received late-filed comments to this rulemaking from the major industry trade associations and others following advisory committee meetings as discussed below. Consistent with DOT Order 2100.6 and 190.323, PHMSA considered all comments, including those that were filed late, given their relevance to the rulemaking and the absence of additional expense or delay resulting from considering these comments.

Some of the comments PHMSA received in response to the NPRM were considered in finalizing the 2019 Gas Transmission Rule targeted at statutory mandates, while other comments were considered in response to the third final rule on gas gathering pipelines (under RIN 2137–AE38). In this final rule, PHMSA considers those comments that are relevant to repair criteria, IM improvements, cathodic protection, MOC, and other related amendments. PHMSA does not address the comments on pipeline safety issues that were beyond the scope of the NPRM and, therefore, beyond the scope of this final rule. However, that does not mean that PHMSA determined the comments lack merit or do not support additional rules or amendments. Such issues may be the subject of other existing rulemaking proceedings or may be addressed in future rulemaking proceedings. The remaining comments reflect a wide variety of views on the merits of particular sections of the proposed regulations.

The Technical Pipeline Safety Standards Committee, commonly known as the Gas Pipeline Advisory Committee (GPAC or ''the committee''), is a statutorily mandated advisory committee that advises and comments on PHMSA's proposed safety standards, risk assessments, and safety policies for natural gas pipelines prior to their final adoption. The GPAC is one of two pipeline advisory committees focused on technical safety standards that were established under the Federal Advisory Committee Act (Pub. L. 92–463) and section 60115 of the Federal Pipeline Safety Statutes (49 U.S.C. 60101 *et seq.*). Each committee consists of approximately 15 members, with membership equally divided among Federal and State agencies, regulated industry, and the public. The committees consider the ''technical feasibility, reasonableness, cost-effectiveness, and practicability'' of each proposed pipeline safety standard and provide PHMSA with recommended actions pertaining to those proposals.

Due to the size and technical detail of the NPRM, the GPAC met 5 times in 2017 and 2018 to discuss the proposed

regulations applicable to gas transmission pipelines. The GPAC convened one time in 2019 to discuss the provisions related specifically to gas gathering pipelines.[17] During those meetings, the GPAC considered the specific regulatory proposals of the NPRM and discussed various comments made on the NPRM's proposal by stakeholders, including the pipeline industry at large, public interest groups, and government entities. To assist the GPAC in its deliberations, PHMSA presented a description and summary of the major proposals in the NPRM and the comments received on those issues. Stakeholders could comment on the proposals during the meeting prior to the committee discussion. PHMSA assisted the committee in fostering discussion and developing recommendations by providing direction on which issues were most pressing.

For the proposals addressed in this final rule, the committee came to consensus when voting on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the NPRM's provisions. In many instances, the committee recommended changes to certain proposals that the committee found would make the rule more feasible, reasonable, cost-effective, or practicable.

This section discusses the substantive comments on the NPRM that were submitted to the docket, as well as the GPAC's recommendations. They are organized by topic and include PHMSA's response to, and resolution of, those comments.

A. IM Clarifications—§§ 192.917(a)–(d), 192.935(a)

i. Threat Identification, Data Collection, and Integration—§ 192.917(a) and (b)

1. Summary of PHMSA's Proposal

Subpart O of 49 CFR part 192 prescribes requirements for managing pipeline integrity in HCAs and requires that operators identify and evaluate all potential threats to each covered pipeline segment. Operators are required to identify threats to which the pipeline is susceptible, collect data for analysis, and perform a risk assessment that informs the operator's baseline assessment schedule and reassessment intervals as well as any additional P&M measures that may be needed for the covered segment. The regulations also require operators to address particular threats, such as third-party damage and manufacturing and construction defects. For these requirements, the regulations reference, through incorporation, ASME/ANSI B31.8S.

For threat identification, the regulations in § 192.917 specify that the potential threats operators must consider include, but are not limited to, the threats listed in section 2 of ASME/ANSI B31.8S. Those threats are grouped into time-dependent threats, static or resident threats, time-independent threats, and human error. In performing data gathering and integration, operators must follow the requirements in ASME/ANSI B31.8S, section 4. At a minimum, operators must gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S, which are the year of installation; pipe inspection reports; leak history; wall thickness; diameter; past hydrostatic test information; gas, liquid, or solid analysis; bacteria culture test results; corrosion detection devices; operating parameters; and operating stress level. An operator must also conduct a risk assessment that follows ASME/ANSI B31.8S section 5.

In a risk-based IM approach, data collection and integration is the backbone of an effective IM program. The PG&E incident exposed several problems in the way operators collect and manage pipeline condition data, showing that some operators have inadequate records regarding the physical and operational characteristics of their pipelines. The use of erroneous information leads to insufficient understanding of pipeline risks and incorrect integrity-related decision making. PG&E's IM program was missing or misidentified data elements that were necessary to characterize risk correctly and establish and validate MAOP, which is critically important for providing an appropriate margin of safety to the public.

Threat identification, data collection, and data integration are basic pillars on which IM was founded with the issuance of the 2003 IM rule. As specified in § 192.907(a), operators were to start with a framework, evolve that framework into a more detailed and comprehensive program, and continually improve their IM programs.[18] Operators would accomplish this constant improvement, in part, through learning about the IM process itself and learning more about the physical condition of their pipelines via IM assessments and the development of that data.

Data collection for new pipeline construction is relatively simple. However, collecting missing material property records for pipeline segments that have been in the ground for years can be challenging, as such data collection must be completed through integrity assessments or excavations. Operators are required to identify missing data and apply conservative assumptions, but incomplete data presents issues for risk assessment. The over-application of assumptions in the absence of real data, even if those assumptions are conservative, can lead to skewed or otherwise inaccurate risk analysis results.

In the NPRM, PHMSA proposed to revise § 192.917 to include specific requirements for collecting, validating, and integrating pipeline data. These requirements would add further specificity to the data integration regulations, list specific pipeline attributes that must be included in these analyses, explicitly require that operators integrate analyzed information, and require that data be verified and validated. PHMSA also proposed to require that operators use validated, objective data to the maximum extent practical. To the degree that subjective data from subject matter experts (SME) must be used, PHMSA would require that operator programs include specific features to compensate for SME bias, including training SMEs to recognize or avoid bias, and using outside technical experts or independent expert reviews to assess SME judgment and logic. Further, in § 192.917(b)(3), PHMSA proposed to require operators to identify and analyze spatial relationships among anomalous information (*e.g.,* corrosion coincident with foreign line crossings and evidence of pipeline damage where overhead imaging shows evidence of encroachment), stating that storing or recording the information in a common location, including a geographic information system (GIS) alone, is not sufficient.

2. Summary of Public Comment

Many stakeholders agreed with PHMSA that verified and validated data is important for data integration and threat analysis. The NTSB expressed support for the proposed additions to the IM analysis requirements and commented that expanded pipeline record and data requirements are a significant safety improvement in the management of pipelines through their service lifecycle. However, certain

[17] Specifically, the committee met on January 11–12, 2017; June 6–7, 2017; December 14–15, 2017; March 2, 2018; March 26–28, 2018; and June 25–26, 2019. Information on these meetings can be found at *regulations.gov* under docket no. PHMSA–2011–0023 and at PHMSA's public meeting page: *https://primis.phmsa.dot.gov/meetings/.*

[18] See 68 FR 69789.

stakeholders had concerns with PHMSA's specific proposed changes.

PHMSA also received comments from the industry on the feasibility of threat identification, data gathering, and integration. The American Petroleum Institute (API) stated that while the totality of attributes listed in proposed § 192.917 should not pose a major burden on the industry, some specific attributes listed may not be feasible to obtain in practice. Enterprise Products stated that including just four or five attributes that point to a specific conclusion would be more useful than the lengthy list of attributes in the proposed provisions. A few commenters requested PHMSA clarify what they meant by ''data integration, verification, and validation,'' as these terms were not clear.

The Interstate Natural Gas Association of America (INGAA) and the Texas Pipeline Association (TPA) expressed concern that the proposed provisions are more prescriptive than the ASME/ANSI standard that is referenced in the current IM requirements. INGAA also commented that PHMSA's proposed inclusion of specific attributes from ASME/ANSI B31.8S in the regulatory text alongside the existing incorporation by reference of that standard could cause confusion. INGAA further stated that PHMSA should retain the current regulatory language requiring operators to ''consider'' the relevant data for covered segments and similar non-covered segments, instead of adopting the proposed provisions that would require data evaluation for non-covered segments. INGAA also stated that many of the data elements required by ASME/ANSI B31.8S are not available for older pipelines, which can include non-covered segments. INGAA and other commenters also asserted that PHMSA should provide sufficient time for operators to comply with the proposed data validation and integration requirements given the expansion of § 192.917(b)(1) to non-covered segments.

Several commenters provided input on PHMSA's proposed requirements to address SME bias. INGAA suggested PHMSA should delete the references to SME bias listed in § 192.917(b)(2) and replace the text with more general language to include peer reviews and external SME verification, citing this alternative as more consistent and clearer than what PHMSA proposed. National Fuel stated that using outside technical experts for bias control would be unnecessarily costly to pipeline operators. The American Gas Association (AGA) asserted that using outside technical subject matter experts for bias control is already standard practice within the industry and that it is not necessary to codify it into regulation. PG&E also suggested improvements to the section, stating that there is not an existing industry standard to provide guidance on what constitutes an outside technical expert to perform this specific function, and PHMSA should provide further guidance on this topic.

Several industry trade groups provided input on the proposed language in § 192.917(b)(3) that would require operators to identify and analyze the spatial relationship among anomalous information (*e.g.,* corrosion coincident with foreign line crossings and evidence of pipeline damage where overhead imaging shows evidence of encroachment). TPA stated that it disagreed with PHMSA's proposal in this paragraph and commented that this requirement would impose a financial burden on smaller operators. PG&E asserted that the proposed language in § 192.917(b)(3) should be removed entirely since it was not clear how to comply with these requirements.

At the GPAC meeting on June 7, 2017, the committee noted that the NPRM's proposed revisions to § 192.917 do not include a way for operators to address the lack of availability of some data sets. The committee suggested that operators could assume the pipeline segment is susceptible to the threat associated with the missing data. The committee also questioned the purpose for the extensive, prescriptive data list, with some members believing it would turn into a compliance paperwork exercise without safety benefit. This, in turn, led to a discussion of how an operator demonstrates to a regulator that it is performing an effective risk analysis and whether that is a checklist of items or performing actions to generate better safety outcomes. Some committee members suggested PHMSA clarify that operators should only collect the pertinent data for operations and maintenance (O&M) tasks.

Committee members representing the industry noted the rule has no timeframe for the implementation of data collection and challenged the conclusion in the preliminary regulatory impact assessment (PRIA) that the data collection elements had a cost of zero, as databases may need to be upgraded to implement the listed attributes. Members representing the industry also requested PHMSA remove the proposed requirement to address SME bias; however, other committee members representing the public noted that SME bias in risk analysis is recognized across different disciplines and reflects a need to address how humans think about risk. Certain committee members representing the industry were also concerned that the requirements mandated the use of a GIS, which might be impractical for small operators.

Following the discussion, the committee voted 11–0 that the proposed rule, as published in the **Federal Register**, with regard to the provisions for IM clarifications regarding threat identification, data collection, and data integration, were technically feasible, reasonable, cost-effective, and practicable if PHMSA revised the list of pipeline attributes in the section to be more consistent with the existing regulations and the ASME/ANSI B31.8S standard, and if PHMSA also added language requiring operators to collect data that is pertinent and that a prudent operator would collect. The committee also recommended PHMSA require operators to have implementation procedures in place 1 year after the effective date of the rule, with full incorporation of all listed attributes by 3 years after the effective date of the rule, and strike requirements for operators to use a GIS in complying with these provisions. Finally, the committee recommended that PHMSA address SME bias by considering some of the specific suggestions made by committee members at the meeting, including striking or revising the last sentence of the provisions.

3. PHMSA Response

The current regulations at § 192.917(b) explicitly require that, at a minimum, an operator must gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S. Operators may not ignore that requirement to collect the minimum set of data needed for a robust threat evaluation and risk assessment. PHMSA agrees that some assumptions regarding threat applicability based upon pipe type, operating parameters, and operating environment (*i.e.,* weld seam type, manufacturing date, coating type, operating pressure versus percentage specified minimum yield strength (SMYS), operating temperature, lack of cathodic protection (CP) or the time when CP was placed on the system, and location) can be made even if the pertinent data is missing. For example, a lack of CP on a pipeline system would mean that the pipeline is more prone to external corrosion, no matter what type of external coating is on the pipe. High operating temperatures, pressures, and a lack of quality pipe coating can also be risk factors for cracking.

Regarding INGAA's comment on retaining the current regulatory

language requiring operators to ''consider'' the relevant data for covered segments and similar non-covered segments rather than adopting the proposed provisions that would require data evaluation for non-covered segments, PHMSA reminds operators that the current requirement states that operators must gather and integrate existing data and information on the entire pipeline that could be relevant to the covered segment. At a minimum, operators must gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S and consider both on the covered segment and similar non-covered segments the data and conditions specific to each pipeline. PHMSA's clarification in this final rule that operators must ''analyze'' the information that they are already required to collect, integrate, and consider, is consistent with the existing requirement, as performing those actions is, essentially, an analysis. Nevertheless, PHMSA is changing ''consider'' to ''analyze'' to reinforce that operators must have documentation demonstrating that they have reviewed the data for similar vintage pipe to determine whether they have threats or not that should be remediated.

PHMSA further disagrees that it is appropriate to allow industry to continue to ''consider'' data elements selectively or that only specifying a few required data elements is the best approach. While some pipelines without associated data may not pose a risk, some may pose a significant risk. Comprehensive data is the best way to ensure an appropriate assessment and, in turn, reduction of risk. The addition of the specific data elements in the regulatory text clarifies PHMSA's expectations of data collection. PHMSA agrees, however, that some data elements may not be pertinent to all pipeline segments. Therefore, in this final rule, PHMSA is revising the proposed requirement to specify that the operator must collect ''pertinent'' data ''about pipeline attributes to assure safe operation and pipeline integrity, including information derived from operations and maintenance activities,'' as recommended by the GPAC. Regarding the cost of this data collection, all the proposed elements were listed in ASME/ANSI B31.8S. As that standard has been incorporated by reference since 2004 for covered segments (*i.e.,* HCAs), collecting the listed data should not be a new or an extensive exercise for any prudent operator with appropriate processes in place. While specifying the list of data elements in the regulatory text is new, the elements listed have been incorporated by reference since the promulgation of subpart O and are not more prescriptive than the current regulations. Further, PHMSA disagrees that continuing to incorporate by reference ASME/ANSI B31.8S as well as specifying individual data elements will confuse operators.

Additionally, in response to comments and the GPAC recommendation, PHMSA is revising the listing of data elements to be more consistent with ASME/ANSI B31.8S. In some cases, PHMSA has clarified the meaning of generic terms in the data collection list found in ASME/ANSI B31.8S within this final rule. For example, where the ASME/ANSI standard lists ''material properties,'' PHMSA has elaborated by specifying these are ''material properties including, but not limited to, grade, SMYS, and ultimate tensile strength.'' In another example, where the standard lists ''pipe inspection reports,'' PHMSA has itemized, in this final rule, the pipe inspections required by part 192 and that are commonly performed by operators.

PHMSA agrees with commenters that sufficient time should be allotted for operators to comply with the data integration requirements. However, PHMSA also agrees with the comments made that operators should have been collecting and accounting for the pertinent items of this data set since the publication of the original IM rule almost 20 years ago. Therefore, in this final rule, PHMSA is providing a phased-in timeframe. The GPAC recommended that the implementation timeframe should begin in year 1, with full incorporation by 3 years. Given the existing requirements for collecting and using the data elements from ASME/ANSI B31.8S, and given the discussion at the GPAC meetings and the public comments received, PHMSA has revised this final rule to require that an operator must begin data integration on the effective date of the rule and integrate all attributes within 18 months of this rule's publication date.

Regarding comments calling for clarification of what ''data integration, verification, and validation'' meant, PHMSA notes that, at a minimum, an operator should consider the same set of data on a periodic basis and analyze changes and trends that would indicate the need for additional integrity evaluations.

Regarding SME bias, PHMSA believes that it is important for operators to address SME bias in data collection and risk assessment to account for the reality of how humans think about risk. Operators should take this into consideration when incorporating SME opinion as fact or when treating input from all SMEs as equivalent. While some operators may effectively account for SME bias, PHMSA has not observed this to be universal practice in the industry. To the point commenters made that using outside technical experts for bias control is unnecessarily costly, PHMSA notes that the use of outside technical experts would be optional: this final rule contemplates that operators could also employ training to ensure information provided by their own SMEs is consistent and accurate. While commenters also correctly noted that there is not an existing industry standard as to what constitutes an outside technical expert or an independent technical expert for SME bias control, an operator is ultimately responsible for determining the appropriateness and conductors of such a review. As a part of such a review, should an operator decide to have another SME review input from another SME, the operator must use a qualified SME—*e.g.,* an individual with formal or on-the-job technical training in the technical or operational area being analyzed, evaluated, or assessed. Operators would be required to document that the SME is appropriately knowledgeable and experienced in the subject being assessed.

PHMSA was persuaded, consistent with a GPAC recommendation, that some adjustments to the rule language are appropriate for clarity, or to eliminate redundant language, within the non-exhaustive list of specific types of data to be collected at § 192.179(a) and (b). Specific changes adopted in this final rule include the following:

- Section 192.917(a)(2): deleted a redundant reference to ''or equipment defects;''
- Section 192.917(b)(1)(iii): deleted explicit material properties (*e.g.,* hardness, chemical composition) from a non-exhaustive list of material properties;
- Section 192.917(b)(1)(xxiv): added ''seam cracking'' within the list of pipe operational and maintenance inspection reports to be reviewed;
- Section 192.917(b)(1)(xxv): deleted a redundant reference to ''outer/inner diameter corrosion monitoring;''
- Section 192.917(b)(1)(xxviii): eliminated specific examples of ''encroachments;'' and
- Section 192.917(b)(1)(xxxvi): deleted a redundant savings clause for ''other pertinent information'' when the lead-in to the section noted that the information listed was non-exhaustive.

PHMSA has also, consistent with a recommendation by the GPAC revised the rule by (1) requiring that operators employ adequate control measures for SME input to ensure consistent and accurate information rather than ''correct'' SME ''bias;'' and (2) requiring that operators document the names and qualifications of individuals who approve SME input rather than document the names of the SMEs and the information provided.

Concerning the use of a GIS, the NPRM's proposed revisions to § 192.917 were not intended to imply that all operators were required to implement a GIS system but were meant to clarify that data integration is not achieved solely by maintaining spatially located data in a GIS system. Accordingly, PHMSA has revised this final rule as recommended by the GPAC to delete reference to the use of a GIS system and maintain the core requirement to identify and analyze spatial relationships among anomalous information.

A. IM Clarifications—§§ 192.917(a)–(d), 192.935(a)

ii. Risk Assessment Functional Requirements—§ 192.917(c)

1. Summary of PHMSA's Proposal

Section 192.917(c) requires operators to perform a risk assessment as part of an effective IM program. A risk assessment is an important element of a good IM plan. PHMSA analyzed the issues related to risk assessments that the NTSB identified in its investigation and held a workshop on July 21, 2011, to address perceived shortcomings in the implementation of IM risk assessments. PHMSA also sought input from stakeholders on these issues in the ANPRM. Based on the input received from both the ANPRM and the workshop, PHMSA determined that additional clarification was needed to emphasize the functions that risk assessments must accomplish and to elaborate on effective processes for risk management, both of which are critical to effective IM.

To address these issues, PHMSA proposed to clarify the risk assessment aspects of the IM regulations at subpart O by including the following functional requirements for risk assessments that operators should perform to assure pipeline integrity:

- Evaluate the effects of interacting threats;
- Ensure validity of the methods used to conduct the risk assessment;
- Determine additional P&M measures needed;
- Analyze how a potential failure could affect an HCA, including the consequences of the entire worst-case incident scenario, from initial failure to incident termination;
- Identify how each risk factor, or each combination of risk factors that simultaneously interact, contribute to risk at a common location;
- Account and compensate for uncertainties in the model and the data used in the risk assessment; and
- Evaluate risk reduction associated with candidate activities, such as P&M measures.

2. Summary of Public Comment

Public interest groups supported PHMSA's proposed revisions at § 192.917(c) to strengthen the functional requirements for risk assessment models. The Pipeline Safety Trust (PST) stated that the risk assessment models currently used by pipeline operators are inadequate and further noted that the proposed provisions could go farther to advance risk assessment quality. Other GPAC members representing the public supported the proposed revisions at § 192.917(c) during the committee meetings and noted that the NPRM language for this topic was written using a risk-informed approach that articulated the functions and purposes of risk assessments without being prescriptive as to the method or process to be used, which is consistent with IM principles.

Multiple industry trade associations and individual operators acknowledged the importance of risk assessments but believed that the proposed revisions at § 192.917(c) were too prescriptive. Several individual operators emphasized their voluntary efforts to improve their risk models and disagreed that the industry's risk models needed further prescription.

Many commenters emphasized that different pipeline systems are susceptible to different threats and believed that operators are best suited to determine which threat analyses are relevant to their systems. Multiple operators expressed the opinion that the proposed revisions at § 192.917(c) would require operators to expand datasets substantially but would contribute little benefit to risk identification, suggesting instead that integrating unnecessary datasets would distract from other safety efforts. AGA and several individual operators requested that PHMSA give operators discretion to select which data sets to incorporate into risk assessments for their system.

Some commenters requested that PHMSA specify what the NPRM meant when it proposed to revise § 192.917(c) to require operators to ''validate'' data. These commenters expressed doubts regarding the technical feasibility of implementing the proposed regulations in § 192.917(c), noting that some of the data PHMSA proposed requiring for the validation of risk assessment models is not available. These commenters proposed that operators be permitted to apply conservative values or values determined using engineering judgement. Southwest Gas Corporation, Paiute Pipeline, and Consumers Pipeline expressed concern that developing the newly required datasets would require the usage of ILI tools that their pipelines are not configured to accommodate. These commenters stated that gathering these datasets would present costs that were not captured by PHMSA's PRIA because PHMSA did not account for the cost of making lines piggable.

Multiple commenters were concerned that the proposed revisions would make operators' current relative risk models invalid and would require a transition to quantitative or probabilistic risk models. Similarly, API agreed with that assessment and noted that quantitative and probabilistic models are not useful or appropriate for the analysis, prediction, or prevention of low-frequency, high-consequence events such as the PG&E incident. Further, API noted that the probabilities of certain infrequent circumstances and conditions occurring at a single location and single time are so low that the quantitative or probabilistic risk models would not identify them because there are no statistics available from which to predict them. AGA asserted that the proposed requirements deviate from industry standards and that PHMSA did not provide sufficient justification for this departure. Commenters also emphasized the high costs associated with implementing quantitative risk models, which can include the procurement of specialist expertise, development of new datasets, and transition to a GIS or other new database management system.

Kern River requested clarification regarding which elements of § 192.917 need to be included in an operator's risk model and which elements only need to be included in the overall IM plan. They noted that integrity assessment method determinations, repair decisions, P&M measures selection, root cause analyses, and similar pipe studies all play a part in the overall IM plan and have at times overlapping, but also unique, requirements for data gathering, integration, and threat analysis.

AGA and several individual operators expressed concerns that the proposed rule does not provide a timeline for implementing new risk assessment requirements, thereby implying that operators must implement new requirements by the rule's effective date. Multiple operators and industry trade associations requested that operators be permitted to develop their own implementation schedules or provided suggestions for specific implementation schedules. For example, Enterprise Products requested that PHMSA include a 2-year implementation period for operators to incorporate the data integration and risk assessment requirements into their IM programs.

At the GPAC meeting on January 12, 2017, some committee members noted that any revisions to the risk assessment requirements should be deferred until after PHMSA's Pipeline Risk Modeling Work Group issues its pipeline system risk modeling technical document.[19] There was broad support from the committee for the revisions to § 192.917(c) proposed in the NPRM, with members noting the language was consistent with IM principles and was written using a performance-based approach that articulated the functions and purposes of risk assessment without being prescriptive as to the method or process needing to be used. However, some committee members representing the industry expressed concern with the use of the term ''probability'' in the NPRM's proposed revisions to § 192.917(c), which seemed to imply PHMSA intended for operators to be using probabilistic risk assessment techniques.

Following the discussion, the committee voted 11–0 that the proposed provisions for the risk assessment requirements were technically feasible, reasonable, cost-effective, and practicable if PHMSA modified the proposed rule to restore the reference to ASME/ANSI B31.8S, section 5, to clarify that other methods besides probabilistic techniques may be used; change the term ''probability'' to ''likelihood'' and delete the term ''risk factors'' from § 192.917 (c)(2); and provide a 3-year phase-in period for risk assessments to meet the functional objectives specified in § 192.917(c).

3. PHMSA Response

On March 6, 2020, PHMSA published the final report titled ''Pipeline Risk Modeling—Overview of Methods and Tools for Improved Implementation'' from the joint PHMSA/industry working group on risk modeling.[20] However, PHMSA notes that the report is focused exclusively on the models employed and ''best practices'' for using them. The working group did not address other aspects of the proposed rule, including how a risk assessment is used.

PHMSA believes that the revisions to § 192.917(c) are important to include in this rulemaking now, as many operators have not substantially improved their risk assessment techniques or models since the early initial efforts to prioritize baseline assessment plans in 2004, with the findings from the PG&E incident being a prime, national example. Therefore, PHMSA is establishing explicit minimum standards for the functional requirements of a risk assessment to help assure that operators will achieve this specific aspect of a ''more detailed and comprehensive'' program as discussed in the 2003 IM rule.

In the NPRM's proposed revisions to § 192.917(c), when PHMSA used terms such as ''probability'' and ''risk factors,'' it was not intended to imply that an operator must perform probabilistic risk analysis. To address this, PHMSA has modified the rule language to replace the term ''probability'' with ''likelihood'' and restored the reference to ASME/ANSI B31.8S, section 5, for acceptable risk assessment methodologies as recommended by the GPAC. Similarly, and as also recommended by the GPAC, PHMSA has deleted the phrase ''or risk factors'' from paragraph § 192.917(c)(2) for clarity. Whichever risk assessment methodology an operator chooses, the result must meet the functional requirements and accomplish the purposes specified in this final rule.

PHMSA notes that all data elements specified in § 192.917(b) are important for a robust risk assessment. While operators do have the discretion to expand their data collection efforts, this minimum defined data set is required to be used. As was emphasized by multiple operators in their comments, each pipeline system is susceptible to different threats, and the individual operator is best suited to determine these threats. However, an operator needs the specified data elements to identify threats objectively. As noted in the previous section, PHMSA has modified the rule to refer to the ''pertinent'' data elements, including information derived from O&M activities that assure safe operation and pipeline integrity. This revision clarifies that data elements that are not pertinent for a given pipeline segment need not be included in a risk assessment.

Pertaining to comments regarding the validity of the method used, an operator must ensure the soundness of the risk modelling method they are using applicable to the threats to a given pipeline segment, including its specific leak or failure history. To Kern River's comment as to which elements of § 192.917 need to be included in an operator's risk model and which elements need to be included in an operator's IM plan, PHMSA will note that integrity assessment method determinations, repair decisions, P&M measure selection, and root cause analyses are examples of items that could be included in an operator's risk model based on the particular types of threats being assessed. The existing regulations state that a ''particular threat'' is an identified threat being assessed for each covered segment.

As discussed above, some commenters claimed there would be high costs associated with implementing quantitative risk models, which might include the procurement of specialist expertise, the development of new data sets, and a transition to a GIS or other new database management system. PHMSA notes that operators can use the same data they have been, and are currently, collecting when implementing a quantitative risk model. Operators do not necessarily have to ''recollect'' or otherwise change their existing data to use a probabilistic risk model.

Given the state of some operators' risk assessment programs, PHMSA is persuaded that it is reasonable to allow operators a reasonable amount of time to upgrade their risk assessment models, methodologies, and analyses. However, this is an important provision that operators need to implement as soon as practicable. Therefore, and to be more consistent with the implementation for the data attributes discussed earlier, PHMSA is modifying this final rule to allow an 18-month implementation period for this provision.

A. IM Clarifications—§§ 192.917(a)–(d), 192.935(a)

iii. Threat Assessment for Plastic Pipe—§ 192.917(d)

1. Summary of PHMSA's Proposal

PHMSA proposed to add to the regulations examples of threats unique to plastic pipe that operators must consider, such as poor joint fusion practices, pipe with poor slow crack

[19] For more information on the work group and its efforts, see *https://www.phmsa.dot.gov/pipeline/risk-modeling-work-group/risk-modeling-work-group-overview.*

[20] *https://www.phmsa.dot.gov/news/now-available-phmsa-report-pipeline-risk-modeling-overview-methods-and-tools-improved-0.*

growth (SCG) resistance, brittle pipe, circumferential cracking, hydrocarbon softening of the pipe, internal and external loads, longitudinal or lateral loads, proximity to elevated heat sources, and point loading. The proposed revisions would not otherwise change the current requirements of § 192.917(d).

2. Summary of Public Comment

PHMSA did not receive any public comments on this section. At the GPAC meeting on June 7, 2017, PHMSA noted in its presentation to the committee that there were no public comments on the issue. Subsequently, the GPAC voted 11–0 that the proposed changes to the provisions for IM clarifications for threat assessments for plastic pipe were technically feasible, reasonable, cost-effective, and practicable, and they did not recommend any additional changes to § 192.917(d).

3. PHMSA Response

Since PHMSA did not receive any public comments or additional GPAC recommendations regarding threat assessment for plastic pipe, the final rule includes the requirement in § 192.917(d) as proposed in the NPRM. PHMSA proposed these changes to highlight these potential threats to both operators and inspectors, and finalizing these requirements will provide additional safety and enforcement awareness.

A. IM Clarifications—§§ 192.917(a)–(d), 192.935(a)

iv. Preventive and Mitigative Measures—§ 192.935(a)

1. Summary of PHMSA's Proposal

PHMSA's inspection experience shows that some operators do not implement additional P&M measures based on the evaluation required at § 192.935(a). PHMSA believes that strengthening requirements related to operators' use of insights gained from their IM programs is prudent to ensure effective risk management. Therefore, PHMSA proposed to clarify the expectation that operators use knowledge from risk assessments to establish and implement adequate P&M measures and provided more explicit examples of the types of P&M measures for operators to evaluate.

2. Summary of Public Comment

Several commenters requested that PHMSA revise the requirements at § 192.935(a) to remove the requirement for operators to perform all the listed measures to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in an HCA. These commenters stated that requiring operators to perform all the measures listed at § 192.935(a) negates the need for a risk analysis, as the rule would then require that operators perform each of the listed actions regardless of whether conditions warrant these actions or whether past efforts have been taken. INGAA suggested that PHMSA should keep the existing language, which states that an operator must base the additional measures on the threats the operator has identified to each pipeline segment. GPAC members representing the industry echoed INGAA's claims during the committee meetings.

During the GPAC meeting on June 7, 2017, the GPAC noted that PHMSA's proposed changes removed a statement that an operator must base additional P&M measures on the threats an operator has identified for each pipeline segment. The proposed text, the members believed, implied an operator would be required to evaluate and implement each listed P&M measure every time. Based on PHMSA's webinars and other discussions, the committee members didn't believe that was PHMSA's intent.

Following that discussion, the committee voted 11–0 that the proposed provisions for strengthening the requirements for applying IM knowledge were technically feasible, reasonable, cost-effective, and practicable if PHMSA clarified it was not the agency's intent to require that all listed P&M measures be implemented, and that operators ''must consider'' the listed items.

3. PHMSA Response

PHMSA agrees that all listed measures are not mandatory for implementation in all cases. Requiring an operator to implement P&M measures against threats that might not be applicable to their particular system could be overly burdensome. However, PHMSA has determined that requiring operators to consider the listed measures in their risk analyses and apply them to threats as appropriate is a practical requirement. As recommended by the GPAC, the final rule has been modified to reflect that position; each operator will be required to consider the listed measures and determine the appropriateness of each for their system.

B. Management of Change—§§ 192.13 & 192.911

1. Summary of PHMSA's Proposal

Section 192.911(k) requires that an operator's IM program include a MOC process as outlined in ASME/ANSI B31.8S, section 11. That document guides operators to develop formal MOC procedures to identify and consider the impact of major and minor changes to pipeline systems and their integrity. These changes can include technical, physical, procedural, and organizational changes, and they can be either temporary or permanent changes. Per ASME/ANSI B31.8S, section 11, an operator's MOC process should include the reason for the change, the authority for approving changes, an analysis of the implications of the change, the proper acquisition of the necessary work permits, appropriate documentation, communications of the change to any affected parties, time limitations of the change, and the qualification of staff. The document notes that changes to a pipeline system might require changes to an operator's IM program; similarly, changes to an IM program might also cause changes to a pipeline system. If changes in land use (*e.g.,* increased population) would affect the potential consequence of an incident or the likelihood of an incident occurring, such a change should be reflected in an operator's IM program. The operator should also reevaluate threats accordingly. In short, the MOC process outlined by ASME/ANSI B31.8S helps to ensure that an operator's IM process remains viable and effective as changes to pipeline systems occur or new data becomes available.

Inadequately reviewed or documented design, construction, maintenance, or operational changes can contribute to pipeline failures. In the PG&E incident, the NTSB investigation determined that a substandard piece of pipe was substituted in the field without proper authorization, design review, or approval. PHMSA has subsequently determined that more specific attributes of the MOC process should be explicitly codified within the text of §§ 192.13 (general requirements) and 192.911(k) (IM requirements). As a result, PHMSA proposed to require that operators have a MOC process that includes the reasons for the change; the authority for approving changes; an analysis of implications; the acquisition of required work permits; and evidence documenting communication of the change to affected parties, time limitations, and the qualification of staff.

2. Summary of Public Comment

Public interest groups, such as the PST, and the National Association of Pipeline Safety Representatives (NAPSR) agreed with and supported the proposed MOC provisions, stating that these provisions would enhance pipeline safety. Several individual pipeline operators and trade associations opposed the proposed MOC provisions, stating that the provisions are generally too broad and would be applied to many routine activities that already have established procedures. More specifically, AGA stated that they would create a new requirement for each transmission operator to have a formal MOC process to document and evaluate all changes to pipelines and processes. They further stated that the proposed revisions are unnecessary due to current industry progress related to MOC and the voluntary adoption of industry consensus standards.

Several commenters opposed the proposed addition of four types of changes (design, environmental, operational, and maintenance), asserting that these elements are not included in current industry standards or recommended practices. Similarly, INGAA asserted that PHMSA should eliminate the changes it proposed to § 192.13 that go beyond the recommendations of ASME/ANSI B31.8S. These commenters stated that PHMSA significantly underestimated the impact and burden caused by codifying and expanding the scope of MOC.

Several commenters, including AGA, API, and INGAA, opposed the proposed immediate implementation of the MOC provisions, with some commenters requesting an implementation period of 1 to 5 years. These commenters stated that the proposed changes were significant and would need to be incorporated into existing MOC processes, and that additional time would be needed to complete this in an effective manner. Many commenters also expressed concern over the retroactive application of the proposed MOC provisions.

At the GPAC meeting on January 12, 2017, the committee voted 8—2 that the proposed MOC revisions were technically feasible, reasonable, cost-effective, and practicable if PHMSA provided a 2-year phase-in period for the regulations as they pertain to non-IM pipeline assets, provided a notification procedure for justified extensions, clarified the requirements only covers significant changes that affect safety and the environment, and clearly stated that the revisions do not apply to distribution or gathering lines. The dissenters in the vote (representatives from the Environmental Defense Fund (EDF) and PST) were members representing the public, who thought that the proposed revisions were acceptable as proposed in the NPRM, the phase-in period recommended by the majority of the GPAC was too long, and that there was no reason that the proposed revisions should not apply to gathering lines.

3. PHMSA Response

PHMSA believes that an operator must understand the impacts that their decisions have on safety and the environment. Therefore, PHMSA believes that specifying the types of changes that must be addressed under a MOC program is appropriate. PHMSA also believes that the proposed changes to the MOC provisions conform with the requirements and intent of ASME/ANSI B31.8S.

However, based on the comments received and GPAC recommendations, PHMSA is persuaded that, as published in the NPRM, the language of proposed § 192.13(d) could be overly broad. Therefore, PHMSA has revised the requirement to specify the requirement applies to a ''significant change that poses a risk to safety or the environment'' to limit the application of this requirement to significant changes, as the GPAC recommended. Additionally, and as also recommended by the GPAC, PHMSA is specifying that § 192.13(d) is not retroactive and applies only to onshore transmission pipelines (*i.e.,* not gathering or distribution pipelines).[21]

PHMSA agrees that operators should be afforded time to comply with this new requirement, but also believes that operators can apply this process to non-HCA assets more promptly than the period that the GPAC recommended. Therefore, operators have 18 months for the MOC process to be fully incorporated for non-HCA pipeline segments. PHMSA is also including a notification procedure in accordance with § 192.18 for operators to apply for an extension, of up to 1 year, of the compliance deadline. PHMSA believes including this compliance deadline strikes a balance between the GPAC recommendation and the implementation of a procedure that operators already have in place for HCA pipeline segments, and including a notification procedure to provide operators with more time, if necessary, effectively implements the GPAC recommendations.

C. Corrosion Control—§§ 192.319, 192.461, 192.465, 192.473, 192.478, and 192.935 and Appendix D

i. Applicability

1. Summary of PHMSA's Proposal

Incidents attributed to corrosion continue to occur, which demonstrates that the current requirements can be more effective at preventing incidents caused by certain types of corrosion. This includes compromised pipe or pipe coating caused by damage from construction, cathodic protection deficiencies, interference currents, and internal corrosion. As a result, PHMSA proposed several changes to the regulations for corrosion control, including new requirements for pipe coating assessments, protective coating strength, P&M measures, and additional mitigation of stray current (also referred to as interference current). PHMSA also proposed changes regarding gas stream monitoring program requirements to mitigate internal corrosion. These proposed revisions were made in §§ 192.319, 192.461, 192.465, 192.473, and 192.935(f) and (g) and are discussed more thoroughly in this section. PHMSA also proposed to add a new § 192.478 for the monitoring and mitigation of internal corrosion.

2. Summary of Public Comment

The Coalition to Reroute Nexus, the Michigan Coalition to Protect Public Rights-of-Way, NAPSR, and the PST supported the proposed changes regarding corrosion control and pipeline condition monitoring. Earthworks suggested that PHMSA issue even more stringent requirements given the number of post-Carlsbad incidents that have occurred due to corrosion.[22] The Pipeline Safety Coalition, the Public Service Commission of West Virginia, and the Pennsylvania Public Utility

[21] PHMSA stated, in response to written comments submitted in the docket and discussion during the January 2017 GPAC meeting, that it would in the final rule limit application of the NPRM's proposed management of change amendments at § 192.13(d) to exclude gas distribution and gathering lines. PHMSA notes, however, that (1) PHMSA has undertaken a rulemaking (under RIN 2137–AF53) that will consider extending those or similar requirements to gas distribution pipelines as required by a mandate in section 204 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (Pub. L. 116–260)); and (2) PHMSA may consider extending those or similar requirements to gas gathering lines as PHMSA obtains more information on the safety risks of such pursuant to enhanced reporting requirements codified by PHMSA's Gas Gathering Final Rule.

[22] An incident near Carlsbad, NM, on August 19, 2000, which was caused due to corrosion, killed 12 people and caused nearly $1 million in damage. The incident was a catalyst for PHMSA's IM program requirements for pipelines.

Commission stated that not all gathering pipelines should be exempt from corrosion monitoring.

Some commenters requested clarification regarding whether the proposed provisions were intended to include transmission, distribution, and gathering pipelines. Other commenters provided input on whether gathering pipelines should be included in the corrosion control requirements, especially alternating current voltage gradient (ACVG) and direct current voltage gradient (DCVG) inspections in proposed § 192.461.

During the meeting on June 7, 2017, GPAC committee members questioned whether the corrosion control requirements would apply to gathering lines—the presumption among the majority of the members was that the requirements were not intended to include gathering or distribution lines. The committee provided other feedback specific to the applicability and implementation of specific corrosion topic areas, which are discussed in the applicable sections below.

3. PHMSA Response

PHMSA has considered the comments received regarding the applicability of the proposed corrosion control requirements. PHMSA stated at the June 2017 GPAC meetings, in response to comments received on the NPRM and the discussions during the GPAC meeting, that it would in the final rule exclude gathering and distribution pipelines from the NPRM's proposed requirements in subpart I related to corrosion control. Accordingly, PHMSA has revised § 192.9 to exempt gathering lines from several of these requirements. PHMSA, however, may consider expanding this provision to gathering lines in the future. Comments on the specific provisions proposed for corrosion control are addressed in the following sections.

As to commenters requesting the regulations be made even more strict than proposed, PHMSA notes that changes more stringent than those proposed would require further notice. PHMSA believes that currently, there is also not sufficient data to justify more stringent changes. PHMSA will continue to review all data sources on the subject, including incident and annual reports, and consider more stringent corrosion control safety requirements in a future rulemaking if there is data supporting the need.

C. Corrosion Control—§§ 192.319, 192.461, 192.465, 192.473, 192.478, and 192.935 and Appendix D

ii. Installation of Pipe in the Ditch and Coating Surveys—§§ 192.319 and 192.461

1. Summary of PHMSA's Proposal

Section 192.319 prescribes requirements for installing pipe in a ditch, including requirements to protect pipe coating from damage during the process. While most operators perform the required high-voltage holiday detection [23] on the pipeline prior to it being placed into the ditch, pipe coating can sometimes be damaged during the handling, lowering, and backfilling process, which can compromise its ability to prevent external corrosion. To address this problem, PHMSA proposed to require that onshore gas transmission pipeline operators perform an above-ground indirect assessment through an ACVG or DCVG survey to identify locations of suspected damage promptly after an operator completes the backfilling process. Per the proposal, operators would remediate any moderate or severe coating damage issues identified by such an assessment, which, was defined as where there are voltage drops of greater than 35 percent for DCVG or 50 dBμV for ACVG.

Section 192.461 prescribes requirements for protective coating systems. PHMSA notes that pipe coating can disbond [24] from the pipe and shield the pipe from CP. The NTSB determined that this was a significant contributing factor in the major crude oil spill that occurred near Marshall, MI, in 2010. As a result, PHMSA determined that additional requirements are needed to specify that coating should not impede cathodic protection. Further, and as discussed above, PHMSA determined that additional requirements are needed so that operators verify that pipeline coating systems for protection against external corrosion have not become compromised or damaged during the installation and backfill process performed during maintenance, repairs, or pipe replacement.[25]

In the NPRM, PHMSA proposed to revise § 192.461(a) to require that pipelines have sufficient coating to protect against damage from being handled. PHMSA also proposed to add § 192.461(f) to require operators to perform an above-ground coating survey within 3 months of placing the pipeline into service and require operators to repair moderate or severe coating damage within 6 months of the assessment.

2. Summary of Public Comment

Stakeholders representing the public, including NAPSR and the PST, generally agreed with and supported the revisions to this section, stating that such requirements would increase safety and were a good step towards reducing the number of incidents that occur due to corrosion. Many commenters stated that ACVG/DCVG surveys are not always feasible and that PHMSA should not limit the tools for performing coating surveys to the two types specified in §§ 192.319 and 192.461(f). For example, INGAA stated that PHMSA did not provide justification for requiring coating surveys, such as ACVG and DCVG, to be used to detect coating issues after construction or after performing a repair or replacement. INGAA further stated that PHMSA should allow operators to use other assessment technologies, such as close interval surveys (CIS) and high-resolution geometry ILI inspection tools, to detect and manage post-construction, post-repair, and post-replacement conditions that contribute to external corrosion.

AGA and AGL Resources (now Southern Company Gas) commented that depth of cover and excessive pavement can make indirect surveys impossible. Further, AGA stated that while conducting post-construction surveys is industry best practice, activities that are not always feasible for operators to complete should not be codified within the regulations.

NACE expressed concern that ACVG and DCVG surveys do not address the stated goal of identifying coatings that impede cathodic protection and objected to setting specific thresholds for these tests. Similarly, INGAA stated that if the requirements for operators to perform coating surveys using ACVG and DCVG are finalized, the proposed voltage drop threshold value in § 192.461(f) should be eliminated.

Industry commenters also stated objections or suggested limitations to the timeframe proposed in § 192.461(f) regarding when these surveys should be performed, stating that the 3-month timeline is inconsistent with the 1-year period allowed to install cathodic protection after the construction of a

[23] ''Holidays'' are essentially holes or gaps in the coating film that exposes the pipeline to corrosion. The inspections of pipeline coating through electronic defect detectors is commonly also referred to as ''jeeping.''

[24] Disbonding is the failure of a coating to adhere to the underlying substance to which it was applied. Specific to pipelines, it is a loss of adhesion between the cathodic coating and the pipe due to a corrosive reaction taking place.

[25] This is similar to a proposal in § 192.319 for new construction.

pipeline in existing § 192.455(a)(2). New Jersey Natural Gas expressed concern that 3 months may not be adequate both to procure qualified personnel and to perform these surveys and have a fully mature cathodic protection system to perform a successful coating assessment. NAPSR believed that, unless there was a technical reason for the 3-month deadline for the surveys, the timeline might be too conservative due to service procurement and seasonal conditions. Therefore, they recommended extending the assessment deadline.

API and Enterprise Products commented that PHMSA does not provide any supporting evidence that backfilling a ditch for an onshore transmission pipeline is, or has been, an issue meriting the need for ACVG or DCVG surveys to assess coating integrity. Further, API and Southern California Gas Company stated that § 192.319(a) already requires all operators of transmission gas pipelines to ''protect the pipe coating from damage,'' either in initial installation, or any time the pipe is exposed and backfill material is added. Therefore, the proposed provisions may be duplicative with § 192.461.

At the GPAC meeting on June 6 and 7, 2017, committee members representing the industry echoed many of the comments received, noting also that ACVG and DCVG surveys may not address issues related to coatings impeding CP. Additionally, some of these members noted that coating surveys are not always feasible, and that PHMSA should not limit the tools for performing such surveys. Further, several GPAC members representing the industry suggested that PHMSA should not set specific repair thresholds in the regulations, and that the provisions do not align with current NACE standards.[26] Certain committee members also recommended applying a greater-than-1000-feet standard for this provision, which would match a proposed requirement for external corrosion control under § 192.461 and thought that the timeline for the above-ground coating survey should be extended from 3 months to 1 year to synchronize with current CP installation requirements. The committee also suggested PHMSA clarify the applicability of these provisions is limited to transmission pipelines.

Therefore, the committee voted 10–0 that these provisions proposed at §§ 192.319 and 192.461 were technically feasible, reasonable, cost-effective, and practicable if PHMSA: (1) raised the repair threshold from ''moderate'' to ''severe'' indications, (2) modified the requirements to apply to segments greater than 1,000 feet in length to be consistent with other similar corrosion control requirements, (3) extended the assessment and remediation timeframe to 6 months after a pipeline is placed into service and made allowances for delayed permitting, (4) adjusted the recordkeeping requirements so that operators would be required to make and retain for the life of the pipeline records documenting indirect assessment findings and remedial actions, and (5) provided flexibility for the use of alternative technology unless the agency objected.

3. PHMSA Response

Operators have historically assumed that coating is functioning as intended after construction. However, the NTSB report on the Enbridge crude oil accident near Marshall, MI, identified shielded CP due to disbonded coating as being a contributing cause of the failure. Whenever an operator backfills a pipeline, there is the potential for coating damage. PHMSA believes that conducting coating surveys after backfill is a reasonable and reliable way for operators to identify coating damage inflicted during the construction process before significant corrosion occurs. This is a means for an operator to confirm, after pipeline construction or replacement, that the pipe coating is not compromised and is functioning as intended.

PHMSA believes that ACVG/DCVG surveys are currently the best and most reliable means of detecting coating damage following construction, as opposed to a CIS survey, which is a complementary survey employed to assess the performance of CP systems. However, PHMSA desires to promote the development of new technologies and methods and acknowledges that other technology could be used for performing coating assessments. Therefore, in this final rule, PHMSA is allowing an operator to notify PHMSA of the intent to use other technology, which it may use unless an objection is received, as was recommended by the GPAC. PHMSA's review of such notification would evaluate whether an operator has demonstrated that the ''other technology'' provides equivalent protection to public safety and the environment compared the existing technologies contemplated by this final rule. As a part of its evaluation, PHMSA considers whether there are technical papers from standard developing organizations that support the use of the new technology, as well as any research that has been conducted on that technology and any usage of the technology in other industries and non-regulated pipelines.

PHMSA disagrees that the voltage drop threshold value used as the remediation criterion should be eliminated from the regulation but does agree that the values in the proposed revisions to §§ 192.319 and 192.461 in the NPRM were conservative as they would indicate ''moderate'' coating damage. Therefore, in this final rule and as recommended by the GPAC, PHMSA is specifying the voltage drop threshold value associated with a ''severe'' indication of coating damage as recommended by GPAC.

As recommended by the GPAC, PHMSA is persuaded that the 3-month proposed timeline may not be practical in all situations and has modified the final rule to allow operators up to 6 months after the pipeline is placed into service to complete the necessary assessments and remediation (with allowance for time required to obtain permits, if required). PHMSA has also included a requirement for the associated recordkeeping requirements of these provisions that includes the editorial changes recommended by the GPAC; specifically, that operators must make and retain for the life of the pipeline records documenting the indirect assessment findings and remedial actions.

PHMSA also modified both sections to apply to segments greater than 1,000 feet in length to be consistent with other corrosion control requirements that were similarly altered in this final rule. PHMSA notes that the application of these requirements to segments greater than 1,000 feet in length is also consistent with conditions that have been applied in several special permit applications.

As a part of the requirements for these sections, PHMSA has provided in the regulatory text that the applicable coating surveys must be conducted, except in locations where effective coating surveys are precluded by geographical, technical, or safety reasons.[27] These might include crossings of major interstates or rivers. An operator must document, in accordance with a technically proven

[26] When the ANPRM was being developed, NACE did have standards for ACVG/DCVG surveys. Since the development of this final rule, NACE has subsequently revised those standards, and there is no longer a standard for these surveys.

[27] For example, coating surveys could require drilling holes in roadways, or digging up pipe—each of which entail their own risks to public safety and the environment. Some of the pipelines that would be surveyed could either be cased or have thick-walls, further complicating efforts to conduct coating surveys.

analysis, any decision made not to perform such a coating survey.

As noted before, PHMSA did not intend for these provisions to apply to gathering or distribution pipelines, and it has clarified the applicability of these provisions to transmission lines only. However, PHMSA may expand the application of these provisions in a future rulemaking.

C. Corrosion Control—§§ 192.319, 192.461, 192.465, 192.473, 192.478, and 192.935 and Appendix D

iii. Interference Surveys—§ 192.473

1. Summary of PHMSA's Proposal

Interference currents occur when metallic structures pick up a stray electrical current from elsewhere and discharge the current, thereby causing corrosion. These currents can negate the effectiveness of cathodic protection systems. The sources of stray current problems are commonplace; they can result from other underground facilities, such as the cathodic protection systems from crossing or parallel pipelines, light rail systems, commuter train systems, high-voltage alternating current (HVAC) electrical lines, or other sources of electrical energy in proximity to the pipeline. Stray current corrosion is electrochemical corrosion that occurs when potential differences between a high-conductivity steel pipeline and lower-conductivity environments causes the stray current to flow through the pipe and create a corrosion cell. If stray current or interference issues are not remediated, accelerated corrosion could occur and potentially result in a leak or rupture. Section 192.473 prescribes general requirements to minimize the detrimental effects of interference currents. However, specific requirements to monitor and mitigate detrimental interference currents have not been prescribed in subpart I of part 192. Therefore, in the NPRM, PHMSA proposed to explicitly require operators to conduct interference surveys and remediate adverse conditions in a timely manner. Specifically, PHMSA proposed to amend § 192.473 to require that an operator's program include interference surveys to detect the presence of interference currents and take remedial actions within 6 months of completing the survey. Additionally, PHMSA proposed to require in § 192.473 that operators perform periodic interference surveys whenever needed.

2. Summary of Public Comment

Generally, stakeholders representing the public agreed with and supported the revisions to this section, noting that the requirements, as proposed, could help reduce the number of pipeline incidents caused by corrosion. Numerous trade associations and pipeline companies were concerned about the proposed requirements for interference surveys under § 192.473. Commenters, including Atmos Energy Corporation and AGA, expressed doubt regarding the ability of individual operators to obtain the necessary information from electric transmission providers. APGA and INGAA urged PHMSA to limit this new requirement to specific transmission lines, such as those pipelines subject to the threat of stray electric current. Commenters, including INGAA, also stated that the provisions should allow for the phased-in implementation of remediation measures and provided timeframes from 12 to 18 months. Some commenters suggested a lengthened implementation period for this requirement due to the potential difficulties in obtaining the proper permits.

At the GPAC meeting on June 7, 2017, certain committee members believed that these requirements should apply only to lines that are subject to stray current risks and noted that interference surveys might not be feasible depending on the information operators can obtain from electricity transmission companies. Committee members also suggested a phased-in compliance period between 12 and 18 months for these requirements, and noted, similarly to the proposed external corrosion provisions, that the remediation period did not account for activities like obtaining the necessary permits. There was also extensive discussion at the meeting regarding PHMSA's proposed use of the word ''significant'' in context of the level of corrosion that would need to be remediated, with several committee members suggesting that phrase be tied to a numeric threshold for easier compliance. The committee also discussed, at length, what PHMSA's expectation for a remediation ''plan'' is and what the necessary paper trail would look like for compliance.

After discussion, the committee voted 9–0 that the provisions for external corrosion interference currents are technically feasible, reasonable, cost-effective, and practicable if PHMSA clarified that the surveys are required for lines subject to stray currents and updated the remediation timeframe to require operators create a remediation procedure and apply for necessary permits within 6 months and complete remediation activities within 12 months with allowances for delayed permitting. The committee also specifically recommended that PHMSA clarify that operators must take remedial action when the interference is at a level that could cause significant corrosion as being 100 amps per meter squared, or if it impedes the safe operating pressure of the pipeline, or if it may cause a condition that would adversely affect the environment or the public.

3. PHMSA Response

PHMSA agrees with commenters that every pipeline segment is not equally subject to stray current. Therefore, in this final rule, PHMSA is modifying § 192.473 as recommended by the GPAC to clarify that interference surveys are required when electric potential monitoring indicates a significant increase in stray current, or new potential stray current sources are introduced. Additionally, PHMSA recognizes the need for objective remediation criteria and has included the criteria recommended by the GPAC, specifically ''greater than or equal to 100 amps per meter squared or if it impedes the safe operation of a pipeline or may cause a condition that would adversely impact the environment or the public.'' PHMSA has also revised this final rule to establish a remediation timeframe of 15 months, with allowance for delayed permitting, as recommended by the GPAC.

C. Corrosion Control—§§ 192.319, 192.461, 192.465, 192.473, 192.478, and 192.935 and Appendix D

iv. Internal Corrosion—§ 192.478

1. Summary of PHMSA's Proposal

Section 192.477 prescribes requirements to monitor internal corrosion by coupon testing or other means if corrosive gas is being transported. However, the regulation is silent on standards for determining whether corrosive gas is being transported or regarding any changes occurring that could introduce corrosive contaminants in the gas stream. The existing regulations also do not prescribe that operators continually or periodically monitor the gas stream for the introduction of corrosive constituents through system changes, changing gas supply, abnormal conditions, or other changes. This could result in pipelines that are not monitored for internal corrosion because an initial assessment did not identify the presence of corrosive gas.

As such, PHMSA determined that additional requirements are needed to ensure that operators effectively monitor gas stream quality to identify if and when corrosive gas is being transported and to mitigate deleterious gas stream constituents such as contaminants or

liquids. In the NPRM, PHMSA proposed to add a new § 192.478 to require onshore gas transmission pipeline operators monitor for deleterious gas stream constituents and evaluate gas monitoring data quarterly. The proposed § 192.478 would also add a requirement for onshore gas transmission pipeline operators to review their internal corrosion monitoring and mitigation program semi-annually and adjust the program as necessary to mitigate the presence of deleterious gas stream constituents. These requirements would be in addition to the existing requirements to check coupons or perform other measures to monitor for the presence of internal corrosion when transporting a known corrosive gas.

2. Summary of Public Comment

NAPSR generally agreed with and supported the addition of this section. They did note, however, that PHMSA should consider the applicability of these requirements to pipelines that are transporting dry, tariff-quality gas. The PST noted that these proposed requirements in this section provided an enforceable mechanism to hold operators accountable for future incidents caused by internal corrosion.

Multiple commenters considered the proposed changes to requirements for internal corrosion control in § 192.478 to be overly prescriptive, particularly regarding gas monitoring and the list of corrosive constituents. INGAA stated that transmission operators are already taking comprehensive steps to address internal corrosion under subparts I and O of part 192 and that proposed § 192.478 should be eliminated for this reason. Atmos Energy Corporation and INGAA asserted that the internal corrosion monitoring timeline proposed in § 192.478(d) is unreasonable and too frequent, particularly for pipeline systems that are not susceptible to internal corrosion. They further stated that mitigation of internal corrosion is necessary only if a pipeline is transporting, or has the potential to transport, corrosive gas. At the GPAC meeting on June 6, 2017, committee members representing the industry supported those comments made by Atmos Energy Corporation and INGAA.

Commenters at the GPAC meeting, including committee members, noted that some distribution operators rely on upstream transmission pipeline gas suppliers to monitor gas quality and do not own any gas monitoring equipment. A committee member noted that if pipeline operators are getting gas from native sources, gathering lines, or underground storage fields, it might be necessary to determine the quality of the gas. Another committee member noted that there are tariffs that prevent certain quantities of constituents that could be internally corrosive from entering a transmission system. That commenter also noted that operators continually monitor for internal corrosion on pipelines transporting tariff-quality gas as a part of IM.

GPAC members also noted that PHMSA should consider harmonizing these requirements with the existing corrosion control monitoring requirements, as they appeared to be duplicative in certain areas.

After discussing the provisions, the committee voted 10–0 that the proposed provisions related to internal corrosion were technically feasible, reasonable, cost-effective, and practicable if PHMSA limited the applicability of the requirements to those pipelines that are transporting corrosive gas and provided additional guidance based on the committee discussion; changed the reference from the use of ''gas-quality monitoring equipment'' to ''gas-quality monitoring methods;'' specified types of technologies operators can use to mitigate potentially corrosive gas streams; and changed the frequency of the monitoring and program review requirements from twice per year to once per calendar year, not to exceed 15 months. The committee also specifically recommended deleting language that was duplicative to existing requirements and instead recommended PHMSA cross-reference those existing requirements in this section.

3. PHMSA Response

PHMSA noted during the GPAC meeting, that, in its experience, transmission pipeline operators measure the quality of the gas coming into their transmission systems. Based on the quality of the gas, transmission pipeline operators are paying suppliers for the gas they receive or are receiving money for the gas they deliver. Therefore, PHMSA assumes transmission pipeline operators have monitoring systems for the quality of the gas entering their systems. PHMSA's intent with the proposed revision of this section was to help ensure that operators were getting that data to the necessary people in their organization. For instance, if an organization's accountants are getting gas quality data due to their work with tariffs, the personnel responsible for operations and integrity management should get that data.

Based on the comments received, PHMSA is revising the scope of proposed § 192.478 in this final rule to limit its applicability to the transportation of corrosive gas and is modifying the proposed language in paragraph (b)(1) to specify that operators perform monitoring at points where gas with potentially corrosive contaminants enters the pipeline. To address concerns regarding the monitoring frequency, PHMSA is changing the requirement from twice per year to once per calendar year, not to exceed 15 months. Making such a change is more consistent with the timeframes for similar requirements in the regulations as revised by this rulemaking and implements the recommendation made by the GPAC.

Further, to harmonize this rule with other rule requirements, PHMSA is deleting proposed paragraph (c), since § 192.477 currently requires the monitoring of internal corrosion. To address comments regarding technology, PHMSA revised paragraph (b)(2) to read ''Technology to mitigate the potentially corrosive gas stream constituents. Such technologies may include product sampling and inhibitor injections.''

There have been instances where operators do transport corrosive gas by pipeline without investigating the possibility of corrosive effect of the gas on its pipeline and taking steps to minimize internal corrosion.[28] This has happened after operators have withdrawn gas from storage facilities (*e.g.,* caverns) where the gas that was injected became corrosive over time because of properties of the storage facilities. Therefore, there can be scenarios where corrosive gas can enter a pipeline system even if the gas being delivered into the upstream system is non-corrosive.

C. Corrosion Control—§§ 192.319, 192.461, 192.465, 192.473, 192.478, and 192.935 and Appendix D

v. Cathodic Protection—§ 192.465 & Appendix D

1. Summary of PHMSA's Proposal

Appendix D to part 192, ''Criteria for Cathodic Protection and Determination of Measurements,'' which is referenced in § 192.465(f), specifies requirements for CP of steel, cast iron, and ductile pipelines. Appendix D has not been updated since 1971. The NPRM

[28] In the Matter of Transcontinental Gas Pipe Line Company, LLC, CPF 1–2018–1005, available at *https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120181005/120181005_Final%20Order_06192019.pdf* (last visited March 27, 2020). On December 12, 2016, Transcontinental Gas Pipe Line Company reported an explosion and fire that severely damaged a portion of one of its facilities and station piping, resulting in an estimated $15 million in damage. The root cause was determined to be internal corrosion caused by salt water produced from a storage field during gas withdrawal.

proposed to update appendix D by eliminating outdated guidance on CP and the interpretation of voltage measurement to better align with current standards and PHMSA's understanding of current industry practice.

Section 192.465 currently prescribes that operators monitor CP and take prompt remedial action to correct deficiencies indicated by the monitoring. The provisions in § 192.465 do not specify the remedial actions required to correct deficiencies and do not define ''prompt.'' To address this gap, the NPRM proposed to amend § 192.465(d) to require that operators must complete remedial action promptly, but no later than the next monitoring interval specified in § 192.465, or within 1 year, whichever is less. Additionally, new paragraph (f) proposed to add requirements for onshore gas transmission pipeline operators to perform CIS if annual test station readings indicate CP is below the level of protection required in subpart I. Unless it is impractical to do so, PHMSA proposed to require that operators complete CIS with the protective current interrupted. Whereas ACVG and DCVG are performed at the time of construction, before electrical current is on the pipe for CP, a CIS requires the pipe to be in the ground with the rectifiers installed. A CIS will discover areas of low current where CP might be weakened and can discover additional construction, operational or environmental damage along the pipeline when performed as a post-construction task. The NPRM's proposed revisions to § 192.465 would also require each operator to take remedial action to correct any deficiencies indicated by the CIS.

2. Summary of Public Comment

NAPSR and the PST generally agreed with and supported the revisions to § 192.465. NAPSR believed that the inclusion of a timeframe for operators to perform CIS and perform subsequent mitigation measures would increase pipeline safety but noted that PHMSA should provide further guidance on the intervals at which operators should perform the surveys. Both PST and NAPSR supported the revisions to appendix D.

Several industry entities commented on the proposed revisions to appendix D to part 192. INGAA stated that the proposed remaining criteria in appendix D for determining the adequacy of cathodic protection are too narrow, and that all industry standards provide for additional methods of assessing voltage drop. These commenters recommended that PHMSA follow the applicable paragraphs of NACE Standard Practice SP0169. Enterprise noted that appendix D should be consistent with § 195.571, which outlines the criteria that hazardous liquid pipeline operators must use when determining the adequacy of cathodic protection.

Commenters stated that the proposed changes to appendix D, as written, would apply to distribution pipelines as well as transmission pipelines and expressed concern that PHMSA has offered neither justification nor an estimate of the impact on distribution systems. These commenters requested that PHMSA clarify that the proposed changes to appendix D apply only to transmission pipelines.

Commenters, including committee members representing the industry during the meeting on June 6, 2017, stated that PHMSA should amend § 192.465 to include a more realistic timeframe for remedial action, specifically noting that the timeframe for remediation does not account for difficulties in obtaining the necessary permits. Additionally, commenters and GPAC committee members stated this provision could lead to unnecessary and costly work, as there are various situations that can produce a low CP reading that do not require CIS for the identification of the root cause. Those commenters stated there are certain conditions that do not require CIS and recommended allowing operators to identify, troubleshoot, and remediate these certain conditions on their own without the need to conduct CIS.

Further, GPAC members representing the industry disagreed with PHMSA's proposed revisions to the appendix D criteria for determining the adequacy of cathodic protection. Like their commentary on other provisions, these committee members also noted that the impact of these changes to distribution pipelines was not justified or analyzed, and therefore, distribution pipelines should be exempt from the proposed requirements.

Following their discussion, the committee voted 10–0 that the provisions related to the CP of steel, cast iron, and ductile pipelines were technically feasible, reasonable, cost-effective, and practicable if PHMSA clarified that the new requirements in § 192.465(d) only apply to gas transmission pipelines and withdrew the proposed revisions to appendix D. The committee also recommended that PHMSA address situations where CIS may not be an effective response by instead requiring operators investigate and mitigate any non-systemic or location-specific causes of corrosion and require CIS if operators need to address systemic causes of corrosion. Additionally, the committee recommended PHMSA address its comments regarding the timeframe by which the proposed provisions would need to be completed by requiring operators make a remedial action plan and apply for any necessary permits within 6 months and finish the remedial action within 1 calendar year, not to exceed 15 months, or as soon as practicable once the operator obtains the necessary permits.

3. PHMSA Response

PHMSA intended that the amendments proposed in the NPRM would apply only to transmission pipelines and has, in this final rule, added the phrase ''onshore gas transmission pipelines'' to § 192.465(d)(1) of to clarify that limitation. PHMSA will consider expanding application beyond onshore gas transmission pipelines in the future. PHMSA believes that modifying the timeline for remediation is appropriate, and therefore, is requiring operators develop a remedial action plan and apply for the necessary permits within 6 months of the inspection, with the completion of remediation activities to be completed prior to the next monitoring interval or within 1 year, not to exceed 15 months. Like the previous section, such a change is consistent with both the GPAC recommendation on the issue and the timeframes for the related regulations in this final rule. PHMSA understands that, in almost all cases where an operator performs an excavation of 1,000 feet or more, that excavation will probably require some permits. An operator should obtain such permits in a manner to allow the performance of coating surveys and any necessary repairs to the coating.

In the NPRM, PHMSA proposed to update appendix D but did not intend to introduce any new requirements. PHMSA agrees with certain commenters that the proposed revisions could have unintended consequences by creating potential tension with analogous cathodic protection evaluation criteria in NACE Standard Practice SP0169 and § 195.571 governing hazardous liquid lines (which section incorporates NACE Standard Practice SP0169 by reference). However, as PHMSA did not propose incorporation by reference of NACE Standard Practice SP0169 in appendix D, PHMSA is withdrawing the proposed changes to appendix D. PHMSA will continue to examine appropriate evaluation criteria for catholic protection of gas transmission pipelines and may pursue future rulemaking on

this topic. These changes to the final rule for CP requirements are in accordance with the GPAC recommendations.

C. Corrosion Control—§§ 192.319, 192.461, 192.465, 192.473, 192.478, and 192.935 and Appendix D

vi. P&M Measures—§ 192.935(f) & (g)

1. Summary of PHMSA's Proposal

Currently, the gas transmission IM provisions do not explicitly address additional P&M measures for the threats of external and internal corrosion. For the same reasons that apply to the proposed changes for general corrosion control as discussed above, PHMSA proposed to address these gaps for HCAs. PHMSA determined that additional P&M measures are needed in § 192.935(f) and (g) to assure that public safety is enhanced in HCAs through additional protections from the time-dependent threats of internal and external corrosion. Specifically, PHMSA proposed to add § 192.935(f) and (g), which would require that operators enhance their corrosion control programs in HCAs to provide additional corrosion protections in addition to the proposed standards in subpart I. Under proposed § 192.935(f), operators would be required to enhance their internal corrosion management programs by performing mitigative actions if deleterious gas stream constituents are being transported and through performing semi-annual reviews of their programs.

Regarding the internal corrosion provisions discussed earlier in this document, § 192.477 prescribes requirements to monitor internal corrosion by coupon testing or other means if corrosive gas is being transported. However, the existing regulations do not prescribe that operators continually or periodically monitor the gas stream for the introduction of corrosive constituents through system changes, changing gas supply, abnormal conditions, or other changes. This could result in pipelines that are not monitored for internal corrosion because an operator's initial assessment did not identify the presence of corrosive gas. To provide additional protections for HCAs in addition to the standards proposed in subpart I, PHMSA proposed that § 192.935(f) would require operators use specific gas quality monitoring equipment for HCA segments, including but not limited to, a moisture analyzer, chromatograph, samplers for carbon dioxide, and samplers for hydrogen sulfide. The proposed provisions would also require operators sample at a certain frequency, use cleaning pigs to sample accumulated liquids and solids, and use corrosion inhibitors when corrosive constituents are present. PHMSA also proposed the maximum amounts of carbon dioxide, moisture content, and hydrogen sulfide that would require operator action.

Under proposed § 192.935(g), operators would also be required to enhance their external corrosion management programs, including controlling both alternating and direct electrical interference currents, confirming external corrosion control through indirect assessment, and controlling external corrosion through CP.

As described in the discussion on interference surveys above, interference currents can negate the effectiveness of CP systems. Section 192.473 prescribes general requirements to minimize the detrimental effects of interference currents. In the NPRM, PHMSA proposed to amend § 192.473 to require that an operator's corrosion control program include interference surveys to detect the presence of interference currents and require the operator take remedial actions within 6 months of completing the survey. In HCAs, PHMSA proposed additional prescriptive requirements in § 192.935(g) to afford extra protections for HCAs, including a maximum interval of 7 years for an operator to perform interference surveys; more specificity regarding the survey performance, including technical acceptance criteria; and a requirement that pipe-to-soil test stations be located at half-mile intervals within each HCA segment with at least one station in each HCA, if practicable.

Lastly, PHMSA proposed to make conforming edits to appendix E, which provides guidance for P&M measures for HCA segments subject to subpart O. PHMSA proposed to accommodate the proposed revised definition for ''electrical survey'' by replacing that term with ''indirect assessment'' to accommodate other techniques in addition to CIS.

2. Summary of Public Comment

NAPSR and the PST agreed with and supported the proposed changes to the P&M measures for addressing internal and external corrosion in HCAs and suggested strengthening the proposed provisions further.

While trade associations and individual operators supported certain aspects of the proposed provisions covering the P&M measures addressing external corrosion and internal corrosion in HCAs, these commenters objected to the specific requirements in § 192.935. Many of these commenters stated a preference for allowing operators the flexibility to implement corrosion control based on their own judgment of the severity of the threat. In general, many industry commenters stated that individual sections of the proposed provisions were too broad and prescriptive, and pipeline operators would incur greater costs without justified benefit. Further, they stated that the monitoring frequency of twice per year was too frequent. Some commenters recommended that PHMSA reference ASME standards for implementing P&M measures, and other commenters stated concern that some of the proposed provisions are not consistent with NACE standards.

Many commenters objected to several of the proposed aspects of internal corrosion control, such as the identification of threats, monitoring, and filtering, and these commenters stated that operators should have flexibility in implementing P&M measures. For example, INGAA opposed the proposed requirement in § 192.935(f) that requires operators to install continuous gas quality monitoring equipment at all points in which gas with potentially deleterious contaminants enters the pipeline. INGAA recommended that § 192.935(f) apply only to pipeline segments with a history of internal corrosion and stated that this would be consistent with the required risk analysis that operators perform to determine whether P&M measures are necessary. Similarly, Atmos Energy recommended that gas sources be monitored only at those sources suspected, in the judgment of the operator, of having deleterious gas stream constituents, and that such monitoring can be performed in real-time or periodically. INGAA stated that PHMSA should modify proposed § 192.935(g) to require that operators conduct periodic indirect inspections only where a pipeline segment has a known history of corrosion.

During the GPAC meeting on June 6, 2017, committee members representing the industry reiterated that § 192.935(f) and (g) were too broad and prescriptive and should not apply to every HCA pipeline segment indiscriminately. These members, echoing comments made by INGAA, stated that operators should use their risk assessments to be used to determine which specific P&M measures are needed in accordance with the current IM approach.

The committee also suggested that PHMSA should reference specific ASME standards for P&M measures and ensure they are consistent with NACE

standards. Members representing the public suggested PHMSA review the proposed changes throughout subpart I and ensure that they would be as enforceable as the proposed P&M measures if the P&M measures were to be deleted. Members also discussed the fact that distribution operators do not always have gas monitoring equipment for their lines, as they depend on the suppliers to monitor the gas quality.

Following the discussion, the committee voted 9–1 (with a representative from PST dissenting) that the proposed rule, regarding the provisions for P&M measures for internal and external corrosion, were technically feasible, reasonable, cost-effective, and practicable if PHMSA withdrew the specific provisions discussed in § 192.935(f) and (g) and appendix E, as the requirements would have been duplicative with subpart I.

3. PHMSA Response

PHMSA noted during the GPAC meeting that it was persuaded by commenters that the changes it is making to the general corrosion control requirements in subpart I in this final rule are sufficient and that the additional regulations proposed in § 192.935(f) and (g) and appendix E were duplicative. The proposed changes to subpart I that PHMSA is finalizing in this rulemaking apply to pipelines in both HCAs and non-HCAs, and they were similar to the P&M measures that PHMSA was proposing regarding corrosion control in HCAs specifically. Therefore, PHMSA believes that the changes to subpart I in this rule provide the safety that the proposed changes at § 192.935(f) and (g) intended to provide. The proposed changes to appendix E incorporated the proposed definition for ''electrical survey'' and did not contain further substantive changes. After considering those comments, and as recommended by the GPAC, PHMSA is withdrawing all the proposed changes to § 192.935(f) and (g) and appendix E.

D. Inspections Following Extreme Weather Events—§ 192.613

1. Summary of PHMSA's Proposal

Weather events and natural disasters that can cause river scour, soil subsidence or ground movement may subject pipelines to additional external loads, which could cause a pipeline to fail. These conditions can pose a threat to the integrity of pipeline facilities if those threats are not promptly identified and mitigated. While the existing regulations provide for design standards that consider the load that may be imposed by geological forces, weather events and natural disasters can quickly impact the safe operation of a pipeline and have severe consequences if not mitigated and remediated as quickly as possible.

In the NPRM, PHMSA proposed revising § 192.613 to require that an operator inspect all potentially affected pipeline facilities after an extreme weather event to help ensure that no conditions exist that could adversely affect the safe operation of that pipeline. The operator would be required to consider the nature of the event and the physical characteristics, operating conditions, location, and prior history of the affected pipeline in determining the appropriate method for performing the inspection required. The NPRM's proposed revisions to § 192.613 also provided that the initial inspection must occur within 72 hours after the cessation of the event, defined as the point in time when the affected area can be safely accessed by available personnel and equipment required to perform the inspection. If an operator finds an adverse condition, the NPRM' s proposed revisions to § 192.613 would require an operator to take appropriate remedial action to ensure the safe operation of a pipeline based on the information obtained because of performing the inspection.

2. Summary of Public Comment

The PST, NAPSR, and EnLink Midstream supported the proposed amendments to § 192.613, with many other stakeholders supporting the intent of the proposed provisions but requesting further clarification on some of the terms used within the proposal.

Some commenters expressed concern with the broad requirements of an ''inspection'' and requested PHMSA clarify what an inspection following an extreme weather event would entail. Additionally, these stakeholders stated that the proposed definition of an extreme weather event was vague and requested clarification. INGAA stated that operators are already required to have procedures to ensure a prompt and effective response to emergency conditions through § 192.615 and suggested that to avoid duplicative regulation, PHMSA should instead modify § 192.615(a)(3) to incorporate additional specificity on weather events that may trigger a response.

Many commenters objected to the proposed timeframe, stating that the 72-hour requirement listed in the rule could be problematic. Commenters stated that PHMSA should allow operators to determine when an impacted area can be safely accessed, and that pipeline operators are best positioned to evaluate the balance between the safety and the need for inspections to ensure continued safe operation of their systems. INGAA stated that the 72-hour requirement should either be replaced with a more general statement such as ''as soon as practicable,'' or that PHMSA should create a process to request an exception to the requirement. Louisiana Mid-Continent Oil and Gas Associations stated that extreme weather events vary significantly by region and commented that not all local geography and extreme weather events are the same. They further stated that the 72-hour deadline for inspection may be too prescriptive depending on the extreme weather event. They stated that because Louisiana is subjected to many unusual extraordinary events, such as spillway openings, high/low river flows, and rainwater flooding, PHMSA should clarify what ''other events'' means and how the cessation of an event is determined.

At the GPAC meeting of January 12, 2017, members noted concerns with the provisions as proposed but voted 12–0 that the provisions were technically feasible, reasonable, cost-effective, and practicable if PHMSA modified the proposed rule to clarify that the timing for this provision is to begin after the operator has made a reasonable determination that the area is safe, clarify in the preamble that operators are encouraged to consult with pipeline safety and public safety officials in order to make such determinations, delete the phrase ''whichever is sooner'' at the end of § 192.613(c)(2), and change the word ''infrastructure'' to ''facilities.''

3. PHMSA Response

PHMSA agrees that an operator's ability to inspect a pipeline facility following an extreme weather event may vary greatly depending on the type of extreme weather event that has taken place and the specific location of the event. The NPRM's proposed revisions to § 192.613 would require operators to inspect its pipeline facilities after the cessation of an extreme weather event. Cessation of the event was defined as the point of time when the affected area could be safely accessed by the personnel and equipment, including availability of personnel and equipment, required to perform the inspection. However, in consideration of the comments received, PHMSA is persuaded that additional clarification is warranted and that 72 hours after the cessation of the event may not be enough time in all cases for operator personnel and equipment to assess and inspect a pipeline safely.

Therefore, as recommended by the GPAC, PHMSA has modified this final rule to require an operator perform an initial inspection 72 hours after the operator reasonably determines that the affected area can be safely accessed by personnel and equipment, and the necessary personnel and equipment required to perform such an inspection are available. PHMSA encourages operators to consult with pipeline and public safety officials, including the appropriate PHMSA regional office, when making these determinations. If an operator is unable to commence the inspection in the 72-hour timeframe due to the unavailability of personnel or equipment, the operator must notify the appropriate PHMSA Region Director as soon as practicable.

If an operator finds an adverse condition, the operator must take appropriate remedial action to ensure the safe operation of a pipeline based on the information obtained from the inspection. Such actions might include, but are not limited to:

- Reducing the operating pressure or shutting down the pipeline;
- Isolating pipelines in affected areas and performing ''stand up'' leak tests;
- Modifying, repairing, or replacing any damaged pipeline facilities;
- Preventing, mitigating, or eliminating any unsafe conditions in the pipeline rights-of-way;
- Performing additional patrols, depth of cover surveys and adding cover over the pipeline, ILI or hydrostatic tests, or other inspections to confirm the condition of the pipeline and identify any imminent threats to the pipeline;
- Implementing emergency response activities with Federal, State, or local personnel; and
- Notifying affected communities of the steps that can be taken to ensure public safety.

PHMSA would not expect operators to comply with these provisions for weather or other disruptive events when, considering the physical characteristics, operating conditions, location, and prior history of the affected system, the event would not be expected to impact the integrity of the pipeline. For example, extreme weather events would not include rain events that do not exceed the high-water banks of the rivers, streams or beaches in proximity to the pipeline; rain events that do not result in a landslide in the area of the pipeline; storms that do not produce winds at tropical storm or hurricane level velocities; or earthquakes that do not cause soil movement in the area of the pipeline.

PHMSA is also modifying § 192.613(c) introductory text and (c)(1) as the GPAC recommended, by removing the phrase ''whichever is sooner'' and replacing the term ''infrastructure'' with ''facilities.'' As discussed during the GPAC meeting, ''pipeline facilities'' is a defined term at § 192.3, and the use of that term will likely provide additional clarity.

E. Strengthening Requirements for Assessment Methods—§§ 192.923(b) & (c), 192.927, 192.929

i. Internal Corrosion Direct Assessment (ICDA)—§§ 192.923(b) & 192.927

1. Summary of PHMSA's Proposal

The current regulations do not specify the quality and effectiveness of ICDA. NACE International submitted a petition for rulemaking on February 11, 2009, requesting that PHMSA address this issue. In the NPRM, PHMSA proposed amendments to §§ 192.923(b) and 192.927 to incorporate by reference NACE SP0206–2006 and further supplement the NACE standard to address issues observed by PHMSA.

For indirect inspections, PHMSA proposed to require that operators use pipeline-specific data, exclusively in performing an indirect inspection, and that the use of assumed pipeline or operational data would be prohibited. PHMSA also proposed operators be required to consider the accuracy, reliability, and uncertainty of data used to make calculations regarding the critical inclination angle of liquid holdup and the inclination profile of pipelines. Further, PHMSA proposed that operators be required to select locations for direct examination and establish the extent of pipe exposure needed, to explicitly account for these uncertainties and their cumulative effect on the precise location of predicted liquid dropout.

For detailed examinations as defined in NACE SP0206–2006, PHMSA proposed to require that operators identify a minimum of two locations for excavation within each covered segment associated with the ICDA Region and perform a detailed examination for internal corrosion at each location using ultrasonic thickness measurements, radiography, or other generally accepted measurement techniques. One required location would be the low point within the covered segment nearest to the beginning of the ICDA Region. The second required location would be near the end of the ICDA Region within the covered segment. If corrosion was found at any location, the operator would be required to evaluate the severity of the defect, expand the detailed examination program to determine all locations that have internal corrosion within the ICDA region, and expand the detailed examination program to evaluate the potential for internal corrosion in all pipeline segments (both covered and non-covered) with similar characteristics to the ICDA Region in the operator's pipeline system.

For post-assessment evaluation and monitoring, PHMSA proposed to require that operators evaluate the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those currently specified in the regulations at § 192.939. PHMSA also proposed to require that operators validate their flow modeling calculations by comparing locations of discovered internal corrosion with locations predicted by the model. Additionally, PHMSA proposed to require that operators continually monitor each ICDA Region that contains a covered segment where internal corrosion was identified and by periodically drawing off liquids at low points and chemically analyzing the liquids for the presence of corrosion products.

Finally, PHMSA proposed to require that operators include in their plans the criteria used in making key decisions in implementing each stage of the ICDA process and provisions that the analysis be carried out on the entire pipeline in which covered segments are present.

2. Summary of Public Comment

NAPSR expressed its agreement with, and support for, the proposed revisions to §§ 192.923(b) and 192.927. Multiple pipeline operators and industry trade associations commented that the proposed provisions should simply incorporate the NACE standard by reference, and should not exceed those established industry standards, be rigidly prescriptive, or otherwise be mandatory. PG&E, commenting on the incorporation of standards by reference, requested PHMSA replace the phrase ''as required by'' with ''in accordance with'' so that operators can meet the substantial requirement but have flexibility in the implementation of that requirement if the industry publishes new techniques to perform ICDA. NACE International expressed its belief that, as described in NACE SP0206–2006, ICDA is an acceptable standalone methodology for assessing pipeline integrity.

Atmos Energy commented that the proposed mandated monitoring for all ICDA regions would be potentially excessive and recommended that PHMSA delete the proposed language and restore the current language at

§ 192.927(c)(4)(ii).[29] Another commenter recommended that PHMSA remove the proposed notification requirement prior to an operator performing an ICDA, noting that operators currently provide this information as part of other annual reporting.

At the GPAC meeting on December 15, 2017, the GPAC committee voted, 13–0, to revise §§ 192.923(b)(2) and (3) and 192.927 according to the recommendations by PHMSA staff at the meeting, which included supplementing the NACE standard with additional requirements to address specific issues that could adversely affect ICDA results.

3. PHMSA Response

PHMSA believes that it is appropriate to address ICDA by incorporating by reference the NACE standard and supplementing it with additional requirements pertaining to indirect inspections (a step in the NACE standard's ICDA process to help in determining where direct assessments need to be made), detailed examinations, and post-assessments. For indirect inspections, PHMSA has implemented additional requirements regarding the data an operator must use and accounting for uncertainties in that data. Where an indirect inspection demonstrates that detailed examinations are needed, PHMSA is expanding the examinations that an operator must perform to evaluate for the potential for internal corrosion in all pipeline segments if corrosion is found in the ICDA region. Regarding post-assessments, PHMSA is requiring operators to evaluate the effectiveness of ICDA as an assessment method and determine whether a covered segment should be reassessed more frequently than the intervals specified at § 192.939. Additionally, PHMSA is requiring operators validate the flow modelling calculations they use in the ICDA process as well as continually monitor each ICDA region that contains a covered segment where internal corrosion has been identified.

When the first IM regulations were promulgated in the 2003 IM rule, there was no consensus industry standard for ICDA that could be adapted or incorporated into the regulations to promote better pipeline safety regarding internal corrosion. Incorporating by reference the NACE standard into the regulations would improve pipeline safety because the NACE standard (1) typically requires more direct examinations than the current regulatory requirements; (2) encompasses the entire pipeline segment and requires that all inputs and outputs be evaluated; and (3) is considered by many to be an equivalent or superior indirect inspection model compared to the Gas Technology Institute (GTI) model currently referenced in § 192.927. Its range of applicability with respect to operating pressure is greater than the GTI model, thus allowing the use of ICDA in pipelines with lower operating pressures and higher flow velocities.

The existing requirements in § 192.927 have one aspect that has proven problematic: the definition of regions and requirements for selection of direct examination locations in the regulations are tied to the covered segment. A ''covered segment'' is defined in § 192.903 as ''a segment of gas transmission pipeline located in a high consequence area.'' The terms ''gas'' and ''transmission line'' are defined in § 192.3. Therefore, covered segment boundaries are determined by population density and other consequence factors without regard to the orientation of the pipe and the presence of locations at which corrosive agents may be introduced or may collect and where internal corrosion would most likely be detected (*e.g.,* low spots). Section 192.927 requires that locations selected for excavation and detailed examination be within covered segments, meaning that the locations at which internal corrosion would most likely be detected may not be examined. Thus, the existing requirements do not always facilitate the discovery of internal corrosion that could affect covered segments. PHMSA is addressing this problem in this final rule by incorporating NACE SP0206–2006 and by expanding the detailed examination program, whenever internal corrosion is discovered, to determine all locations that have internal corrosion within the ICDA region.

PHMSA believes requiring a notification requirement for operators is important so that PHMSA can review the specific proposal to use a standard to assess pipe segments that are explicitly excluded from the scope of the standard. PHMSA has also revised § 192.927(c) to clarify that an operator must conduct the ICDA process ''in accordance with'' the NACE standard to avoid the implication that all non-mandatory recommendations contained in the standard are required.

E. Strengthening Requirements for Assessment Methods—§§ 192.923(b) & (c), 192.927, 192.929

ii. Stress Corrosion Cracking Direct Assessment (SCCDA)—§§ 192.923 & 192.929

1. Summary of PHMSA's Proposal

The current regulations do not specify a number of issues that affect the quality and effectiveness of SCCDA integrity assessments. Specifically, Appendix A3 of ASME/ANSI B31.8S, which is referenced in the regulations, provides some guidance for conducting SCCDA, but the guidance is limited to stress corrosion cracking (SCC) that occurs in high-pH environments. NACE International submitted a petition for rulemaking to PHMSA on February 11, 2009, requesting that PHMSA address this issue by incorporating by reference NACE SP0204–2008, which addresses near-neutral SCC in addition to high-pH SCC. Accordingly, in the NPRM, PHMSA proposed changes to §§ 192.923 and 192.929 to incorporate by reference NACE SP0204–2008 and supplement the NACE standard to address issues observed by PHMSA in the areas of data gathering and integration, indirect inspection, direct examinations, remediation and mitigation, and post-assessments.

PHMSA proposed to require an operator's SCCDA plan to evaluate the effects of a carbonate-bicarbonate environment; the effects of cyclic loading conditions on the susceptibility and propagation of SCC in both high-pH and near-neutral-pH environments; the effects of variations in applied CP, such as overprotection, CP loss for extended periods, and high negative potentials; the effects of coatings that shield CP when disbonded from the pipe; and other factors that affect the mechanistic properties associated with SCC.

For indirect inspections, PHMSA proposed to require an operator's plan include provisions for conducting at least two above-ground surveys using complementary measurement tools most appropriate for the pipeline segment based on the data gathered.

For direct examinations, PHMSA proposed to require an operator's procedures provide for conducting a minimum of three direct examinations within the SCC segment at locations determined to be the most likely for SCC to occur.

For post-assessments, PHMSA proposed to require that the operator's procedures include the development of a reassessment plan based on the

[29] PHMSA regulations at § 192.927(c)(2) define an ICDA region as a continuous length of pipe (including weld joints), uninterrupted by any significant change in water or flow characteristics, that includes similar physical characteristics or operating history. An ICDA region extends from the location where liquid may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur until a new input introduces the possibility of water entering the pipeline.

susceptibility of the operator's pipe to SCC as well as on the mechanistic behavior of identified cracking.

2. Summary of Public Comment

Multiple commenters supported the proposed changes to § 192.929 for SCCDA. NAPSR expressed its agreement with, and support of, these revisions. Spectra Energy Partners (SEP), which merged with Enbridge in 2017, provided comments in support of the proposed inclusion of explicit requirements for SCCDA. SEP expressed its belief that SCCDA is a diligent, practicable approach for assessments for SCC for cases where the pipeline has not previously experienced an in-service failure caused by SCC and provided specific edits to make the proposed requirements for SCCDA clearer and more practicable. A commenter recommended that the requirements for SCCDA specify that an operator is required to conduct assessments in areas that are most likely to be subject to SCC regardless of HCA designation.

Several other commenters questioned or opposed the proposed changes to § 192.929. Several commenters, including API, expressed their support of NACE standards SP0204–2008 for SCCDA but recommended that PHMSA not exceed those established industry standards and should not make the recommendations within those standards mandatory. NACE International stated it was unaware of any conclusive data regarding overprotection or high-negative potentials as a factor in SCC of pipelines, which is what the NPRM's proposed revisions to § 192.929 suggested. Additionally, NACE International commented that PHMSA went beyond the practices stated in NACE Standard SP0204–2008 by proposing to require a minimum of two above-ground surveys and three direct examinations.

INGAA proposed to clarify the way in which SCCDA can be used as an IM method, asserting that SCCDA is a valid method to assess SCC threats in gas pipeline segments that are susceptible to, but have no history of, SCC.

Other commenters provided specific technical comments regarding these proposed provisions. TransCanada asserted that applying the NACE ''significant SCC'' definition as the threshold for immediate repair is both overly conservative and overly complicated, and they suggested that PHMSA instead adopt the threshold of ''noteworthy'' as defined in ASME STP–PT–011.

Enable Midstream Partners (EMP) agreed that operators should consider the specific factors PHMSA proposed in § 192.929(b)(1) and (4) as part of the data gathering and integration and post-assessment remediation and mitigation process for SCCDA. However, EMP asserted that PHMSA should clarify these sections by including a referenced standard that provides guidance to operators on how they should consider these specific factors. Another commenter stated that PHMSA should include a reference to ASME/ANSI B31.8S, Appendix A3, for susceptibility criteria.

Commenters also suggested that PHMSA allow operators to use sound engineering judgments when calculating the remaining strength of the pipeline segment if the segment is subject to the pipeline material properties and attributes verification requirements of § 192.607 and those requirements have not yet been met.

At the GPAC meeting on December 15, 2017, the committee recommended PHMSA revise the approach proposed in the NPRM by making the changes to these provisions that were recommended by PHMSA staff during the meeting, which were to replace the spike hydrostatic pressure test requirements with a reference to § 192.506(e) to eliminate redundancy; address the gap pertaining to failure pressure calculations when data is not available; codify, as applicable, the expectation that the recommendations within the NACE standard are not mandatory; communicate additional guidance as needed during rule implementation; and consider how to structure the rule to apply results from non-HCAs to HCAs.

3. PHMSA Response

When the first IM rule was promulgated in 2003, there was no NACE standard for SCCDA. Additionally, the requirements pertaining to SCC in ASME/ANSI B31.8S, Appendix B, only applied to pipe susceptible to high pH SCC (*i.e.,* pipelines susceptible to near-neutral SCC were not addressed). Therefore, PHMSA believes that incorporating by reference the NACE standard and supplementing it with additional requirements to address issues it has observed related to data gathering and integration, indirect inspection, direct examinations, remediation and mitigation, and post-assessments, is an appropriate way to address SCCDA.

For data gathering and integration, PHMSA is requiring that operators gather and evaluate data related to SCC at all sites an operator excavates while conducting its pipeline operations where the criteria in NACE SP0204–2008 indicate the potential for SCC. Per this final rule, operators must additionally analyze the effects of a carbonate-bicarbonate environment, cyclic loading conditions, variations in applied CP, the effects of coatings that shield CP when disbonded from the pipe, and other factors that would affect the mechanics of SCC. For indirect inspections, PHMSA is requiring operators conduct at least two above-ground surveys using the measurement tools most appropriate for the pipeline segment based on an evaluation of the collected data. An operator's plan for direct examination must include a minimum of three direct examinations within the SCC segment at the locations where SCC would be most likely to occur. If an operator finds any indication of SCC in a segment, an operator must perform specific mitigation measures. Further, in this final rule, an operator must develop procedures for post-assessments based on the susceptibility of the pipeline segment to SCC as well as the mechanical behavior of identified cracking. Regarding EMP's comment stating that PHMSA should provide guidance to operators on how they should consider specific factors as a part of the data gathering and integration process by referring to a standard incorporated by reference within PHMSA regulations, as well as the comment recommending that PHMSA incorporate a reference to ASME/ANSI B31.8S, Appendix A3, for susceptibility criteria, PHMSA declines to incorporate by reference such standards because it could limit operators from considering all of the factors that they should.

PHMSA also agrees with commenters that referring to § 192.506, *Transmission lines: Spike hydrostatic pressure test,* in § 192.929 is preferred instead of repeating the spike hydrostatic test requirements and has changed this final rule accordingly. PHMSA addressed the comment about determining predicted failure pressure when needed data are not available by referencing § 192.712, which explicitly provides an operator with conservative assumptions and alternatives for material toughness values, material strength, and pipe dimensions and other data, in lieu of documented material properties.

F. Repair Criteria—§§ 192.714, 192.933

PHMSA identified several improvements to the IM repair criteria based on its experience gained since the IM rule became effective in 2004; ongoing research and development, including developments in ASME/ANSI B31.8S; and investigations into recent incidents. In the NPRM, PHMSA

proposed adjustments to the existing repair criteria for anomalies discovered in HCAs and proposed new repair criteria for anomalies found outside of HCAs.[30]

F. Repair Criteria—§§ 192.714, 192.933

i. Repair Criteria in HCAs—§ 192.933

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to add more immediate repair conditions and more 1-year repair conditions for HCA pipeline segments in § 192.933. The specific anomalies and repair schedules for cracks, dents, and corrosion metal loss are discussed in their respective sections below. In certain cases, like for SCC and selective seam weld corrosion anomalies that were new to the repair criteria, PHMSA proposed to require that operators repair ''any indication of'' such anomalies. In other cases, such as for dents, PHMSA did not make significant changes to the existing repair criteria at § 192.933, which require the repair of ''any indication of'' metal loss, cracking, or a stress riser.

2. Summary of Public Comment

Public advocacy groups, including Pipeline Safety Coalition, the PST, and Clean Water for North Carolina, supported the proposed provisions that would strengthen the existing repair criteria at §§ 192.713 (non-HCAs) and 192.933 (HCAs). Additionally, NAPSR and the NTSB supported PHMSA's proposed repair criteria revisions.

There was common agreement from pipeline operators and the industry trade associations that the processes for HCA repairs and non-HCA repairs should be standardized. However, the trade associations and pipeline operators generally believed that the proposed provisions at §§ 192.713 and 192.933 were too prescriptive and would impede operators from performing repairs based on risks. They further stated that the proposed provisions do not take into consideration other factors that operators currently consider when optimizing plans to remediate anomalies, such as historical data, geography, and congestion of the right-of-way.

Some of the commenters representing the industry recommended PHMSA eliminate all references to the words ''any indication of'' within the proposed revisions to §§ 192.713 and 192.933 when applied to anomalies needing repair so that it is the confirmed presence of a condition that requires a repair instead. These commenters stated that requiring operators to repair an ''indication of'' certain anomalies would cause needless repairs and misallocate resources. Spectra Energy stated that PHMSA's annual report data indicates that only one repair is required for every three anomaly investigations, which demonstrates that the existing anomaly response criteria operators have implemented are appropriately conservative.

3. PHMSA Response

Based on PHMSA's annual report data, the number of immediate repairs have remained relatively constant even though the baseline assessment period has concluded. PHMSA understands that this is likely the result of operators deferring repair of non-immediate conditions until the defect progresses into an immediate repair condition, rather than immediate conditions arising spontaneously. PHMSA understands that most defects that become immediate repair conditions are observable by ILI equipment well in advance of progression to an immediate repair condition. The repair criteria in this final rule are intended to assure that anomalies are repaired before they become an immediate condition and are at or near failure. In this final rule, PHMSA has included reference to ASME/ANSI B31.8S within each of §§ 192.714 and 192.933 to take into consideration other factors that operators currently consider when establishing remediation plans.

In this final rule, PHMSA has removed the proposed repair criteria under §§ 192.714 (non-HCAs) and 192.933 (HCAs) for SCC and selective seam weld corrosion, which were new repair criteria that contained the phrase ''any indication of.'' PHMSA combined SCC and selective seam weld corrosion repair criteria into a more general cracking repair criteria because each of these phenomena is, or results in, cracking. PHMSA included remediation measures for SCC under the requirements at § 192.929, which are the requirements for using direct assessment for SCC but did not require the remediation of ''any indication of'' SCC. PHMSA was not proposing to change any of the existing repair criteria that referenced ''any indication of,'' such as that for dents with any indication of metal loss, cracking, or a stress riser. Those repair criteria remain unchanged in this final rule.

F. Repair Criteria—§§ 192.714, 192.933

ii. Repair Criteria in Non-HCAs—§ 192.714

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed at § 192.713 repair criteria for non-HCA areas to assure that operators promptly repair injurious defects that are discovered outside of HCAs. These proposed repair criteria for non-HCAs were based on, and were similar, to, the repair criteria (regarding structure, anomaly types, and the repair timeframes) for HCA pipeline segments proposed at § 192.933.

For those anomalies for which a 1-year response is required on HCA pipeline segments, PHMSA proposed that a 2-year response would be required in non-HCA pipeline segments. This proposal would require operators to remediate anomalous conditions on gas transmission pipeline segments promptly and commensurate with the risk they present, while allowing operators to allocate their resources to those anomalies in HCAs that present a higher risk.

The specific anomalies and repair schedules for cracks, dents, and corrosion metal loss are discussed in their respective sections below.

2. Summary of Public Comment

Citizen groups, including Pipeline Safety Coalition, the PST, and Clean Water for North Carolina, supported the proposed provisions that would strengthen the repair criteria for HCAs and non-HCAs. Additionally, NAPSR and the NTSB supported PHMSA's revisions to the repair criteria.

Generally, the industry trade associations and pipeline operators supported PHMSA's intention of establishing repair criteria outside of HCAs but disagreed with some of the specific provisions. There was common agreement, however, that the processes for HCA repairs and non-HCA repairs should be standardized.

The trade associations and pipeline operators generally believed that the proposed provisions were too prescriptive and would impede operators from performing repairs based on risks. They further stated that the proposed provisions do not take into consideration other factors that operators currently consider when optimizing plans to remediate anomalies, such as historical data, geography, and congestion of the right-of-way.

AGA recommended that PHMSA create a new subpart to address assessment requirements outside of

[30] The GPAC voted on each section of the repair criteria separately, and each section is discussed in more detail below.

HCAs and add a section within that subpart to cover repair criteria. Several other trade associations and pipeline operators echoed AGA's recommendations.

Several industry commenters also stated that the rulemaking did not demonstrate that the safety benefit of strengthened repair criteria outweighs the costs. Multiple operators stated that the proposed repair provisions in § 192.713 would increase the number of digs operators would need to perform and asserted that the increased number of digs may not improve pipeline safety.

Certain commenters suggested that it would not be appropriate for PHMSA to require operators to repair immediate conditions in non-HCAs before repairing immediate conditions in HCAs, and that PHMSA should require operators to prioritize those conditions discovered within HCAs if operators discover multiple immediate conditions in HCAs and non-HCAs simultaneously. More specifically, AGA requested that the rule explicitly prioritize immediate conditions within HCAs over immediate conditions in other locations when conditions are discovered simultaneously and recommended that PHMSA adopt different terminology for ''immediate repair conditions'' inside and outside HCAs. Similarly, other industry trade organizations expressed concern that the proposed provisions for non-HCAs would complicate the allocation of resources to HCAs on a higher-priority basis when confronted with the large number of new, non-HCA pipelines needing assessments.

Commenters also requested PHMSA make the sections pertaining to non-HCA repairs and HCA repairs consistent regarding pressure reductions. Commenters representing the industry noted that, as proposed, certain notification requirements for long-term pressure reductions or for those operators unable to respond within the given timeframe were different depending on whether the pipeline was in an HCA or a non-HCA. These commenters suggested that those notification procedures be made consistent, wherever possible, between the HCA and non-HCA repair criteria. Multiple trade associations and pipeline industry entities also expressed concerns that the proposed provisions requiring ''an operator to reduce the operating pressure of its affected pipeline until it can remediate the immediate repair conditions'' are unnecessarily conservative. INGAA asserted that the proposed pressure reduction requirements for non-HCAs are more stringent than the pressure reductions requirements for HCAs, and several commenters offered alternative methods for determining appropriate operating pressure reductions. Specifically, these commenters requested PHMSA allow operators to take a pressure reduction other than 80 percent if they documented the analysis performed and assumptions used. These commenters claimed that, as proposed in the NPRM, operators were allowed to use a different pressure reduction in HCAs if an analysis supported it but were not allowed to do so in non-HCAs.

During its meeting in late March 2018, the GPAC recommended PHMSA clarify that pressure reductions would be required for immediate conditions in non-HCAs and in cases where repair schedules could not be met. As a part of this recommendation, the GPAC also recommended that operators notify PHMSA when they could not meet the schedule for anomaly evaluation and remediation or when a temporary pressure reduction exceeds 365 days. The GPAC also recommended that PHMSA should allow operators to calculate pressure reductions (following the discovery of repairable conditions) by using either class location factors, or 80 percent of the operating pressure, or 1.1 times the predicted failure pressure. The GPAC also recommended PHMSA require that operators document and keep records, for 5 years, of the calculations and decisions used to determine such pressure reductions and the implementation of the actual reduced operating pressure. Further, the GPAC recommended PHMSA avoid duplicating language regarding the need for repairs and pressure reductions found in other sections of the regulations.

3. PHMSA Response

In the 2019 Gas Transmission Rule, PHMSA promulgated new requirements for operators to conduct integrity assessments in areas outside of HCAs, including all Class 3 and Class 4 locations and the newly defined ''moderate consequence areas'' (MCA) that are piggable. This new requirement was in response to the congressional mandate in the 2011 Pipeline Safety Act (Pub. L. 112–90) to expand IM or elements of IM beyond HCAs. The non-HCA repair criteria PHMSA is issuing in this final rule are the companion requirements to those assessments and are necessary to extend the assessment and repair program elements of IM effectively to areas beyond HCAs. Although PHMSA agrees that this requirement will likely result in additional repairs, PHMSA believes it is necessary and important to assure that injurious defects are remediated before they lead to loss of pipeline integrity.

Commenters requested that the non-HCA repair criteria be split out from the general non-IM repair provisions that previously existed in the regulations. PHMSA determined that the non-HCA repair criteria would be clearer and easier to comply with if they were in a distinct section, and PHMSA has created a new § 192.714 with all of the non-HCA repair criteria.

To the comments that suggested that a different schedule be created for immediate conditions within HCAs and non-HCAs, PHMSA believes that the existing approach used in subpart O for HCAs is better because the identification of anomalies based on ILI results is an actionable indication that there might be an injurious defect in the pipeline. Establishing repair criteria based on operators discovering these actionable anomalies assures that the anomaly is investigated promptly and repaired, if necessary. PHMSA believes it is prudent for an operator to perform any necessary repairs once the operator has excavated the pipe and exposed the anomaly for field investigation, instead of deferring the repairs. Although PHMSA agrees that defects in HCAs, if they were to fail, could result in higher consequences, PHMSA reminds readers that ASME/ANSI B31.8S, section 7.2, defines an immediate condition as an ''indication show[ing] that [a] defect is at failure point.'' PHMSA believes that any indication of a pipe that is at the point of failure needs to be addressed immediately, and as such, for both HCAs and non-HCAs, operators must reduce pressure and immediately remediate the anomaly.

PHMSA agrees with several commenters and the GPAC recommendations for consistently addressing pressure reductions for repairs for both HCA and non-HCA pipeline segments. PHMSA believes that pressure reductions are needed for immediate conditions and when repair schedules cannot be met and has incorporated pressure reductions for non-HCA pipelines that are like the existing requirements for HCAs in subpart O, which include the operator notifying PHMSA. PHMSA also agrees that the amount of the pressure reduction should be established to be 80 percent of the operating pressure at the time of discovery of the defect, or the predicted failure pressure divided by 1.1, or the predicted failure pressure times the design factor for the class location in which the affected pipeline is located, and that records for such pressure reductions must be kept for a minimum of 5 years. PHMSA

incorporated these provisions, as recommended by the GPAC, in § 192.714(e) for non-HCA pipelines. Further, PHMSA followed the GPAC recommendation for reducing duplicative language regarding repairs and pressure reductions and has streamlined this final rule accordingly.

PHMSA also notes that AGA suggested creating a new subpart for non-HCA assessments and repairs. Although PHMSA has not created a new subpart, PHMSA believes it has accomplished the same purpose by putting the new non-HCA assessment and repair requirements in separate, distinct sections.

F. Repair Criteria—§§ 192.714, 192.933

iii. Cracking Criteria—§§ 192.714(d)(1)(v) & 192.933(d)(1)(v)

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to add criteria to address cracking and crack-like defects, including SCC, because the existing regulations have no explicit repair criteria for those types of critical defects. The cracking criteria would apply to both HCAs and non-HCAs, but they would require repair at different size thresholds and at different timeframes depending on the anomaly location.

Following the Enbridge incident near Marshall, MI, the NTSB recommended that PHMSA revise the hazardous liquid regulations at § 195.452 to state clearly: (1) when an engineering assessment of crack defects, including environmentally assisted cracks, must be performed; (2) the acceptable methods for performing these engineering assessments, including the assessment of cracks coinciding with corrosion with a safety factor that considers the uncertainties associated with sizing of crack defects; (3) criteria for determining when a probable crack defect in a pipeline segment must be excavated and time limits for completing those excavations; (4) pressure restriction limits for crack defects that are not excavated by the required date; and (5) acceptable methods for determining crack growth for any cracks allowed to remain in the pipe, including growth caused by fatigue, corrosion fatigue, or SCC as applicable.[31] Although the recommendation was limited to hazardous liquid pipelines, the issue applies equally to gas transmission pipelines, as SCC can occur on these pipelines as well.

Therefore, in the NPRM, PHMSA proposed to allow operators to use an engineering critical assessment (ECA) to evaluate indications of SCC. If the SCC was ''significant,'' it would be categorized as an ''immediate'' repair condition. If the SCC was not ''significant,'' it would be categorized as a ''1-year'' condition. Further, PHMSA proposed to adopt the definition of significant SCC from the consensus industry standard NACE SP0204–2008. PHMSA also proposed that an operator could not use an ECA to justify not remediating any known indications of SCC.

The current regulations also do not have repair criteria for seam cracks or crack-like flaws. Current regulations also fail to address corrosion affecting a longitudinal seam and selective seam weld corrosion, which are time-sensitive integrity threats that behave like cracks and are categorized as crack-like defects. In the NPRM, PHMSA proposed to address these gaps by including repair criteria for cracks and crack-like flaws in § 192.933 and proposed similar criteria in § 192.713.

2. Summary of Public Comment

INGAA, API, and Piedmont strongly opposed the proposed provisions in § 192.713(d)(1)(v), that stated ''any indication of significant SCC'' constitutes an immediate repair condition. Commenters requested that PHMSA determine the repair condition of cracks and crack-like defects according to factors that capture the severity of the defect, such as predicted failure pressures or maximum depth. Many commenters believed that PHMSA's proposed criteria were too conservative and suggested the repair criteria be for anomalies with a crack depth of greater than 70 percent of the pipe wall thickness or with a predicted failure pressure of less than 1.1 times MAOP. Other commenters suggested PHMSA delete the definitions of specific significant crack defects and use the alternative cracking criterion proposed by PHMSA at the GPAC meeting on March 2, 2018.

INGAA recommended making the repair criteria for cracking consistent with the repair criteria for metal loss and suggested that PHMSA consider anomalies with a crack depth of 80 percent wall thickness as immediate conditions for this reason. INGAA also recommended that PHMSA adopt a failure pressure ratio approach for cracking.

Certain commenters noted that the classification of all cracks or crack-like defects as 2-year repair conditions was overly conservative and suggested PHMSA relax that requirement. For example, some commenters suggested requiring repairs at 50 percent crack depth or a predicted failure pressure of less than 1.25 times MAOP.

At the GPAC meeting, for the proposed repair criteria for cracks, members representing the industry stated PHMSA's criteria for the immediate repair of certain crack defects were too conservative and suggested establishing an immediate repair threshold for cracks up to 70 percent of wall thickness or those with a predicted failure pressure of less than 1.1 times MAOP rather than those cracks with a predicted failure pressure of less than 1.25 times MAOP. Members representing the public noted that public safety would be better served by the threshold for immediate crack repairs being more conservative but questioned whether the more stringent threshold would be practical.

Similarly, members representing the industry suggested that PHMSA's proposed criteria for 1-year and 2-year scheduled conditions were too conservative as well and suggested setting the relevant criteria as those cracks with a depth of 50 percent wall thickness or those cracks with a predicted failure pressure of less than 1.25 times MAOP. Members representing the industry also suggested that, in addition to relaxing the criteria for immediate cracks, PHMSA should also add language requiring operators to consider tool tolerance and other factors when examining crack growth rates. Further, members representing the industry suggested that PHMSA base the repair criteria on design conditions or design factors rather than class location factors. Committee members also suggested that PHMSA cross-reference specific regulatory language rather than repeat the text in full in other sections of the code.

Following the discussion, the committee voted 12–0 that, as published in the **Federal Register**, the provisions in the proposed rule and draft regulatory evaluation for cracking repair criteria were technically feasible, reasonable, cost-effective, and practicable if PHMSA: (1) struck the proposed definitions of ''significant seam cracking'' and ''significant stress corrosion cracking,'' (2) deleted the phrase ''any indication of'' from the repair criteria related to cracking, (3) combined the criteria for SCC and seam cracking, (4) required that operators calculate predicted failure pressures for all time-dependent cracking anomalies by using the fracture mechanics

[31] NTSB Recommendation P–12–3, available at *https://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-003.*

procedure PHMSA developed, (5) revised the definition of ''hard spot'' as discussed,[32] and (6) considered specific crack repair criteria as immediate conditions. Those specific crack repair criteria for immediate conditions would include (1) crack depth plus corrosion greater than 50 percent of pipe wall thickness; (2) crack depth plus any corrosion is greater than the inspection tool's maximum measurable depth; or (3) the crack anomaly is determined to have a predicted failure pressure that is less than 1.25 times MAOP.

3. PHMSA Response

In this final rule, PHMSA did not adopt the proposed definitions of ''significant seam cracking'' and ''significant stress corrosion cracking.'' With the revisions to the cracking repair criteria, these definitions weren't necessary. Similarly, with the deletion of the proposed repair criteria using those specific definitions, the recommendation for deleting the phrase ''any indication of'' from those criteria, became moot. Further, PHMSA's revisions to the cracking repair criteria also made the recommendation for PHMSA to combine the proposed SCC criteria and the seam cracking criteria moot.

PHMSA believes that the repair criteria it proposed in the NPRM for cracks are consistent with research findings and provides an adequate safety margin while accounting for the severity of the defects through the analysis of the predicted failure pressure.[33] PHMSA believes the repair criteria for cracks that were suggested by some of the commenters would not provide an adequate safety margin due to factors including the accuracy of tool results, varying pipe toughness, and pressure cycling. This was discussed at length by the GPAC, who ultimately recommended that anomalies be classified as immediate conditions where the crack depth plus corrosion is greater than 50 percent of pipe wall thickness, compared to certain commenters who suggested that cracks with a depth of up to 70 percent pipe wall thickness be classified as immediate conditions.

While the GPAC did not have an explicit recommendation for scheduled (*i.e.,* non-immediate) crack repair criteria, they recommended that PHMSA consider a repair schedule for cracks that is less conservative than what was proposed in the NPRM. Their recommended schedule is: 1.39 times MAOP for Class 1 and 2 locations and 1.5 times MAOP for Class 3 and 4 locations. PHMSA considered this recommendation and determined that the condition should cover Class 1 locations and Class 2 locations containing Class 1 pipe that has been uprated in accordance with § 192.611, where the predicted failure pressure is 1.39 times MAOP. For all other Class 2 locations and higher class locations, the predicted failure pressure would be 1.5 times MAOP. Section 192.611 allows Class 1 pipe to remain in a Class 2 location if it has had a subpart J pressure test, for 8 hours, at 1.25 times MAOP. Also, it allows pipe with a design factor of 0.72, with the reciprocal of 1 divided by 0.72 being equal to 1.39, which is the predicted failure pressure. Therefore, PHMSA elected to apply a predicted failure pressure ratio of 1.39 times MAOP to both Class 1 pipe and uprated Class 2 pipe.

For immediate conditions, the GPAC asked PHMSA to consider if a less conservative repair criterion of 1.1 times MAOP (after tool tolerance had been applied) would be appropriate. PHMSA considered this suggestion but notes that, after allowing for pressure excursions above MAOP due to over pressure protection device settings, the actual safety margin of such an approach would be between 0 and 6 percent. PHMSA has determined that this safety margin for immediate crack conditions is inadequate and, for this final rule, has retained the requirement that operators must immediately repair crack anomalies with a predicted failure pressure that is less than 1.25 times MAOP.

PHMSA took technical guidance information from several sources into account regarding significant SCC and significant seam weld corrosion when creating the repair criteria for these anomalies, including ASME ST–PT–011 (''Integrity Management of Stress Corrosion Cracking in Gas Pipeline High Consequence Areas'').[34]

ASME ST–PT–011 states that stress corrosion cracks are ''Noteworthy'' if the maximum crack depth is greater than 10 percent of the wall thickness and if the maximum interacting crack length is more than the critical length of a 50 percent through-wall crack at a stress level of 110 percent SMYS.[35] The report provides categories as follows:

Category 1: Predicted Failure Pressure (PFP) is above 110 percent SMYS (note that 110 percent SMYS is used to delineate Category 1 cracks because it corresponds to the pressure most commonly prescribed for hydrostatic testing).

Category 2: PFP is above 125 percent MAOP[36] and below 110 percent SMYS.

Category 3: PFP is above 110 percent MAOP and below 125 percent MAOP.

Category 4: PFP is below 110 percent MAOP.

Category Zero: A crack below the threshold for Noteworthy cracks. These typically fall into two groups: (1) Those that are shallow (*i.e.,* less than 10 percent through-wall depth), or (2) Those that are so short that, even if they were 50 percent through-wall depth, they would not result in a hydrostatic test failure.

In this final rule, operators can use an engineering analysis on cracks in Categories 1 through 2 as described above. However, any Category 3 or 4 cracking defect below 125 percent MAOP would require immediate remediation. Category 3 cracks would have a 10 percent or greater safety factor, which is similar to how PHMSA currently treats corrosion anomalies at § 192.933. PHMSA provides more conservatism in the cracking criteria because there is more uncertainty with the accuracy of current ILI technology in its ability to measure crack length and depth, as well operational factors.

These severity categories allow operators to estimate the minimum remaining life at operating pressure for each category. The following estimates from ASME ST–PT–011 are based on the time it would take for the crack depth to increase to a failure-causing depth at the operating pressure. For pipelines operating at 72 percent SMYS, the following minimum operational lives for each category of cracks are as follows:

[32] This is discussed more under the ''Definitions'' subsection of this section.

[33] See ASME, ''STP–PT–0011:Integrity Management of Stress Corrosion Cracking in Gas Pipeline High Consequence Areas'' (2008). See also Young, B.A., et al., ''Comprehensive Study to Understand Longitudinal ERW Seam Failures'' (2017), available at *https://primis.phmsa.dot.gov/matrix/PrjHome.rdm?prj=390*. Both papers call for anomaly evaluation; the knowledge of certain properties, including the length and depth of the crack, and pipe properties like wall thickness, grade, and toughness; and a proposed safety factor based on the time until the next assessment period. The papers also require that the depth of a crack not be greater than the depth of the assessment tool's tolerance. See § 192.712(e).

[34] ASME, ''STP–PT–011: Integrity Management of Stress Corrosion Cracking in Gas Pipeline High Consequence Areas'' (2008).

[35] PHMSA notes that 110 percent SMYS for a Class 1 pipeline is roughly equivalent to 1.49 times MAOP.

[36] PHMSA notes that 125% times MAOP for a pipeline that operates at 72% SMYS in a Class 1 location would correspond to roughly 90% SMYS for a Category 2 crack. PHMSA has defined in § 192.506 that a spike test for cracking should be conducted at a pressure of 100 percent of SMYS (roughly equivalent to 1.39 times MAOP for a Class 1 location) or 1.5 times MAOP.

Category Zero: Failure life exceeds 15 years (for short cracks) to 25 years (for shallow cracks).

Category 1: Failure life exceeds 10 years.

Category 2: Failure life exceeds 5 years.

Category 3: Failure life exceeds 2 years.

Category 4: Failure may be imminent.

ASME ST–PT–011 further states that mitigating a pipeline segment with SCC should be commensurate with the severity of the discovered crack, which would reflect the PFP and the estimated life at the operating pressure. For example, Category Zero cracks may warrant no more than ongoing SCC condition monitoring and reassessment after a period of 7 years. Cracks may be best assessed by direct assessment, hydrostatic testing, or ILI. The most severe cases would require an immediate pressure reduction, repair (if the location is known), and hydrostatic testing or ILI, followed by replacing the pipe or installing an appropriate sleeve over the crack or known cracking areas.

F. Repair Criteria—§§ 192.714, 192.933

iv. Dent Criteria—§§ 192.714 & 192.933

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed that dents in non-HCA segments with any indication of metal loss, cracking, or a stress riser would be considered ''immediate'' repair conditions. Additionally, PHMSA proposed that dents meeting the ''1-year'' repair conditions under § 192.933 would be required to be repaired in non-HCAs within 2 years.

2. Summary of Public Comment

Multiple commenters, including the industry trade associations and operators, disagreed that all dents with metal loss should be considered immediate repair conditions. These commenters requested that PHMSA's final rule address different kinds of dents separately. Many pipeline operators stated that dents with metal loss from ''scratches, gouges, and grooves'' are appropriate as immediate repair conditions, while dents caused by corrosion are lower risk and should be conditions scheduled for later repair. Several organizations cited API Publication 1156 [37] and ASME/ANSI B31.8, ''Gas Transmission and Distribution Piping Systems,'' to support these claims. Several commenters also recommended that PHMSA impose different response timelines for dents depending on the location and the manner of the dents, because dents with bottom-side metal loss are usually corrosion-related and low-risk, while dents on the top of the pipeline with metal loss are likely to be from mechanical damage and are at a higher risk to fail. This distinction would be consistent with the criteria for smooth dents (dents with no peaks, buckling, gouging, cracking, or metal loss that can reduce the operational life of the pipe).

With further regard to the repair criteria for dents, commenters representing the industry believed PHMSA should allow operators to use an ECA to evaluate dents as an alternative to following the prescribed repair criteria. Some of this discussion focused on whether PHMSA should include a finite element analysis (FEA) [38] as part of the ECA and whether PHMSA should define critical strain levels as a criterion in the ECA. Comments from industry additionally suggested that the criterion related to gouges or grooves greater than 12.5 percent of wall thickness was duplicative with other criteria. Industry trade associations noted that gouges and grooves would be evaluated in accordance with the dent, metal loss, or cracking criteria, and therefore, a separate anomaly category for gouges and grooves should be removed. Further, they asserted that current ILI technology can't determine the specific cause of metal loss, which would make this criterion unfeasible.

At the GPAC meeting on March 26, 2018, the committee recommended changes to several of the specific repair criteria for cracks, corrosion metal loss, and dents. Specific to dents, the committee recommended that PHMSA allow use of an ECA to evaluate certain dent-related anomalies and incorporate the ECA into the repair criteria.[39]

Following the discussion, the committee voted 12–0 that, as published in the **Federal Register**, the provisions in the proposed rule and draft regulatory evaluation for dent repair criteria were technically feasible, reasonable, cost-effective, and practicable if PHMSA: (1) allowed operators to use an ECA for specific dent-related repair criteria and considered language to accommodate alternative ECA methods (including an FEA), and (2) distinguished between top-side dents that exceeded critical strain levels and bottom-side dents that exceeded critical strain levels by making distinct criteria for those anomalies.

3. PHMSA Response

PHMSA believes that the repair criteria it proposed in the NPRM for dents provide an adequate safety margin and believes the criteria for dents that were suggested by some of the commenters would not provide adequate safety margin. PHMSA based this judgment on R&D programs that have been sponsored by PHMSA and the Pipeline Research Council International, and on elements of dent repair criteria that are contained within API RP 1183.[40]

PHMSA agrees with the GPAC recommendation for allowing an ECA method to evaluate dent anomalies and has revised the dent repair criteria for immediate, scheduled, and monitored conditions, as recommended by GPAC, to do so. PHMSA believes that the development of high-resolution deformation ILI tools has advanced enough to justify allowing operators to use an ECA method to evaluate dent anomalies and believes that it would be consistent with public safety while providing operators additional flexibility. While this rulemaking was under development, API published API RP 1183, which provides guidance for assessing and managing dents that are present in pipeline systems as a result of contact by rocks, machinery, or other forces. The RP presents guidance for developing a dent assessment and management program by (1) providing suitable methods for inspecting and characterizing the condition of the pipeline with respect to dents; (2) establishing data screening processes to evaluate dents relative to the extent and degree of deformation and operational severity; (3) providing response criteria for dents based on the dent shape and profile as determined by ILI; (4) applying engineering assessment methods to evaluate the fitness-for-service of dents, including the reassessment interval; (5) presenting remediation and repair options to address dents; and (6) developing preventive and mitigative measures for dents in lieu of, or in addition to,

[37] API, ''Pub. 1156: Effects of Smooth and Rock Dents on Liquid Petroleum Pipelines'' (1997).

[38] FEA is a modeling technique used to find and solve structural or integrity issues for phenomena such as cracking or denting. Pipe properties, including the parameters of the damage to the pipe, planned operating pressure, lifespan until the next evaluation, and any future operational conditions (max pressure, pressure cycle, higher temperatures), are needed to perform an FEA.

[39] Many of the recommended changes to the proposed repair criteria were highly technical in nature. For more information, including transcripts of the discussion and the voting slides, please visit: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=132.*

[40] API, Recommended Practice 1183, ''Assessment and Management of Dents in Pipelines'' (Nov. 2020).

periodic dent integrity assessment, including pressure reductions and pressure cycle management.

PHMSA agrees with commenters that the criteria based on gouges and grooves would be duplicative with other criteria being proposed in the NPRM, namely the criteria related to metal loss anomalies. Accordingly, PHMSA has removed the criteria related to gouges and grooves from this final rule.

In the 2019 Gas Transmission Rule, PHMSA finalized an ECA method for operators to use as a part of the pipeline material property and attribute verification under § 192.607 and the MAOP reconfirmation requirements of § 192.624. A key aspect of that ECA method is the detailed analysis of the remaining strength of pipe with known or assumed defects. The 2019 Gas Transmission Rule created a new section, § 192.712, to address the techniques and procedures an operator could use to analyze the predicted failure pressures for pipe with corrosion metal loss and cracks or crack-like defects.[41] That analysis requires the conservative analysis of the defect to determine the remaining life of the pipeline. In this final rule, PHMSA is building on the provisions it promulgated in the 2019 Gas Transmission Rule by allowing operators to use such an analysis for determining the timing of certain anomaly repairs, including dents. Unlike the previously existing repair criteria, which required the repair of listed anomalies within a specific timeframe, operators, per this final rule, can perform this analysis to determine whether the predicted failure pressure of the anomaly would warrant additional monitoring and a later repair. PHMSA understands that operators may propose, for PHMSA review in accordance with § 192.18, procedures for the assessment and remediation of dent anomalies (such as an ECA for dent anomalies); operators may develop those procedures using consensus industry standards (*e.g.,* API RP 1183, ASME B31.8, ASME B31.8S) or current research findings.

F. Repair Criteria—§§ 192.714, 192.933

v. Corrosion Metal Loss Criteria—§§ 192.714 & 192.933

1. Summary of PHMSA's Proposal

The required remediation of several types of corrosion defects that are incorporated in the hazardous liquid regulations in part 195 are currently omitted from part 192. The current gas transmission IM regulations allow operators to use ASME/ANSI B31.8S, Figure 4, for guiding repair decisions not specified in § 192.933(d), which can allow operators significant discretion in assessing and remediating pipe with corrosion or metal loss defects. PHMSA has found a wide variation in operators' interpretation of how to meet the requirements of the regulations in assessing, evaluating, and remediating corrosion and metal loss defects.

To address these gaps, and to harmonize part 192 with part 195, PHMSA proposed to amend § 192.933 to designate as immediate repair conditions those anomalies where metal loss is greater than 80 percent of nominal wall thickness and for indications of metal loss affecting certain legacy pipe with longitudinal seams.

To address gaps related to non-immediate conditions, the NPRM proposed that operators must repair the following within 1 year: (1) anomalies where a calculation of the remaining strength of the pipe shows a predicted failure pressure ratio at the location of the anomaly less than or equal to 1.25 times the MAOP for Class 1 locations, 1.39 times the MAOP for Class 2 locations, 1.67 times the MAOP for Class 3 locations, and 2.00 times the MAOP for Class 4 locations (comparable to the alternative design factor specified in § 192.620(a)); (2) areas of general corrosion with a predicted metal loss greater than 50 percent of nominal wall thickness; (3) anomalies with predicted metal loss greater than 50 percent of nominal wall thickness that are located at crossings of another pipeline, are in areas with widespread circumferential corrosion, or are in areas that could affect a girth weld; and (4) anomalies with metal loss due to gouges or grooves[42] that are greater than 12.5 percent of nominal wall thickness.

2. Summary of Public Comment

A commenter noted that PHMSA should recognize that gouges and scrapes are metal loss defects that can be smoothed by grinding to eliminate stress concentrations.

Multiple commenters also provided input on the proposed provisions that determine repair criteria for metal loss affecting certain pipe with longitudinal seams. INGAA, AGA, and a pipeline industry entity generally supported a classification of ''immediate'' for anomalies with ''an indication of metal loss affecting a detected longitudinal seam, if that seam was formed by direct current or low frequency or high frequency electric resistance welding or by electric flash welding.'' However, PG&E requested that PHMSA not classify metal loss affecting a detected longitudinal seam as an immediate repair condition if that seam was formed by high-frequency electric resistance welding, as that pipe is considered ductile. National Fuel requested that PHMSA categorize longitudinal seam metal loss based on a minimum metal-loss threshold rather than ''an indication.'' Certain commenters requested PHMSA allow operators to perform a fitness-for-service evaluation or ECA on selective seam weld corrosion.

Kern River suggested PHMSA should consider applicable manufacturing and tool detection tolerances in the establishment of repair criteria that require response to ''any indication of metal loss.''

Several commenters, including AGA, Pauite, and DTE, did not support the proposed inclusion of ''any indication of significant seam weld corrosion'' in § 192.713(d)(1)(vi). INGAA and AGA asserted that seam weld corrosion can only be conclusively determined by an in-field examination even though ILI tools are often employed to identify possible seam weld corrosion areas.

INGAA requested that gouge and groove metal loss anomalies be deleted from the 1-year and 2-year response conditions. Other commenters noted that current ILI tools do not have the capability of differentiating 12.5 percent gouge or groove metal loss anomalies from 12.5 percent external corrosion metal loss anomalies and suggested PHMSA delete this proposed requirement. These commenters argued that, given current ILI technology and per this proposal, operators would be required to investigate all metal loss indications greater than 12.5 percent to determine if the metal loss was a gouge or groove. Several trade associations and pipeline industry entities requested that operators be allowed to perform excavations to validate ILI results before classifying a segment as a high-priority repair.

Several pipeline industry commenters disagreed with the proposed repair criteria and repair methods that differed from industry standard ASME/ANSI B31.8S. For example, AGA stated that they opposed the inclusion of different repair criteria for different class locations because this contradicts ASME/ANSI B31.8S. API noted that PHMSA's proposal contradicted the ASME/ANSI standard by including depth-based criteria and also stated that PHMSA should not include the depth-

[41] See 84 FR 52236, 52237.

[42] Gouges or grooves are stress concentrators that lead to cracking and fatigue, which in turn may lead to accelerated failure.

based criteria but only reference ASME/ANSI B31.8S, which is considered the best accepted practice. Similarly, INGAA recommended that PHMSA allow operators to use the repair methods in ASME/ANSI B31.8S rather than the proposed criteria.

Some commenters thought that the new proposed criteria for corrosion anomalies made the existing corrosion repair requirements at § 192.485(c) duplicative and requested PHMSA delete the existing corrosion repair requirements for clarity. Other commenters noted that PHMSA's proposed requirement for corrosion greater than 50 percent of wall thickness was redundant to other proposed corrosion metal loss defects and suggested this specific item should be deleted. Similarly, commenters suggested that the criteria for predicted metal loss greater than 50 percent of nominal wall located at the crossing of another pipeline, areas with widespread circumferential corrosion, or areas that could affect a girth weld were both too conservative and duplicative of other corrosion repair criteria.

At the GPAC meeting on March 26, 2018, regarding the general provisions and applicability of the corrosion metal loss repair criteria, commenters representing the industry noted that for 1-year and 2-year scheduled conditions, the use of class location safety factors would be burdensome, as it would require more frequent repairs for pipelines in Class 2, Class 3, or Class 4 locations than contemplated by consensus industry standard ASME/ANSI B31.8S section 7, figure 4.

The committee also discussed specific requirements related to the repair of corrosion anomalies. Echoing many of the public comments on the topic, members representing the industry believed that the newly proposed corrosion repair requirements were either overly conservative or duplicative compared to existing repair requirements in the corrosion control subpart. These committee members suggested the new requirements should be deleted or otherwise changed to be less conservative. Additionally, these members noted that the proposed criteria for anomalies where corrosion is greater than 50 percent of wall thickness would be redundant with other repair criteria for evaluating corrosion metal loss defects using accepted analysis techniques, such as ASME B31G and remaining strength of corroded pipe (RSTRENG).[43] Further, for corrosion metal loss affecting pipe seams, members representing the industry suggested the criteria should apply to corrosion that ''preferentially'' affects the long seam,[44] and that PHMSA should allow an ECA to analyze such defects to prevent unnecessary excavations.

The committee also suggested that PHMSA evaluate predicted failure pressure ratings and thresholds for remediation schedules of anomalies at pipeline crossings with widespread circumferential corrosion or with corrosion that can affect a girth weld.

Following the discussion, the committee voted 11–0 that, as published in the **Federal Register**, the provisions in the proposed rule and draft regulatory evaluation for corrosion metal loss repair criteria (excluding the repair timing) were technically feasible, reasonable, cost-effective, and practicable if PHMSA: (1) clarified that the criteria do not apply to corrosion pits near a long seam but does apply to corrosion along seams that could lead to slotting-type crack-like defects, (2) deleted duplicative criteria, (3) cross-referenced the proposed new fracture mechanics section with the general corrosion remediation requirements, and (4) revised the repair criteria for scheduled conditions regarding the predicted failure pressure as discussed by the committee.

The committee then voted 8–3 (with each of two members representing State regulators and one member representing the public dissenting) that, as published in the **Federal Register**, the provisions in the proposed rule and draft regulatory evaluation for scheduled conditions regarding the predicted failure pressure repair criteria for corrosion metal loss anomalies were technically feasible, reasonable, cost-effective, and practicable if PHMSA: (1) incorporated ASME/ANSI B31.8S, section 7, figure 4, into the repair criteria; (2) required operators to consider ILI tool tolerance on all runs; (3) removed and revised the predicted failure pressure standards for metal loss anomalies per the discussion of the committee; and (4) provided guidance to improve the understanding and use of ASME/ANSI B31.8S, section 7, figure 4.

For corrosion metal loss anomalies that meet the ''scheduled'' criteria (*i.e.,* 1-year conditions for HCAs and 2-year conditions for non-HCAs), the GPAC voted 8–3 that PHMSA should remove the predicted failure pressure standards for Class 1 and Class 2 segments from the NPRM and require operators to use section 7, figure 4 from ASME/ANSI B31.8S instead (*i.e.,* retain the current requirement in place for HCAs under subpart O).

3. PHMSA Response

When developing the repair criteria in the NPRM, PHMSA evaluated grounding the predicted failure pressure for those criteria in one or more of the following three factors: (1) the test pressure of a pipeline, (2) the design factor of a pipeline, and (3) the HCA repair criteria. Because PHMSA sought to improve upon existing HCA repair criteria, PHMSA decided against using that factor as the basis for calculating predicted failure pressures and proposed using test pressure or design factor of a pipeline instead. PHMSA based its proposed threshold for Class 1 pipelines (less than or equal to 1.25 times MAOP predicted failure pressure) on the maximum test pressure in § 192.619 for Class 1 pipelines (1.25 times MAOP). For the repair thresholds for Class 2, Class 3, and Class 4 pipelines, PHMSA calculated predicted failure pressures using the reciprocals of the design factors listed at § 192.111 for the immediately preceding class location rating. This approach ensured an adequate margin to failure even if the pipeline were to experience a one-class bump (pursuant to § 192.611) from changes in population density of the surrounding area. The resulting predicted failure pressure thresholds were less than or equal to 1.39 times MAOP (reciprocal of the 0.72 Class 1 design factor) for pipelines in a Class 2 location, less than or equal to 1.67 times MAOP for pipelines in Class 3 locations, and less than or equal to 2.00 times MAOP for pipelines in Class 4 locations.

PHMSA believes the repair criteria for corrosion metal loss that were suggested by some of the commenters would not provide adequate safety margin compared to what PHMSA proposed in the NPRM. This was discussed at length by the GPAC, who recommended repair criteria that, in some cases, were less conservative than what PHMSA proposed in the NPRM.

In this final rule, PHMSA adopted the GPAC's recommendation to incorporate ASME/ANSI B31.8S section 7, figure 4, into the repair criteria by requiring operators to use it in Class 1 locations for metal loss anomalies with a

[43] Both are incorporated by reference at § 192.7; see (c)(4): ASME/ANSI B31G–1991 (Reaffirmed 2004), ''Manual for Determining the Remaining Strength of Corroded Pipelines,'' 2004, and (j)(1): AGA, Pipeline Research Committee Project, PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989).

[44] Corrosion that ''preferentially'' affects the long seam is corrosion that is of and along the weld seam that is classified as selective seam weld corrosion. It normally effects low frequency electric resistance weld seams (LF–ERW) and electric flash welded seams (EFW).

predicted failure pressure greater than 1.1 times MAOP, which is consistent with the previous IM repair regulations. The committee also recommended PHMSA provide additional guidance on the use of ASME/ANSI B31.8S section 7, figure 4. ASME/ANSI B31.8S, section 7, figure 4 has three scales for repair that are based on the MAOP of the pipeline and the MAOP's percentage of the pipeline's SMYS.[45] Operators can use one of the 3 sliding scales of figure 4, as appropriate, to address anomalies when the anomaly has a failure pressure ratio above 1.1. As discussed previously, operators are currently required to follow ASME/ANSI B31.8S section 7, figure 4 under elements of the previous IM repair regulations. PHMSA understands that the 10 percent nominal safety margin provided by compliance with ASME/ANSI B31.8S section 7, figure 4 is appropriate for the relatively low risk to public safety posed to pipelines in low-population-density, Class 1 locations.

However, PHMSA did not accept the GPAC's recommendation for Class 2 locations. The number of immediate repair conditions being discovered during reassessments in Class 2 locations continues at approximately the same rate as they were discovered during the baseline assessment phase of the IM rule promulgated in 2004, according to PHMSA annual report data. PHMSA attributes this to defects that are not repaired and allowed to grow to a size that are at or near failure (*i.e.,* an immediate condition). Existing immediate repair criteria for pipelines in Class 2 locations (predicated on ASME/ANSI B31.8S section 7, figure 4) allow up to a maximum 10 percent safety margin over the MAOP. However, after allowing for pressure excursions above MAOP due to overpressure protection device settings, the actual safety margin is between 0 and 6 percent. PHMSA has determined that the continued reliance on those ASME/ANSI B31.8S section 7, figure 4-derived safety margins in more densely populated Class 2 locations does not ensure adequate identification and elimination of sub-critical defects before they grow to a size that would raise immediate safety concerns. Therefore, in this final rule, PHMSA chooses to retain the NPRM's predicted failure pressure threshold for metal loss anomalies in Class 2 locations of less than 1.39 times MAOP.

For Class 3 and Class 4 locations, PHMSA considered predicted failure pressure thresholds between 1.39 times and 1.50 times MAOP as requested by the committee. However, PHMSA has determined that, in order to provide adequate margin for public safety in higher- population-density Class 3 and 4 locations, PHMSA could not establish a predicted failure pressure threshold as low as 1.39 times MAOP. Therefore, in this final rule, PHMSA has provided a repair threshold for anomalies meeting a predicted failure pressure of less than 1.50 times MAOP for pipelines in Class 3 and Class 4 locations. PHMSA notes this approach would align repair criteria with the approach in § 192.619 for determining maximum allowable pressures for the same locations, and reflects that transmission pipelines in Class 3 and Class 4 locations are more robust (as a result of thicker walls and other design requirements) than those used in Class 1 and Class 2 locations.

PHMSA has provided similar repair criteria in this final rule for corrosion metal loss anomalies that are at a crossing of another pipeline; are in an area with widespread circumferential corrosion; could affect a girth weld; or that preferentially affects detected longitudinal seams that are formed by direct current, low-frequency or high-frequency electric resistance welding, electric flash welding, or with a longitudinal joint factor less than 1.0. Specifically, PHMSA is requiring the repair of conditions that reach less than 1.39 times the MAOP for anomalies in Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611. For those corrosion metal loss anomalies at all other Class 2 locations, as well as those anomalies in Class 3 and Class 4 locations, operators will have to repair them once they reach a predicted failure pressure of less than 1.50 times MAOP.

PHMSA is requiring the additional stringency in Class 1 locations and Class 2 locations compared to the general corrosion metal loss repair standard discussed above because, should corrosion at the crossing of other pipelines induce failure, multiple pipelines could be damaged or fail. Pipelines with anomalies located at areas of widespread circumferential corrosion could additionally lose pipe strength due to outside longitudinal (pulling force) loading on the pipeline. And, historically, longitudinal seams that are formed by direct-current welding, low-frequency or high-frequency electric resistance welding, electric flash welding, or that have a longitudinal joint factor of less than 1.0, are more likely to fail. Therefore, PHMSA has determined that more stringent repair criteria are necessary for corrosion metal loss anomalies that preferentially affect these longitudinal seams. In contrast, because pipelines in Class 3 and Class 4 locations are (as noted above) more robust than those in Class 1 and Class 2 locations, PHMSA has determined that it is unnecessary to impose different thresholds for pipelines in Class 3 and Class 4 locations based on whether they are located at the crossing of another pipeline.

As explained in the discussion for dent anomalies above, PHMSA agreed with commenters that the specific criteria for gouges and grooves was duplicative with other metal loss conditions and has chosen not to finalize gouge and groove criteria in this final rule. Therefore, the comments related to whether ILI tools can properly or reliably identify gouges and grooves specifically are moot.

F. Repair Criteria—§§ 192.714, 192.933

vi. General Discussion

Process for Analyzing Defects Discovered—§ 192.933

1. Summary of PHMSA's Proposal

Following the Enbridge hazardous liquid incident in 2010 that spilled nearly 1 million barrels of oil near Marshall, MI, in 2010, the NTSB recommended that PHMSA revise requirements in the hazardous liquid pipeline safety regulations at § 195.452(h)(2) related to the ''discovery of condition'' to require, in cases where a determination about pipeline threats has not been obtained within 180 days following the date of inspection, that pipeline operators notify PHMSA and provide an expected date when adequate information will become available.[46] The NTSB also recommended that PHMSA revise part 195 to state the acceptable methods for performing engineering assessments of ILI results, including the assessment of cracks coinciding with corrosion, with a safety factor that considers the uncertainties associated with sizing of crack defects (P–12–3). Although these recommendations were for the hazardous liquid pipeline safety regulations in part 195, the issues apply equally to gas pipelines regulated under part 192.

Accordingly, PHMSA proposed to amend paragraph (b) of § 192.933 to

[45] Those three scales pertain to (1) not exceeding 30 percent SMYS, (2) above 30 percent SMYS but not exceeding 50 percent SMYS, and (3) above 50 percent SMYS.

[46] NTSB Recommendation P–12–4, available at *https://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-004.*

require that operators notify PHMSA within 180 days following an assessment where the operator cannot obtain sufficient information to determine if a condition presents a potential threat to the integrity of the pipeline; and expand the requirements in § 192.933 to clarify that operators must assure that persons qualified by knowledge, training, and experience must analyze the data obtained from an ILI to determine if a condition could adversely affect the safe operation of the pipeline. PHMSA also proposed to require that operators explicitly consider uncertainties in reported results in identifying and characterizing anomalies, which includes uncertainties in tool tolerance, detection threshold, the probability of detection, the probability of identification, sizing accuracy, conservative anomaly interaction criteria, location accuracy, anomaly findings, and unity chart plots.

PHMSA also proposed to amend paragraphs (a) and (d) of § 192.933 to require that operators document a pipeline's physical material properties and attributes that are used in remaining strength calculations in reliable, traceable, verifiable, and complete records. If such records were not available, operators would be required to base the pipe and material properties used in the remaining strength calculations on properties determined and documented in accordance with § 192.607.

2. Summary of Public Comment

Commenters noted that there were potential issues with how the revised repair criteria and the proposed material verification requirements at § 192.607 would interact regarding remaining strength calculations. These commenters requested that, absent reliable data, PHMSA allow operators to use supportable, sound engineering judgments when calculating remaining strength. This would allow operators to establish the remaining strength of affected segments while material verification was completed. Similarly, commenters suggested if the value for specified minimum yield strength is unknown, operators should be able to use a conservative default value, such as 30,000 pounds per square inch (psi). For predicted failure pressure calculations, operators suggested they should be able to use the records they have on hand and operator knowledge for calculations until any necessary material properties are verified through § 192.607. Similarly, at the GPAC meeting on March 26, 2018, commenters representing the industry suggested PHMSA should allow, in the absence of traceable, verifiable, and complete material records,[47] for operators to use sound engineering judgment or otherwise conservative assumptions in repair-related decision making, and recommended PHMSA modify the regulations as such.

The EDF and PST supported PHMSA's proposals related to considering uncertainties in ILI results for identifying and characterizing anomalies. Several pipeline operators and industry trade associations on the other hand, including INGAA, expressed concern that the NPRM would require pipeline operators to repair anomalies that do not threaten pipeline integrity, stating that many anomalies that are identified by indirect measurements as requiring repair are later determined not to require repair upon examination in the field. These commenters requested that PHMSA change the proposed requirements to distinguish between ILI results and in-field examinations and start the repair timeline with the time an anomaly is examined in the field and not when it is identified by ILI.

INGAA suggested that PHMSA change the proposed requirements to differentiate between response, remediation, and repair, and that PHMSA replace ''repair'' with ''response'' in the terms ''2-year repair criteria'' and ''1-year repair criteria'' as those terms pertain to the non-HCA repair criteria. INGAA also requested that PHMSA further divide ''2-year response conditions'' into ''2-year response conditions and scheduled responses'' and similarly divide ''1-year response conditions'' into ''1-year response conditions and scheduled responses.'' INGAA suggested such a revision would be necessary because the proposed requirements for the response to, and repair of, potential pipeline anomalies do not recognize the differences between actions that operators take when evaluating the result of integrity assessments versus those actions operators take following in-field examinations of potential anomalies.

Several commenters requested that PHMSA change the proposed regulatory language to distinguish between ILI results and in-field examinations (response) and the actual remediation activity (repair) with a view to start the repair timeline after an anomaly is examined in the field and not when it is identified by ILI. Commenters suggested separate timelines to distinguish between the ''response'' and ''repair'' phases of pipeline remediation.

3. PHMSA Response

PHMSA addressed comments pertaining to the use of sound engineering judgment and assumed values to evaluate anomalies when data required for the evaluation is unknown or not available in traceable, verifiable, and complete records in the 2019 Gas Transmission Rule at § 192.712.[48] If an operator does not have one or more of the material properties necessary to perform an ECA analysis (diameter, wall thickness, seam type, grade, and Charpy v-notch toughness values, if applicable), the operator must use the conservative assumptions PHMSA provided and include the pipeline segment in its program to verify the undocumented information in accordance with the material properties verification requirements at § 192.607.

In the Response to Petitions for Reconsideration on the 2019 Gas Transmission Rule,[49] PHMSA stated that if operators are missing any material properties during anomaly evaluations and repairs, operators must confirm those material properties under §§ 192.607 and 192.712(e) through (g). For consistency in this final rule, and to make this requirement more explicit, PHMSA has linked those material property confirmation requirements to the anomaly repair requirements by cross-referencing § 192.607 at both §§ 192.714 and 192.933. PHMSA will also note that, in accordance with the section 23 mandate in the 2011 Pipeline Safety Act, operators reported that approximately 13 percent of pipeline segment mileage in HCAs and Class 3 and Class 4 locations lack adequate documentation of the physical and operational characteristics of the pipelines necessary to confirm the proper MAOP. Such documentation is

[47] In an advisory bulletin dated May 7, 2012 (77 FR 26822), PHMSA provided guidelines for what records would meet a traceable, verifiable, and complete standard. The phrase ''traceable, verifiable, and complete'' matched a phrase from NTSB recommendation P–10–5, which recommended to the California Public Utilities Commission to ensure that PG&E ''aggressively and diligently searched documents and records relating to [. . .] natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas [. . .]. These records should be traceable, verifiable, and complete [. . .].'' See NTSB Recommendation P–10–5, available at *https://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-10-005*. While PHMSA proposed that records meet a reliable, traceable, verifiable, and complete standard, PHMSA believes that being consistent with the guidance it provided in the May 2012 advisory bulletin and the NTSB recommendation will provide further clarity.

[48] See 84 FR 52236, 52251.

[49] 85 FR 40132 (July 6, 2020).

also critical for performing predicted failure pressure calculations.

In an earlier section of the repair criteria discussion, PHMSA noted that the identification of anomalies based on ILI results is an actionable indication that there might be an injurious defect in the pipeline. Establishing repair criteria based on operators discovering these actionable anomalies assures that these anomalies are investigated promptly and repaired. Therefore, PHMSA disagrees with commenters who suggested that there should be separate timelines for anomaly responses and repairs, as it would be prudent for operators to perform any necessary repairs once the operator has excavated the pipe and exposed the anomaly for investigation rather than deferring such repairs.

F. Repair Criteria—§§ 192.714, 192.933

vii. Miscellaneous Comments

1. Summary of Public Comments

Commenters were concerned that the requirements in this rulemaking would apply to gas gathering pipelines and requested that PHMSA clarify this is not the case. Similarly, the GPAC, in its late March 2018 meeting, recommended PHMSA clarify that the non-HCA repair criteria applied to those pipeline segments not currently covered under the IM regulations at subpart O.

Additionally, pipeline operators and their trade associations requested that PHMSA clarify the effective date of the repair provisions, as the requirements were proposed in an allegedly retroactive section of the regulations. These commenters claimed, as written, the proposed provisions would force operators to apply the revised repair criteria to prior ILI assessments that, at the time, met all the standards of the regulations. Some of these commenters recommended PHMSA establish reasonable, risk-based timeframes for operators to implement repairs of anomalies that were historically identified and were repaired in accordance with the code requirements of the time. The GPAC, during their meeting in late March of 2018, similarly recommended that PHMSA add an effective date to these general repair provisions to clarify that they were not retroactive.

Some commenters also discussed the application of the proposed repair criteria to pipelines outside of HCAs that have established their MAOP under the alternative requirements at § 192.620. The GPAC recommended PHMSA apply appropriate predicted failure pressure factors to alternative MAOP pipelines based on class location and design factors for scheduled conditions under the repair criteria.

2. PHMSA Response

PHMSA did not intend for the new repair criteria for non-HCA pipe segments to be applicable to gas gathering pipelines, HCA segments, or offshore transmission lines. However, PHMSA will consider expanding the application of these provisions in the future. In this final rule, to clarify that the new non-HCA repair criteria apply only to onshore transmission lines, PHMSA placed the new non-HCA repair criteria in a new § 192.714, which applies only to onshore transmission lines. Subsequently, PHMSA withdrew all proposed changes to § 192.713. PHMSA has also revised § 192.9 in this final rule to exempt regulated gas gathering lines from the requirements of § 192.714. Additionally, PHMSA has modified § 192.711 in this final rule to clarify that the new repair criteria in § 192.714 do not apply to gathering lines or HCA segments subject to subpart O. The current and unchanged § 192.713 would continue to apply to regulated gas gathering lines. Although the creation of a new § 192.714 was not discussed at the GPAC, PHMSA determined that this approach was a clearer means to specify that the new non-HCA repair criteria only apply to onshore transmission pipelines and meet the intent of the GPAC recommendation to clarify that the non-HCA repair criteria do not apply to gathering lines, HCA segments, or offshore transmission lines. Furthermore, PHMSA determined that this approach avoids duplication of repair language in other code sections.

PHMSA did not intend to imply that the new repair criteria were to be applied retroactively and has clarified this intent in this final rule by revising § 192.711(b) to include an effective date as recommended by the GPAC.

Regarding alternative MAOP pipelines, the NPRM did not propose, and therefore did not give opportunity for comment on, changes to repair criteria for alternative MAOP pipe segments. However, PHMSA agrees with commenters that the language proposed in the NPRM could create ambiguity with respect to the applicability of the non-HCA repair criteria to pipe with MAOP established in accordance with § 192.620. Therefore, in this final rule, PHMSA more broadly exempted alternative MAOP lines from compliance with non-HCA repair criteria and reiterated the applicability of the repair criteria provided at the alternative MAOP provisions under § 192.620(d)(11) as they provide a comparable level of safety based upon the operating factors. PHMSA did not make a corresponding change to § 192.933, as alternative MAOP pipelines in HCAs must meet both the HCA and the alternative MAOP repair criteria. This approach is preferable to repeating the alternate MAOP repair criteria in two locations of part 192.

G. Definitions—§ 192.3

i. Close Interval Survey

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed a new definition for ''close interval survey'' as a series of closely spaced pipe-to-electrolyte potential measurements taken to assess the adequacy of cathodic protection or to identify locations where a current may be leaving the pipeline and may cause corrosion, and for the purpose of quantifying voltage drops other than those across the structure electrolyte boundary.

2. Summary of Public Comment

Comments from the trade associations and GPAC members representing the industry questioned whether PHMSA should tie the definition of ''close interval survey'' to a corresponding NACE standard for consistency. PHMSA presented some minor changes to the definition at the meeting on March 28, 2018, and the committee voted 13–0 that PHMSA should adopt those changes into the final rule.

3. PHMSA Response

After considering the comments and GPAC recommendations, PHMSA is adopting the definition of ''close interval survey'' as recommended by GPAC. As such, PHMSA has specified that the pipe-to-electrolyte potential measurements are taken ''over the pipe,'' and added the phrase ''such as when performed as a current interrupted, depolarized, or native survey'' to qualify what is ''other than those across the structure electrolyte boundary.''

G. Definitions—§ 192.3

ii. Distribution Center

1. Summary of PHMSA's Proposal

PHMSA proposed to define a ''distribution center'' as a location where gas volumes are either metered or have a pressure or volume reduction prior to delivery to customers through a distribution line.

2. Summary of Public Comment

AGL Resources, Pipeline Safety Coalition, Southern California Gas

Company, Spire STL Pipeline LLC, and Xcel Energy supported PHMSA's intention to define the term ''distribution center.'' In particular, AGL Resources stated that the proposed definition would remove confusion and the potential for conflict between operators and regulators throughout the Nation. Like its comments on the proposed definition for ''transmission line,'' Xcel Energy suggested that PHMSA add an implementation period for operators to handle the regulatory impacts of the new definition.

AGA supported PHMSA's effort to define a ''distribution center'' to ensure consistency and certainty in the identification of transmission lines. However, AGA also stated that PHMSA failed to provide any justification or explanation for its proposed definition, and AGA proposed an alternative definition of ''distribution center'' where piping downstream of a distribution center that operates above 20 percent SMYS would be classified as a transmission line. Other organizations, such as Alliant Energy, Dominion Energy, PECO Energy, Paiute Pipeline Company, and Southwest Gas Corporation, supported AGA's alternative definition.

TPA recommended PHMSA revise the proposed definition of ''distribution center'' to provide a clear endpoint for transmission lines and the start of distribution lines. Atmos Energy stated that the proposed definition did not recognize the many possible configurations of pipes in which transmission pipelines deliver to distribution systems. For example, Oleksa and Associates stated that some distribution systems may have no meters prior to delivery to customers and also may have no pressure or volume reductions (*e.g.,* a distribution system supplied by a landfill). Lastly, Cascade Natural Gas requested the term ''distribution center'' clearly refer to distribution pipelines and that such a definition should not be included in a rulemaking for transmission and gathering pipelines.

At the GPAC meeting, PHMSA offered for the committee's consideration the option of recommending withdrawal of the proposed definition for ''distribution center.'' Committee members opposed this suggestion, stating that finalizing a definition for ''distribution center'' would provide the industry and regulators with regulatory certainty and clarity. During the meeting, committee members came to a consensus on the definition of a ''distribution center'' based on comments the industry provided. However, certain committee members representing the public were not inclined to adopt a definition of a ''distribution center'' that was based on the comments provided by industry and wished to defer to PHMSA regarding the wordsmithing of the definition.

Following the discussion, the committee voted 10–0 that the definition for ''distribution center'' was technically feasible, reasonable, cost-effective, and practicable if PHMSA incorporated a definition for ''distribution center'' in the final rule and considered revising the definition to mean the initial point where gas enters piping used to deliver gas to customers for end use as opposed to customers who purchase it for resale. Examples of a distribution center would include a metering location; a pressure reduction location; or where there is a reduction in the volume of gas, such as a lateral off a transmission pipeline.

3. PHMSA Response

After considering the comments received and the GPAC's recommendations, PHMSA is adopting the definition recommended by GPAC so that a ''distribution center'' means the initial point where gas enters piping used to deliver gas to customers for end use as opposed to customers who purchase it for resale.

PHMSA disagrees that an implementation period for the definition is appropriate, given that this term has been in use for a long period of time. PHMSA agrees with commenters for the need to clarify the end point of transmission and the start of distribution. PHMSA agrees with those commenters who suggested that piping downstream of a distribution center operating at above 20 percent SMYS should be considered a transmission line and is modifying the definition of ''transmission line'' accordingly in this final rule.

G. Definitions—§ 192.3

iii. Dry Gas or Dry Natural Gas

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed a new definition for the term ''dry gas or dry natural gas'' to mean gas with less than 7 pounds of water per million cubic feet that is not subject to excessive upsets allowing electrolytes into the gas system.

2. Summary of Public Comment

GPAC members representing the industry asked whether PHMSA should tie the definition for dry gas to the corresponding NACE standard for continuity. Committee members representing the public were concerned about incorporating by reference the definition into the regulations but were amenable to lifting the language directly from the standard to ensure consistency. PHMSA representatives noted that the agency could consider the NACE definition and make the definition for dry gas less prescriptive than proposed.

After discussion, the committee voted 13–0 that the definition for ''dry gas or dry natural gas'' was technically feasible, reasonable, cost-effective, and practicable if PHMSA revised the definition to be consistent with the NACE definition as discussed at the meeting.

3. PHMSA Response

PHMSA has taken into consideration the comments as well as the GPAC recommendations and is modifying the definition for ''dry gas or dry natural gas'' to be consistent with the NACE standard. More specifically, the definition specifies that ''dry gas or dry natural gas'' is gas ''above its dew point and without condensed liquids.''

G. Definitions—§ 192.3

iv. Electrical Survey

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed revising the term ''electrical survey'' so that it means a series of closely spaced measurements of the potential difference between two reference electrodes to determine where the current is leaving the pipe on ineffectively coated or bare pipelines.

2. Summary of Public Comment

PHMSA received a variety of comments on the definition for ''electrical survey.'' Some commenters expressed support for the definition and its inclusion in the regulations. Other commenters supported the concept of the definition but provided PHMSA with varying edits to improve on the clarity and functionality of the definition.

Several commenters noted that the proposed definition for electrical survey was duplicative with the proposed definition for ''close interval survey'' and recommended that PHMSA retain the definition for close interval survey instead. Some of these commenters noted that the proposed definition for electrical survey was more restrictive than the definition of electrical survey in NACE standards and excluded certain types of surveys. Other commenters suggested that the proposed definition for electrical survey should match the definition in various NACE standards.

NACE itself believed that the definition used in the NPRM for

''electrical survey'' was ambiguous and inaccurate, stating the proposed definition does not align with current terminology and accepted pipeline integrity practices. NACE recommended that PHMSA use the definition for ''indirect inspection'' in NACE SP0502, which is widely accepted as standard practice and should meet PHMSA's intent.

The GPAC recommended that PHMSA withdraw the proposed changes to appendix D as a part of the recommended revisions to the proposed corrosion control regulations. There was no further discussion on the definition for the term, and the committee voted, 13–0, to delete the definition from the rule.

3. PHMSA Response

PHMSA notes that, when the committee voted to withdraw the proposed changes to appendix D as a part of the corrosion control discussion, a revised definition for electrical survey was unnecessary as all references to ''electrical surveys'' were removed. Therefore, PHMSA agrees with the GPAC recommendation and has struck the proposed revision to the definition of ''electrical survey'' from this final rule.

G. Definitions—§ 192.3

v. Hard Spot

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to define a ''hard spot'' as steel pipe material with a minimum dimension greater than 2 inches (50.8 mm) in any direction with hardness greater than or equal to Rockwell 35 HRC, Brinnel 327 HB, or Vickers 345 HV_{10}.

2. Summary of Public Comment

During the GPAC meeting, committee members noted there was a small editorial correction that needed to be made—changing ''Brinnel'' to ''Brinell''—and also recommended that the definition be prefaced with the phrase ''an area on'' so that the definition reads ''an area on steel pipe material [. . .].''

3. PHMSA Response

PHMSA has modified the proposed definition of hard spot as the GPAC recommended for this final rule.

G. Definitions—§ 192.3

vi. In-Line Inspection (ILI) and In-Line Inspection Tool or Instrumented Internal Inspection Device

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to add definitions for ''in-line inspection (ILI)'' and ''in-line inspection tool or instrumental internal inspection device'' to § 192.3. Specifically, the term ''in-line inspection'' would mean the inspection of a pipeline from the interior of the pipe using an ILI tool, which may also be known as intelligent or smart pigging. The term ''in-line inspection tool or instrumented internal inspection device'' would mean a device or vehicle that inspects a pipeline from the inside using a non-destructive technique. Such a device might also be called an intelligent or smart pig.

2. Summary of Public Comment

NACE International commented that the proposed definitions of ''in-line inspection'' and ''in-line inspection tool or instrumented internal inspection device'' do not align with the definition provided in NACE International Standard SP01024 or SP0102, respectively. NACE International suggested that PHMSA use the definition in NACE Standard SP0102, as PHMSA had proposed to incorporate by reference the standard in the regulations.

The GPAC reviewed the proposed definitions and, following their discussion, voted 13–0 that the definitions for ''in-line inspection'' and ''in-line inspection tool or instrumented internal inspection device'' were technically feasible, reasonable, cost-effective, and practicable if PHMSA considered clarifying in the preamble that the phrase ''a line that can accommodate inspection by means of an instrumented in-line inspection tool'' referred to pipeline segments that can be inspected with free-swimming ILI tools without any permanent physical modification of the pipeline segment.

3. PHMSA Response

After considering these comments, PHMSA is modifying the definitions of both ''in-line inspection'' and ''in-line inspection tool or instrumented internal inspection device'' based on the definitions in NACE SP0102–2010. In accordance with the GPAC recommendation, PHMSA is also noting that an ILI can include both tethered and self-propelled (*i.e.,* ''free-swimming'') tools.

G. Definitions—§ 192.3

vii. Transmission Line

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to modify the second criterion of the ''transmission line'' definition to base the percentage of SMYS on the MAOP of the pipeline, whereas currently it is based on the pressure at which the pipeline is operating. PHMSA also proposed editorial changes to the ''Note'' section of the definition and make it clearer that ''factories, power plants, and institutional users of gas'' were examples of a large-volume customer.

2. Summary of Public Comment

AGA asserted that modifying the second criterion in the ''transmission line'' definition in conjunction with other definition changes PHMSA proposed would result in the reclassification of some transmission pipelines to distribution lines and some distribution pipelines to transmission lines. Several pipeline operators and industry representatives, including AGL Resources, Alliant Energy, Black Hills Energy, Cascade Natural Gas, Centerpoint Energy, Spire, Delmarva Power, National Grid, National Fuel Gas Supply Corporation, North Dakota Petroleum Council, Paiute Pipelines, TECO Peoples Gas, TPA, and PECO Energy, supported AGA's comments or provided similar recommendations. Additionally, Dominion East Ohio and Southwest Gas objected to PHMSA's proposed modifications to the definition, stating that the proposed definition would burden operators with ongoing IM programs with no additional benefit to public safety.

APGA commented that PHMSA's slight rewording of the note in the transmission definition regarding types of large-volume customers could be interpreted to mean that only factories, power plants, and institutional users of gas can be large-volume customers. APGA suggested PHMSA change the proposed language in the final rule to clarify that those listed items are examples of large-volume customers rather than a comprehensive list.

ONE Gas proposed an alternative simplified approach to the definition of ''transmission line'' that focuses on a line's MAOP as it relates to the percentage of yield strength.

There were various comments from other pipeline operators, including the suggestion that PHMSA remove the term ''distribution center'' from the definition of ''transmission line,'' allow operators to use MAOP to determine a transmission pipeline, and provide an implementation period for operators to incorporate regulatory requirements of the newly defined transmission lines.

During the GPAC meeting, committee members representing the industry expressed support for allowing operators to designate pipelines voluntarily as transmission lines, especially if their risk profile was high,

so that operators could operate and maintain those lines to a higher standard.

Following the discussion, the committee voted 10–0 that the definition for ''transmission line'' was technically feasible, reasonable, cost-effective, and practicable if PHMSA included the phrase ''an interconnected series of pipelines'' within the text of the definition and allowed operators to designate pipelines voluntarily as transmission lines.

3. PHMSA Response

PHMSA has considered the comments received regarding the proposed definition of a ''transmission line.'' PHMSA agrees with the recommendation from the GPAC to allow operators to designate pipelines voluntarily as transmission lines, as well as the recommendation from the GPAC to include the phrase ''an interconnected series of pipelines.'' Accordingly, PHMSA has revised the definition of ''transmission line'' in this final rule to include these recommendations.

PHMSA agrees with commenters that the language to clarify the examples of large-volume customers may imply a specific list and has withdrawn the changes to the note in the definition. In response to the comment on providing an implementation period for compliance with the new definition, PHMSA notes that it does not apply separate implementation periods to definitions outside of the effective date of the rule. If PHMSA determines that corresponding regulations would be affected by a change in a definition, it incorporates appropriate implementation time to those regulations as necessary.

PHMSA also notes that, per the comments received on the definition for ''distribution center,'' it agreed with commenters who suggested that piping downstream of a distribution center operating at above 20 percent of SMYS should be considered a transmission line and is modifying the definition of ''transmission line'' accordingly in this final rule.

PHMSA sees no functional difference in changing the definition of a transmission line from a pipeline that operators at a hoop stress of 20 percent or more of SMYS and a pipeline that has a MAOP of 20 percent or more of SMYS. For a pipeline to operate above 20 percent or more of SMYS, it will have an MAOP of 20 percent or more of SMYS. If an operator has a pipeline where the theoretical MAOP is higher than the pipeline's actual operating pressure, and therefore the line would need to be reclassified, the operator could reduce the MAOP of the line to keep the line's classification the same without affecting its operating pressure.

G. Definitions—§ 192.3

viii. Wrinkle Bend

1. Summary of PHMSA's Proposal

In the NPRM, PHMSA proposed to define ''wrinkle bend'' as a bend in the pipe that was formed in the field during construction such that the inside radius of the bend has one or more ripples of various sizes or where the ratio of peaks to peaks or peaks to valleys are of a certain size, or where a mathematical equation could be substituted when a wrinkle bend's length cannot reliably be determined.

2. Summary of Public Comment

There was no significant public comment on this definition, and the GPAC recommended PHMSA adopt the definition as it was published in the NPRM.

3. PHMSA Response

PHMSA adopts the definition as it was published in the NPRM.

IV. Section-by-Section Analysis

Section 192.3 Definitions

Section 192.3 provides definitions for various terms used throughout part 192. In support of other regulations adopted in this final rule, PHMSA is amending the definition of ''transmission line'' and is adding new definitions for ''close interval survey,'' ''distribution center,'' ''dry gas or dry natural gas,'' ''hard spot,'' ''in-line inspection,'' ''in-line inspection tool or instrumented internal inspection device,'' and ''wrinkle bend.'' The definitions, including ''in-line inspection,'' ''dry gas or dry natural gas,'' and ''hard spot,'' clarify technical terms used in part 192 or in this rulemaking.

Section 192.7 What documents are incorporated by reference partly or wholly in this part?

Section 192.7 lists documents that are incorporated by reference in part 192. PHMSA is making conforming amendments to § 192.7 to include two NACE standard practice documents regarding SCCDA and ICDA.

Section 192.9 What requirements apply to gathering lines?

Section 192.9 lists the requirements that are applicable or not applicable to gathering lines. This final rule addresses several new requirements for transmission lines that are not intended to apply to gathering lines; PHMSA is adopting in this final rule revisions to § 192.9 to except each of offshore and Types A, B, and C[50] gas gathering lines from those requirements.

Section 192.13 What general requirements apply to pipelines regulated under this part?

Section 192.13 prescribes general requirements for gas pipelines. PHMSA has determined that public safety and environmental protection would be improved by requiring operators of transmission lines to evaluate and mitigate risks during all phases of the useful life of a pipeline as an integral part of managing pipeline design, construction, operation, maintenance, and integrity, including the MOC process.

As such, PHMSA has added a new paragraph (d) to § 192.13 with a general clause for transmission pipeline operators that invokes the requirements for the MOC process as it is outlined in ASME/ANSI B31.8S, section 11, and explicitly articulates the requirements for a MOC process applicable to onshore gas transmission pipelines. This final rule requires each operator to have a MOC process that must include the reason for change, authority for approving changes, analysis of implications, acquisition of required work permits, documentation, communication of change to affected parties, time limitations, and qualification of staff. While these general attributes of change management are already required for covered segments by virtue of the incorporation by reference of ASME/ANSI B31.8S, PHMSA believes it will improve the visibility and emphasis on these important program elements to require them for all onshore transmission pipelines directly in the rule text.

Section 192.18 How To Notify PHMSA

Section 192.18 in subpart A contains the procedure for an operator to submit notifications to PHMSA. Paragraph (c) has been modified to incorporate notification requirements for the use of ''other technology'' with external corrosion control and ICDA per §§ 192.461(g) and 192.927(b).[51] This is

[50] PHMSA notes that it has introduced in this final rule revisions to § 192.9(e), which paragraph was adopted in the Gas Gathering Final Rule, to identify specific provisions of part 192 that would apply to the new Type C category of part 192-regulated onshore gas gathering pipelines.

[51] PHMSA notes that between publication of this final rule and its effective date, regulatory amendments to § 191.18 adopted in rulemaking published in April 2022 will have been codified in the Code of Federal Regulations. ''Pipeline Safety:

Continued

consistent with the requirements PHMSA issued with the use of other technology for provisions finalized in the 2019 Gas Transmission Rule.

Section 192.319 Installation of Pipe in a Ditch

Section 192.319 prescribes requirements for installing pipe in a ditch, including requirements to protect pipe coating from damage during the process. Sometimes pipe coating is damaged during the construction process while it is being handled, lowered, and backfilled, which can compromise its ability to protect against external corrosion. Accordingly, this final rule adds new paragraphs (d) through (g) to § 192.319, which require that onshore gas transmission operators perform an above-ground indirect assessment to identify locations of suspected damage promptly after backfilling is completed and remediate coating damage. Mechanical damage is also detectable by these indirect assessment methods, since the forces that can mechanically damage steel pipe usually result in detectable coating defects.

If an operator uses ''other technology'' to perform an assessment required under this section, paragraph (e) requires the operator to notify PHMSA in accordance with § 192.18. Paragraph (g) requires each operator of transmission pipelines to make and retain, for the life of the pipeline, records documenting the coating assessment findings and repairs. The additional requirements of this section do not apply to gas gathering pipelines or distribution mains.

Section 192.461 External Corrosion Control: Protective Coating

Section 192.461 prescribes requirements for protective coating systems. Certain types of coating systems that have been used extensively in the pipeline industry can impede the process of cathodic protection if the coating disbonds from the pipe. Accordingly, this final rule amends paragraph (a)(4) to require that pipe coating has sufficient strength to resist damage during installation and backfill, and it also adds a new paragraph (f) to require that onshore gas transmission operators perform an above-ground indirect assessment to identify locations of suspected damage promptly after backfill is completed or anytime there is an indication that the coating might be compromised. To ensure the prompt remediation of any severe coating damage, new paragraph (h) requires operators create a remedial action plan and provides the specific timing requirements for repairs. New paragraph (g) requires an operator to notify PHMSA, in accordance with § 192.18, if using ''other technology'' for the coating assessment, and paragraph (i) specifies the documentation requirements for this section. The additional requirements of this section do not apply to gas gathering pipelines or distribution mains.

Section 192.465 External Corrosion Control: Monitoring

Section 192.465 requires that operators monitor CP and take prompt remedial action to correct deficiencies indicated by the monitoring. To clarify that regulatory requirement, this final rule amends paragraph (d) to require that operators of onshore transmission pipelines must complete remedial action no later than the next monitoring interval specified in § 192.465, within 1 year, or within 6 months of obtaining any permits, whichever is less.

This final rule also adds a new paragraph (f) to require onshore gas transmission operators to conduct annual test station readings to determine if CP is below the level of protection required in subpart I. For non-systemic or location-specific causes of insufficient CP, the operator must investigate and mitigate the cause. For insufficient CP due to systemic causes, an operator must complete CIS with the protective current interrupted, unless it is impractical to do so based on a geographical, technical, or safety reason. For example, issues related to cost would not be an adequate reason for not performing the survey, whereas performing a survey on a pipeline protected by direct buried sacrificial anodes (anodes directly connected to the pipelines) might be impractical. The revisions to paragraph (d) and new paragraph (f) do not apply to gas gathering lines or distribution mains.

Section 192.473 External Corrosion Control: Interference Currents

Interference currents can negate the effectiveness of CP systems. Section 192.473 currently prescribes general requirements to minimize the detrimental effects of interference currents. However, subpart I does not presently contain specific requirements to monitor and mitigate detrimental interference currents. Accordingly, this final rule adds a new paragraph (c) to require that onshore gas transmission operator corrosion control programs include interference surveys to detect the presence of interference currents when potential monitoring indicates a significant increase in stray current, or when new potential stray current sources are introduced. Sources of stray current can include co-located pipelines, structures, HVAC power lines, new or enlarged power substations, new pipelines, and other structures. They can also include additional generation, a voltage uprating, and additional lines. The rule also requires operators perform remedial actions no later than 15 months after completing the interference survey, with an allowance for permitting, to protect the pipeline segment from detrimental interference currents. These additional requirements do not apply to gas gathering pipelines or distribution mains.

Section 192.478 Internal Corrosion Control: Monitoring

Section 192.477 prescribes requirements to monitor internal corrosion if corrosive gas is being transported. However, the existing rules do not prescribe operators continually or periodically monitor the gas stream for the introduction of corrosive constituents through system modifications, gas supply changes, upset conditions, or other changes. This could result in operators not identifying internal corrosion if an initial assessment did not identify the presence of corrosive gas. Accordingly, PHMSA has determined that additional requirements are needed to ensure that operators effectively monitor their gas stream quality to identify if, and when, corrosive gas is being transported and mitigate deleterious gas stream constituents (*e.g.,* contaminants or liquids).

Therefore, this final rule adds a new § 192.478 to require onshore gas transmission operators monitor for known deleterious gas stream constituents and evaluate gas monitoring data once every calendar year, not to exceed a period of 15 months. Additionally, this final rule adds a requirement for onshore gas transmission operators to review their internal corrosion monitoring and mitigation program annually, not to exceed 15 months, and adjust the program as necessary to mitigate the presence of deleterious gas stream constituents. These requirements are in addition to the existing requirements to check coupons or perform other methods to monitor for the actual

Requirement of Valve Installation and Minimum Rupture Detection Standards,'' 87 FR 20940 (Apr. 8, 2022) (identifying an effective date in October 2022) (Valve Installation Final Rule). The amendatory text at the end of this final rule, therefore, reflects the text of § 192.18 as it will be revised when the Valve Installation Final Rule becomes effective.

presence of internal corrosion in the case of transporting a known corrosive gas stream. The new § 192.478 does not apply to gas gathering pipelines or distribution mains.

Section 192.485 Remedial Measures: Transmission Lines

Section 192.485 prescribes requirements for operators to perform remedial measures to address general corrosion and localized corrosion pitting in transmission pipelines. For such conditions, the requirements specify that an operator may determine the strength of pipe based on actual remaining wall thickness by using the procedure in ASME/ANSI B31G or the procedure in AGA Pipeline Research Committee Project PR 3–805 (RSTRENG). PHMSA has determined that additional requirements are needed beyond ASME/ANSI B31G and RSTRENG to ensure such calculations have a sound basis and has revised § 192.485(c) to specify that an operator must calculate the remaining strength of the pipe in accordance with § 192.712, which prescribes important aspects such as pipe and material properties, assumptions allowed when data is unknown, accounting for uncertainties, and recordkeeping requirements.

Section 192.613 Continuing Surveillance

Extreme weather and natural disasters can affect the safe operation of a pipeline. Accordingly, this final rule revises § 192.613 to require operators to perform inspections after these events and take appropriate remedial actions.

Section 192.710 Transmission Lines: Assessments Outside of High Consequence Areas

Section 192.710 prescribes requirements for the periodic assessment of certain pipelines outside of HCAs. In the NPRM, PHMSA proposed for operators to use the non-HCA repair criteria being finalized in this rule if they performed an assessment on a non-HCA pipeline and discovered an anomaly requiring repair. However, in splitting the rulemaking, PHMSA finalized the assessment requirement in the 2019 Gas Transmission Final Rule but did not incorporate regulatory text establishing the corresponding repair criteria. Therefore, in this final rule, PHMSA has revised the assessment requirement at § 192.710 to require operators to use the repair criteria finalized in this rulemaking if anomalies are discovered during these assessments.

Section 192.711 Transmission Lines: General Requirements for Repair Procedures

Section 192.711 prescribes general requirements for repair procedures. For non-HCA segments, the existing regulations required that operators make permanent repairs as soon as feasible. However, no specific repair criteria were detailed, and no specific timeframe or pressure reduction requirements were provided. PHMSA has determined that more specific repair criteria are needed for pipelines not covered under the integrity management regulations. Such repair criteria will help to maintain safety in a consistent manner in Class 1 through Class 4 locations that may have significant populations but that are not HCAs. Accordingly, this final rule amends paragraph (b)(1) of § 192.711 to require operators remediate specific conditions, as defined in § 192.714, on non-HCA gas transmission pipelines. Paragraph (b)(1) retains the existing requirement that operators must repair anomalies on gathering pipelines regulated in accordance with § 192.9 as soon as feasible.

Section 192.712 Analysis of Predicted Failure Pressure and Critical Strain Levels

In the 2019 Gas Transmission Rule, PHMSA updated and codified minimum standards for determining the predicted failure pressure of pipelines containing anomalies or defects associated with corrosion metal loss and cracks. In this final rule, PHMSA is revising the repair criteria for gas transmission pipelines, including for dents. Some of the revised dent repair criteria allow operators to determine critical strain levels for dents and defer repairs if critical strain levels are not exceeded. As such, PHMSA has established minimum standards for operators to calculate critical strain levels in pipe with dent anomalies or defects and has included those standards in a new paragraph (c) of § 192.712. The title of this section has also been updated to reflect this addition. PHMSA has also provided reassessment schedules for engineering critical assessments that operators perform to determine maximum reevaluation intervals to ensure that anomalies do not grow to critical sizes.

Section 192.714 Transmission Lines: Permanent Field Repair of Imperfections and Damages

Section 192.713 prescribes requirements for the permanent repair of pipeline imperfections or damage that impairs the serviceability of steel transmission pipelines operating at or above 40 percent of SMYS. PHMSA has determined that more explicit requirements are needed in § 192.714 to identify criteria for the severity of imperfections or damage that must be repaired, and to identify the timeframe within which repairs must be made for pipelines in all class locations that are not in HCAs. Pipelines not in HCAs can still have significant populations that could be harmed by a pipeline leak or rupture. As such, PHMSA has determined that repair criteria should apply to any onshore transmission pipeline not covered under the IM regulations in subpart O. PHMSA believes that establishing these non-HCA segment repair conditions for Class 1 locations through Class 4 locations are important because, even though they are not within HCAs, these locations could be in highly populated areas and are not without consequence to public safety and the environment.

Accordingly, this final rule creates a new § 192.714 to establish repair criteria for immediate, 2-year, and monitored conditions that the operator must remediate or monitor to ensure pipeline safety. PHMSA is using the same criteria as it is issuing for HCAs, except conditions for which a 1-year response is required in HCAs will require a 2-year response in non-HCA pipeline segments so that operators can allocate their resources to HCAs on a higher-priority basis. Additionally, PHMSA is prescribing more explicit requirements for the *in situ* evaluation of cracks and crack-like defects using in-the-ditch tools whenever required, such as when an ILI, SCCDA, pressure test failure, or other assessment identifies anomalies that suggest the presence of such defects.

Section 192.911 What are the elements of an integrity management program?

Paragraph (k) of § 192.911 requires that IM programs include a MOC process as outlined in ASME/ANSI B31.8S, section 11. PHMSA has determined that specific attributes and features of the MOC process that are currently specified in ASME/ANSI B31.8S, section 11, should be codified directly within the text of subpart O for HCAs to make the requirements readily available to all operators of onshore gas transmission pipelines. This change is consistent with the new paragraph (d) in § 192.13 for all onshore transmission pipelines.

Section 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?

Section 192.917 requires that operators with IM programs for covered pipeline segments identify potential threats to pipeline integrity and use the threat identification in their integrity program. This performance-based process includes requirements to identify threats to which the pipeline is susceptible, collect data for analysis, and perform a risk assessment. The regulations include special requirements for operators to address plastic pipe and particular threats, such as third-party damage and manufacturing and construction defects.

As specified in § 192.907(a), PHMSA expected operators to start with a framework for IM, which would later evolve into a more detailed and comprehensive program, and expected that an operator would continually improve its IM program as it learned more about the process and about the material condition of its pipelines through integrity assessments. PHMSA elaborated on this philosophy in the 2003 IM rule.[52]

Even though the IM regulations have been in effect since 2004, PHMSA still finds certain operators have poorly developed IM programs. The clarifications and additional specificity adopted in this final rule, with respect to the processes an operator must use in implementing the threat identification, risk assessment, and preventive and mitigative measure program elements, reflect PHMSA's expectation regarding the degree of progress operators should be making, or should have made, during the first 10 years of the implementation of the IM regulations.

The current IM regulations incorporate by reference ASME/ANSI B31.8S to require that operators implement specific attributes and features of the threat identification, data analysis, and risk assessment process in their IM programs. In this final rule, PHMSA is amending § 192.917 to insert certain critical features of ASME/ANSI B31.8S directly into the regulatory text. PHMSA is specifying several pipeline attributes that must be included in pipeline risk assessments and is explicitly requiring that operators integrate analyzed information and ensure that data is verified and validated to the maximum extent practical. To the degree that subjective data from SMEs must be used, PHMSA is requiring that an operator's program account and compensate for uncertainties in the risk model used and the data used in the operator's risk assessment. PHMSA is also in this final rule revising the non-exhaustive list of data to be collected for clarity or to eliminate redundant language.

PHMSA will note that in its advisory bulletin on the verification of records that ''verifiable'' records are those in which information is confirmed by other complementary, but separate, documentation. Such records might include contract specifications for a pressure test of a line segment complemented by field logs or purchase orders with pipe specifications verified by metallurgical tests of coupons pulled from the same pipe segment.

Additionally, PHMSA is clarifying the performance-based risk assessment aspects of the IM regulations in this final rule by specifying that operators must perform risk assessments that are adequate for evaluating the effects of interacting threats; determine additional P&M measures needed; analyze how a potential failure could affect HCAs, including the consequences of the entire worst-case incident scenario from initial failure to incident termination; identify the contribution to risk of each risk factor, or each unique combination of risk factors that interact or simultaneously contribute to risk at a common location; account for, and compensate for, uncertainties in the model and the data used in the risk assessment; and evaluate risk reduction associated with candidate risk reduction activities, such as P&M measures.

In consideration of NTSB recommendation P–11–18, PHMSA is adopting regulations that require operators to validate their risk models considering incident, leak, and failure history and other historical information. These features are currently requirements because they are incorporated by reference in ASME/ANSI B31.8S. However, PHMSA has found that provisions incorporated directly into its regulatory text have higher levels of compliance. The final rule also amends the requirements for plastic pipe to provide specific examples of integrity threats for plastic pipe that must be addressed.

Section 192.923 How is direct assessment used and for what threats?

This final rule incorporates by reference NACE SP0206–2006, ''Internal Corrosion Direct Assessment Methodology for Pipelines Carrying Normally Dry Natural Gas,'' for addressing ICDA, and NACE SP0204–2008, ''Stress Corrosion Cracking Direct Assessment,'' for addressing SCCDA. Accordingly, PHMSA has revised § 192.923(b)(2) and (3) to require operators comply with these standards.

Section 192.927 What are the requirements for using internal Corrosion Direct Assessment (ICDA)?

Section 192.927 specifies requirements for gas transmission pipeline operators who use ICDA for IM assessments. The requirements in § 192.927 were promulgated before NACE SP0206–2006 was published and require that operators follow ASME/ANSI B31.8S provisions related to ICDA. PHMSA has reviewed NACE SP0206–2006 and finds that it is more comprehensive and rigorous than either § 192.927 or ASME/ANSI B31.8S in many respects. Therefore, PHMSA is incorporating NACE SP0206–2006 into the regulations for the performance of ICDA and is establishing additional requirements for addressing covered segments within the technical process defined by the NACE standard.

This final rule requires that operators perform two direct examinations within each covered segment the first time ICDA is performed. These examinations are in addition to those required to comply with the NACE standard. The additional examinations are consistent with the current requirement in § 192.927(c)(5)(ii) that operators apply more restrictive criteria when conducting ICDA for the first time and are intending to verify, within the HCA, that the results of applying the process of NACE SP0206–2006 for the ICDA are acceptable. Applying the process for NACE SP0206–2006 requires more precise knowledge of the pipeline orientation (particularly slope) than operators may have in many cases. Conducting examinations within the HCA during the first application of ICDA will verify that applying the ICDA process provides an operator with adequate information about the covered segment. Operators who identify internal corrosion on these additional examinations, even though excavations at locations determined using NACE SP0206–2006 did not identify any internal corrosion, will know that improvements are needed to their knowledge of pipeline orientation. In addition, operators will know they need other adjustments to their application of the NACE standard to the covered segment for using ICDA in the future. Section 192.927(b) and (c) are revised in this final rule to address these issues.

PHMSA notes that, for these requirements, operators are prohibited from using assumed pipeline or operational data. Any data an operator

[52] ''Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)''; 68 FR 69778 (Dec. 15, 2003). See 68 FR 69789.

uses for its ICDA process should be based on known information, such as the pipeline route, the pipeline diameter, and pipeline flow inputs and outputs. Operators can choose to base their ICDA process on data that is more conservative than their known pipeline or operational data.

Section 192.929 What are the requirements for using Direct Assessment for Stress Corrosion Cracking (SCCDA)?

Section 192.929 specifies requirements for gas transmission pipeline operators who use SCCDA for IM assessments. The requirements in § 192.929 were promulgated before NACE Standard Practice SP0204–2008 was published, and the standard requires that operators follow Appendix A3 of ASME/ANSI B31.8S. That appendix provides some guidance for conducting SCCDA but is limited to SCC that occurs in high-pH environments. Experience has shown that pipelines can also experience SCC degradation in areas where the surrounding soil has a pH near neutral (referred to as near-neutral SCC). NACE SP0204–2008 addresses near-neutral SCC as well as high-pH SCC. NACE SP0204–2008 also provides technical guidelines and process requirements that are both more comprehensive and rigorous for conducting SCCDA than § 192.929 or ASME/ANSI B31.8S.

Since NACE SP0204–2008 provides comprehensive guidelines on conducting SCCDA and is more comprehensive in scope than Appendix A3 of ASME/ANSI B31.8S, PHMSA has concluded the quality and consistency of SCCDA conducted under IM requirements would be improved by requiring operators to use NACE SP0204–2008. The final rule accomplishes this.

Section 192.933 What actions must be taken to address integrity issues?

Section 192.933 specifies injurious anomalies and defects that operators must remediate and the timeframes within which such remediation must occur. PHMSA determined that the existing regulations for repair criteria had gaps, as some injurious anomalies and defects were not listed as requiring remediation in a timely manner commensurate with their seriousness. To remedy this, in this final rule, PHMSA is designating the following types of defects as immediate conditions: (1) anomalies where the metal loss is greater than 80 percent of nominal wall thickness; (2) metal loss anomalies with a predicted failure pressure less than or equal to 1.1 times the MAOP; (3) a topside dent that has metal loss, cracking, or a stress riser; (4) anomalies where there is an indication of metal loss affecting certain longitudinal seams; and (5) cracks or crack-like anomalies meeting specified criteria.

The final rule also designates the following types of defects as 1-year conditions: (1) smooth topside dents with a depth greater than 6 percent of the pipeline diameter; (2) dents greater than 2 percent of the pipeline diameter that are located at a girth weld or spiral seam weld; (3) a bottom-side dent that has metal loss, cracking, or a stress riser; (4) metal loss anomalies where a calculation of the remaining strength of the pipe shows a predicted failure pressure ratio less than or equal to 1.39 for Class 2 locations, and 1.50 for Class 3 locations and Class 4 locations; (5) anomalies where there is metal loss that is at a crossing of another pipeline, is in an area with widespread circumferential corrosion, or is in an area that could affect a girth weld, and that has a predicted failure pressure less than 1.39 in Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, and less than 1.50 times the MAOP in all other Class 2 locations and all Class 3 and 4 locations; (6) anomalies where there is metal loss affecting a longitudinal seam; and (7) any indications of cracks or crack-like defects other than those listed as an immediate condition.

In this final rule, PHMSA is also adding requirements for addressing regulatory gaps related to the methods for calculating predicted failure pressure if metal loss exceeds 80 percent of wall thickness; time-sensitive integrity threats including corrosion affecting a longitudinal seam, especially those associated with seam types that are known to be susceptible to latent manufacturing defects, such as the failed pipe at San Bruno,[53] and selective seam weld corrosion; and the fact that the current regulations do not list SCC as an immediate condition even though it is listed in ASME/ANSI B31.8S as an immediate repair condition.

With respect to SCC, PHMSA has incorporated repair criteria to specify that operators must use engineering assessment techniques specified in § 192.712 to evaluate if cracks or crack-like anomalies should be categorized as an ''immediate'' condition, a ''1-year'' condition, or a ''monitored'' condition. PHMSA believes that this will help address NTSB recommendation P–12–3, which resulted from the investigation of the Enbridge accident near Marshall, MI.[54] Although the NTSB recommendation was specifically made for hazardous liquid pipelines regulated under part 195, SCC can affect gas transmission pipelines regulated under part 192 as well.

The current regulations do not include 1-year conditions for metal loss anomalies. For non-immediate conditions, the regulations direct operators to use Figure 4 in ASME/ANSI B31.8S to determine the repair criteria for metal loss anomalies that do not meet the ''immediate'' threshold. To address this gap, PHMSA is including certain metal loss anomalies in the list of 1-year conditions. These changes make the gas transmission repair criteria more consistent with the hazardous liquid repair criteria at 49 CFR 195.452(h).

PHMSA is also incorporating safety factors commensurate with the class location in which the pipeline is located to make 1-year conditions anomalies where the predicted failure pressure is less than or equal to 1.39 times MAOP in Class 2 locations, and 1.50 times MAOP in Class 3 and Class 4 locations in HCAs. Operators must continue to use ASME/ANSI B31.8S, Figure 4 for corrosion metal loss anomalies in Class 1 locations.

Additionally, the NTSB recommended that PHMSA revise the ''discovery of condition'' at 49 CFR 195.452(h)(2) to require, in cases where a determination about pipeline threats has not been obtained within 180 days following the date of inspection, that pipeline operators notify PHMSA and provide an expected date when adequate information will become available.[55] PHMSA incorporated this NTSB recommendation into §§ 195.416(f) and 195.452(h)(2) of the ''Safety of Hazardous Liquid Pipelines'' final rule, which was published on October 1, 2019.[56]

Although the NTSB made the recommendation for hazardous liquid pipelines regulated under part 195, the issue applies to gas transmission pipelines regulated under part 192 as well. Accordingly, PHMSA has

[53] These seam types include seams formed by direct current, low- or high-frequency electric resistance welding, electric flash welding, or with a longitudinal joint factor less than 1.0, and where the predicted failure pressure, determined in accordance with § 192.712(d), is less than 1.25 times the MAOP.

[54] See NTSB Recommendation P–12–3, available at *https://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-003.*

[55] NTSB Recommendation P–12–4, available at *https://www.ntsb.gov/safety/safety-recs/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-004.*

[56] See 84 FR 52260.

amended paragraph (b) of § 192.933 to require that operators notify PHMSA whenever the operator cannot obtain sufficient information to determine if a condition presents a potential threat to the integrity of the pipeline within 180 days of completing the assessment.

PHMSA is also finalizing requirements for the *in situ* evaluation of cracks and crack-like defects using in-the-ditch tools whenever an operator discovers conditions that need to be repaired, such as when an ILI, an SCCDA, a pressure test failure, or another assessment identifies such anomalies. This applies to IM pipelines the same requirement adopted in § 192.714(g) for non-IM pipelines.

Section 192.935 What additional preventive and mitigative measures must an operator take?

Section 192.935 requires an operator to take additional measures beyond those already required by part 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in an HCA. An operator must conduct a risk analysis to identify the additional measures to protect the HCA and improve public safety. As discussed earlier, PHMSA is amending § 192.917 to clarify the guidance for risk analyses operators use to evaluate and select additional P&M measures. This final rule also adds specific enhanced measures for operators to use for managing internal and external corrosion in HCAs and expands the list of P&M measures operators must consider when providing for public safety.

Specifically, operators must explicitly consider the following P&M measures:

(i) Correcting the root causes of past incidents in order to prevent recurrence;

(ii) O&M processes that maintain safety and the pipeline MAOP;

(iii) Adequate resources for the successful execution of these activities within the required timeframe;

(iv) Pressure transmitters that communicate with the pipeline control center on both sides of automatic shut-off valves and remote-control valves;

(v) Additional right-of-way patrols;

(vi) Hydrostatic tests in areas where pipeline material has quality issues or records that are not traceable, verifiable, and complete;

(vii) Tests to determine unknown material, mechanical, or chemical properties that are needed to ensure pipeline integrity or substantiate MAOP, including material property tests from removed pipe that is representative of the in-service pipeline;

(viii) The re-coating of damaged, poorly performing, or disbonded coatings, and

(ix) Additional depth-of-cover surveys at roads, streams, and rivers, among other areas.

These P&M measures do not alter the fundamental requirement for operators to identify and implement P&M measures; rather, they provide additional guidance and clarify PHMSA's expectations with this important aspect of IM.

Section 29 of the 2011 Pipeline Safety Act requires operators to consider seismicity when evaluating threats. In the 2019 Gas Transmission Rule, PHMSA revised § 192.917 to include seismicity as a potential threat for operators to identify and evaluate. In this final rule, PHMSA is revising this section to require operators consider the seismicity of the area when evaluating additional P&M measures against the threat of outside force damage.

Section 192.941 What is a low stress reassessment?

Section 192.941 specifies that, to address the threat of external corrosion on cathodically protected pipe in an HCA segment, an operator must perform an electrical survey (*i.e.,* with an indirect examination tool or method) at least every 7 years. In this final rule, PHMSA is replacing the term ''electrical survey'' with ''indirect assessment'' to accommodate other techniques that are comparably effective.

V. Standards Incorporated by Reference

A. Summary of New and Revised Standards

Consistent with the amendments in this document, PHMSA is incorporating by reference into the PSR several standards as described below. Some of these standards are already incorporated by reference into the PSR and are being extended to other sections of the regulations. Other standards provide a technical basis for corresponding regulatory changes in this final rule.

- NACE Standard Practice 0204–2008, ''Stress Corrosion Cracking (SCC) Direct Assessment Methodology'' (Sept. 18, 2008).

This standard addresses the situation in which a portion of a pipeline has been identified as an area of interest with respect to SCC based on its history, operations, and risk assessment process, and it has been decided that direct assessment is an appropriate approach for integrity assessment. The incorporation of this standard into the PSR would provide guidance for managing SCC through the selection of potential pipeline segments, selecting dig sites within those segments, inspecting the pipe, collecting and analyzing data during the dig, establishing a mitigation program, defining the re-evaluation interval, and evaluating the effectiveness of the SCCDA process.

- NACE Standard Practice 0206–2006, ''Internal Corrosion Direct Assessment Methodology for Pipelines Carrying Normally Dry Natural Gas'' (DG–ICDA) (Dec. 1, 2006).

This standard practice formalizes an internal corrosion direct assessment method (DG–ICDA) that can be used to help ensure pipeline integrity for pipelines carrying normally dry natural gas. The method is applicable to natural gas pipelines that normally carry dry gas but that may suffer from infrequent, short-term upsets of liquid water (or other electrolyte). This standard is intended for use by pipeline operators and others who manage pipeline integrity. The basis of DG–ICDA is a detailed examination of locations along a pipeline where water would first accumulate and provides information about the downstream condition of the pipeline. If the locations along a length of pipe most likely to accumulate water have not corroded, other downstream locations less likely to accumulate water may be considered free from corrosion. The presence of extensive corrosion found at many locations during the evaluation suggests that the transported gas was not normally dry, and this standard would not be considered applicable.

- ASME/ANSI B31.8S–2004, ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines'' (Jan. 14, 2005).

This standard covers onshore gas pipeline systems constructed with ferrous materials, including pipe, valves, appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. ASME/ANSI B31.8S is specifically designed to provide the operator with the information necessary to develop and implement an effective IM program using proven industry practices and processes. Effective system management can decrease repair and replacement costs, prevent malfunctions, and minimize system downtime.

The incorporation by reference of ASME/ANSI B31.8S–2004 was approved for §§ 192.921 and 192.937 as of January 14, 2004. That approval is unaffected by the section revisions in this final rule.

- ANSI/NACE Standard Practice 0502–2010, ''Pipeline External Corrosion Direct Assessment Methodology'' (June 24, 2010).

This standard covers the NACE external corrosion direct assessment (ECDA) process, which assesses and

reduces the impact of external corrosion on pipeline integrity. ECDA is a continuous-improvement process providing the advantages of locating areas where defects can form in the future, not just areas where defects have already formed, thereby helping to prevent future external corrosion damage. This standard covers the four components of ECDA: Pre-Assessment, Indirect Inspections, Direct Examinations, and Post-Assessment.

The incorporation by reference of ANSI/NACE Standard Practice 0502–2010 was approved for §§ 192.923, 192.925, 192.931, 192.935, and 192.939 as of March 6, 2015. That approval is unaffected by the section revisions in this final rule.

The incorporation by reference of R–STRENG and ASME/ANSI B31G in certain sections of this rule was approved July 1, 2020, and remains unaffected by the revisions in this final rule.

B. Availability of Standards Incorporated by Reference

PHMSA currently incorporates by reference into 49 CFR parts 192, 193, and 195 all or parts of more than 80 standards and specifications developed and published by standard developing organizations (SDO). In general, SDOs update and revise their published standards every 2 to 5 years to reflect modern technology and best technical practices.

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113; NTTAA) directs Federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government-written standards whenever possible. Voluntary consensus standards bodies develop, establish, or coordinate technical standards using agreed-upon procedures. In addition, the Office of Management and Budget (OMB) issued Circular A–119 to implement section 12(d) of the NTTAA relative to the utilization of consensus technical standards by Federal agencies.[57] This circular provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the NTTAA.

Accordingly, PHMSA has the responsibility for determining, via petitions or otherwise, which currently referenced standards should be updated, revised, or removed, and which standards should be added to the PSR. Revisions to materials incorporated by reference in the PSR are handled via the rulemaking process, which allows for the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials.

Pursuant to 49 U.S.C. 60102(p), PHMSA may not issue PSR amendments that incorporate by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge. Further, the Office of the Federal Register issued a rulemaking on November 7, 2014, revising 1 CFR 51.5(b) to require that agencies detail in the preamble of a final rulemaking the ways the materials it incorporates by reference are reasonably available to interested parties, and how interested parties can obtain those materials.[58]

To meet its statutory obligation for this rulemaking, PHMSA negotiated agreements with SDOs to provide free online access to standards that are incorporated by reference or proposed to be incorporated by reference. PHMSA will also provide individual members of the public temporary access to any standard that is incorporated by reference. Requests for access can be sent to the following email address: *phmsaphpstandards@dot.gov;* please include your phone number, physical address, and an email address and PHMSA will respond within 5 business days and provide access to the standard. PHMSA also notes that standards incorporated by reference in the PSR can be obtained from the organization developing each standard. Section 192.7 provides the contact information for each of those standard-developing organizations.

VI. Regulatory Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the existing authorities of the Secretary of Transportation delegated to the PHMSA Administrator pursuant to 49 CFR 1.97. Among the statutory authorities delegated to PHMSA are section 60102 of the Federal Pipeline Safety Statutes (49 U.S.C. 60101 *et seq.*) (authorizing issuance of regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities) and section 28 of the Mineral Leasing Act, as amended (30 U.S.C. 185(w)(3)). For a complete listing of authorities, see 49 CFR 1.97.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review'')[59] requires that agencies ''should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' Agencies should consider quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Further, Executive Order 12866 requires that agencies ''should maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.'' Similarly, DOT Order 2100.6A (''Rulemaking and Guidance Procedures'') requires that regulations issued by PHMSA and other DOT Operating Administrations should consider an assessment of the potential benefits, costs, and other important impacts of the proposed action and should quantify (to the extent practicable) the benefits, costs, and any significant distributional impacts, including any environmental impacts. The Federal Pipeline Safety Statutes at 49 U.S.C. 60102(b)(5) further authorize only those safety requirements whose benefits (including safety and environmental benefits) have been determined to justify their costs.

This action has been determined to be significant under Executive Order 12866. It is also considered significant under DOT Order 2100.6A because of significant congressional, State, industry, and public interest in pipeline safety. The final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 and is consistent with the requirements of Executive Order 12866, 49 U.S.C. 60102(b)(5), and DOT Order 2100.6. The Office of Information and Regulatory Affairs (OIRA) has not designated this rule as a ''major rule'' as defined by the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order 12866 and DOT Order 2100.6A also require PHMSA to provide a meaningful opportunity for public participation, which also reinforces requirements for notice and comment under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Therefore, in the NPRM, PHMSA sought public comment on its proposed revisions to the PSR and the preliminary cost and benefit analyses in the PRIA, as

[57] 81 FR 4673 (Jan. 27, 2016).

[58] 79 FR 66278.

[59] 58 FR 51735 (Oct. 4, 1993).

well as any information that could assist in quantifying the costs and benefits of this rulemaking. Those comments are addressed in this final rule, and additional discussion about the costs and benefits of the final rule are provided within the RIA posted in the rulemaking docket.

The table below summarizes the annualized costs for the provisions in the final rule. These estimates reflect the timing of the compliance actions taken by operators and are annualized, where applicable, over 20 years and discounted using rates of 3 percent and 7 percent. PHMSA estimates incremental costs for the final requirements in section 5 of the RIA. The costs of this final rule reflect MOC process improvements, additional corrosion control requirements, programmatic changes related to inspections following extreme weather events, and compliance with the revised repair criteria. PHMSA finds that the other final rule requirements will not result in an incremental cost. PHMSA estimates the annualized cost of this rule is $16.7 million at a 7 percent discount rate.

TABLE 1—ANNUALIZED COST OF THE FINAL RULE, YEAR 1–YEAR 20

[$2019 USD thousands]

Provision	Discount rate	
	3%	7%
Integrity Management Process Improvements *	$0	$0
Management of Change Process Improvements	1,194	1,223
Corrosion Control	8,662	8,998
Extreme Weather	55	78
Repair Criteria	2,725	6,357
Total	12,637	16,656

* No incremental costs are estimated for this topic area.

The benefits of the final rule consist of improved safety and avoided environmental harms (including greenhouse gas emissions) from reduction of risk of incidents on natural gas pipelines and will depend on the degree to which compliance actions result in additional safety measures, relative to the baseline, and the effectiveness of these measures in preventing or mitigating future pipeline releases or other incidents. PHMSA changed its benefit analysis approach for the RIA relative to the PRIA. The PRIA quantified and monetized the NPRM's benefits, while the RIA does not monetize this final rule's benefits. PHMSA chose not to monetize benefits in the RIA based on the public comments received in response to the PRIA and the uncertainty associated with quantifying changes in incident rates that can be explicitly attributed to the final rule's provisions.

For more information, please see the RIA posted in the rulemaking docket.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for any final rule subject to notice-and-comment rulemaking under the APA unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule was developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') [60] to promote compliance with the Regulatory Flexibility Act and to ensure that the potential impacts of the rulemaking on small entities has been properly considered.

PHMSA prepared a FRFA, which is available in the docket for the rulemaking. In it, PHMSA certifies that the rule will not have a significant impact on a substantial number of small entities.

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

PHMSA analyzed this final rule per the principles and criteria in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') [61] and DOT Order 5301.1 (''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes''). Executive Order 13175 requires agencies to assure meaningful and timely input from Tribal Government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Tribes.

PHMSA assessed the impact of the rulemaking and determined that it would not significantly or uniquely affect Tribal communities or Tribal governments. The rulemaking's regulatory amendments are facially neutral and would have broad, national scope; PHMSA, therefore, does not expect this rulemaking to significantly or uniquely affect Tribal communities, much less impose substantial compliance costs on Native American Tribal governments or mandate Tribal action. And insofar as PHMSA expects the rulemaking will improve transmission pipeline safety and environmental risks, PHMSA does not expect it would entail disproportionately high adverse risks for Tribal communities. PHMSA also received no comments alleging ''substantial direct compliance costs'' or ''substantial direct effects'' on Tribal communities and Governments. For these reasons, PHMSA has determined the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 do not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Pursuant to implementing regulations at 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests.

On April 8, 2016, PHMSA published an NPRM seeking public comments on proposed revisions of the PSR

[60] 68 FR 7990 (Feb. 19, 2003).

[61] 65 FR 67249 (Nov. 6, 2000).

applicable to the safety of gas transmission pipelines and gas gathering pipelines. Based on the provisions in the NPRM, PHMSA proposed corresponding changes to information collections. PHMSA determined it would be more effective to first advance a rulemaking that focused on the mandates from the 2011 Pipeline Safety Act and subsequently split out the other provisions contained in the NPRM into three separate rules. As such, in this rulemaking, PHMSA has removed all references to the changes in the information collections covered in those other rulemakings. PHMSA will submit information collection revision requests to OMB based on the requirements contained within this final rule.

PHMSA estimates that the proposals in this final rule will involve new and amended information collections as described below. The following information is provided for each information collection: (1) title of the information collection; (2) OMB control number; (3) current expiration date; (4) type of request; (5) abstract of the information collection activity; (6) description of affected public; (7) estimate of total annual reporting and recordkeeping burden; and (8) frequency of collection. Relevant information collections consist of the following:

1. Title: Record Keeping Requirements for Gas Pipeline Operators.

OMB Control Number: 2137–0049.

Current Expiration Date: 3/31/2025.

Abstract: A person owning or operating a natural gas pipeline facility is required to maintain records, make reports, and provide information to the Secretary of Transportation upon request. Based on the proposed revisions in this final rule, 16 new recordkeeping requirements are being added to the pipeline safety regulations for owners and operators of gas transmission pipelines. PHMSA expects these new mandatory recordkeeping requirements to result in 1,902 responses and 9,530 burden hours.

Affected Public: Gas Transmission Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 3,863,374.

Total Annual Burden Hours: 1,686,560.

Frequency of Collection: On occasion.

2. Title: Notification Requirements for Gas Transmission Pipelines.

OMB Control Number: 2137–0636.

Current Expiration Date: 01/31/2023.

Abstract: A person owning or operating a natural gas pipeline facility is required to provide information to the Secretary of Transportation at the Secretary's request in accordance with 49 U.S.C. 60117. The regulations in 49 CFR part 192 require operators to make various notifications upon the occurrence of certain events. Based on the proposed revisions in this final rule, 6 new notification requirements are being added to the PSR for owners and operators of gas transmission pipelines. PHMSA expects these revisions to result in 268 additional responses and 290 additional burden hours for this information collection. These mandatory notification requirements are necessary to ensure safe operation of transmission pipelines, ascertain compliance with gas pipeline safety regulations, and to provide a background for incident investigations.

Affected Public: Gas Transmission Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 990.

Total Annual Burden Hours: 1,360.

Frequency of Collection: On occasion.

3. Title: Annual Reports for Gas Pipeline Operators

OMB Control Number: 2137–0522.

Current Expiration Date: 3/31/2025.

Abstract: This information collection covers the collection of annual report data from natural gas pipeline operators. PHMSA is revising the Gas Transmission and Gas Gathering Annual Report (form PHMSA F7 100.2–1) to collect more granular data on conditions being repaired outside of HCA segments. Operators currently provide the number of anomalies outside of HCAs based on assessment methods, however, PHMSA requires operators to further categorize the data in accordance with 49 CFR 192.713. Based on the proposed revisions, PHMSA estimates that it will take an additional 30 minutes per report to include the newly required data—increasing the burden for completing each annual report to 47.5 hours. This change results in an overall burden increase of 905 hours for this information collection.

Affected Public: Natural Gas Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 3,053.

Total Annual Burden Hours: 95,521.

Frequency of Collection: On occasion.

Requests for copies of these information collections should be directed to Angela Hill or Cameron Satterthwaite, Office of Pipeline Safety (PHP–30), Pipeline Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001, Telephone (202) 366–4595.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any NPRM or final rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

As explained in the RIA, PHMSA determined that this final rule does not impose enforceable duties on State, local, or Tribal governments or on the private sector of $100 million or more (in 1996 dollars) in any one year. A copy of the RIA is available for review in the docket.

G. National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.,* NEPA), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality implementing regulations (40 CFR parts 1500–1508) require Federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) probable environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. DOT Order 5610.1C (''Procedures for Considering Environmental Impacts'') establishes departmental procedures for evaluation of environmental impacts under NEPA and its implementing regulations.

PHMSA has completed its NEPA analysis. Based on the environmental assessment, PHMSA determined that an environmental impact statement is not required for this rulemaking because it will not have a significant impact on the human environment. The final EA and Finding of No Significant Impact have been placed into the docket addressing the comments received.

H. Executive Order 13132

PHMSA analyzed this final rule in accordance with Executive Order 13132 (''Federalism'').[62] Executive Order

[62] 64 FR 43255 (Aug.10, 1999).

13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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.''

The final rule does not have a substantial direct effect on the State and local governments, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. This rulemaking action does not impose substantial direct compliance costs on State and local governments. Section 60104(c) of the Federal Pipeline Safety Statutes prohibits certain State safety regulation of interstate pipelines. Under the Federal Pipeline Safety Statutes, States can augment pipeline safety requirements for intrastate pipelines regulated by PHMSA but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility that PHMSA does not regulate. In this instance, the preemptive effect of the final rule is limited to the minimum level necessary to achieve the objectives of the pipeline safety laws under which the final rule is promulgated. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

I. Executive Order 13211

Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') [63] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Executive Order 13211 defines a ''significant energy action'' as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies); or (2) is designated by the Administrator of the OIRA as a significant energy action.

This final rule is a significant action under Executive Order 12866; however, it is expected to have an annual effect on the economy of less than $100 million. Further, this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy in the United States. The Administrator of OIRA has not designated the final rule as a significant energy action. For additional discussion of the anticipated economic impact of this rulemaking, please review the RIA posted in the rulemaking docket.

J. Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement [64] at: *https://www.govinfo.gov/content/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

K. Executive Order 13609 and International Trade Analysis

Executive Order 13609 (''Promoting International Regulatory Cooperation'') [65] requires agencies consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public. PHMSA has assessed the effects of the rulemaking and determined that it will not cause unnecessary obstacles to foreign trade.

L. Environmental Justice

DOT Order 5610.2(b) and Executive Orders 12898 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''),[66] 13985 (''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government''),[67] 13990 (''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis''),[68] and 14008 (''Tackling the Climate Crisis at Home and Abroad'') [69] require DOT operational administrations to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations, low-income populations, and other underserved disadvantaged communities.

PHMSA has evaluated this final rule under DOT Order 5610.2(b) and the Executive Orders listed above and determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations, low-income populations, and other underserved and disadvantaged communities. The rulemaking is facially neutral and national in scope; it is neither directed toward a particular population, region, or community, nor is it expected to adversely impact any particular population, region, or community. And insofar as PHMSA expects the rulemaking would reduce the safety and environmental risks associated with natural gas transmission pipelines, many of which are located in the vicinity of environmental justice communities,[70] PHMSA expects the regulatory amendments introduced by this final rule would reduce adverse human health and environmental risks for minority populations, low-income populations, and other underserved and other disadvantaged communities in the vicinity of those pipelines. Lastly, as

[63] 66 FR 28355 (May 18, 2001).

[64] 65 FR 19476 (Apr. 11, 2000).

[65] 77 FR 26413 (May 4, 2012).

[66] 59 FR 7629 (Feb. 16, 1994).

[67] 86 FR 7009 (Jan. 20, 2021).

[68] 86 FR 7037 (Jan. 20, 2021).

[69] 86 FR 7619 (Feb. 1, 2021).

[70] See Ryan Emmanuel, et al., ''Natural Gas Gathering and Transmission Pipelines and Social Vulnerability in the United States,'' 5:6 GeoHealth (June 2021), *https://agupubs.onlinelibrary.wiley.com/toc/24711403/2021/5/6* (concluding that natural gas gathering and transmission infrastructure is disproportionately sited in socially-vulnerable communities).

explained in the final EA, PHMSA expects that the regulatory amendments in this final rule will yield GHG emissions reductions, thereby reducing the risks posed by anthropogenic climate change to minority, low-income, underserved, and other disadvantaged populations and communities.

List of Subjects in 49 CFR Part 192

Corrosion control, Incorporation by reference, Installation of pipe in a ditch, Integrity management, Internal inspection device, Management of change, Pipeline safety, Repair criteria, Surveillance.

In consideration of the foregoing, PHMSA amends 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.,* and 49 CFR 1.97.

■ 2. In § 192.3:
■ a. Add definitions for ''Close interval survey'', ''Distribution center'', ''Dry gas or dry natural gas'', ''Hard spot'', ''In-line inspection (ILI)'', and ''In-line inspection tool or instrumented internal inspection device'' in alphabetical order;
■ b. Revise the definition for ''Transmission line''; and
■ c. Add the definition ''Wrinkle bend'' in alphabetical order.

The additions and revision read as follows:

§ 192.3 Definitions.

* * * * *

Close interval survey means a series of closely and properly spaced pipe-to-electrolyte potential measurements taken over the pipe to assess the adequacy of cathodic protection or to identify locations where a current may be leaving the pipeline that may cause corrosion and for the purpose of quantifying voltage (IR) drops other than those across the structure electrolyte boundary, such as when performed as a current interrupted, depolarized, or native survey.

* * * * *

Distribution center means the initial point where gas enters piping used primarily to deliver gas to customers who purchase it for consumption, as opposed to customers who purchase it for resale, for example:

(1) At a metering location;

(2) A pressure reduction location; or

(3) Where there is a reduction in the volume of gas, such as a lateral off a transmission line.

* * * * *

Dry gas or dry natural gas means gas above its dew point and without condensed liquids.

* * * * *

Hard spot means an area on steel pipe material with a minimum dimension greater than two inches (50.8 mm) in any direction and hardness greater than or equal to Rockwell 35 HRC (Brinell 327 HB or Vickers 345 HV_{10}).

* * * * *

In-line inspection (ILI) means an inspection of a pipeline from the interior of the pipe using an inspection tool also called *intelligent* or *smart pigging.* This definition includes tethered and self-propelled inspection tools.

In-line inspection tool or *instrumented internal inspection device* means an instrumented device or vehicle that uses a non-destructive testing technique to inspect the pipeline from the inside in order to identify and characterize flaws to analyze pipeline integrity; also known as an *intelligent* or *smart pig.*

* * * * *

Transmission line means a pipeline or connected series of pipelines, other than a gathering line, that:

(1) Transports gas from a gathering pipeline or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center;

(2) Has an MAOP of 20 percent or more of SMYS;

(3) Transports gas within a storage field; or

(4) Is voluntarily designated by the operator as a transmission pipeline.

Note 1 to *transmission line.* A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

* * * * *

Wrinkle bend means a bend in the pipe that:

(1) Was formed in the field during construction such that the inside radius of the bend has one or more ripples with:

(i) An amplitude greater than or equal to 1.5 times the wall thickness of the pipe, measured from peak to valley of the ripple; or

(ii) With ripples less than 1.5 times the wall thickness of the pipe and with a wrinkle length (peak to peak) to wrinkle height (peak to valley) ratio under 12.

(2)(i) If the length of the wrinkle bend cannot be reliably determined, then wrinkle bend means a bend in the pipe where (h/D)*100 exceeds 2 when S is less than 37,000 psi (255 MPa), where (h/D)*100 exceeds for psi [for MPa] when S is greater than 37,000 psi (255 MPa) but less than 47,000 psi (324 MPa), and where (h/D)*100 exceeds 1 when S is 47,000 psi (324 MPa) or more.

(ii) Where:

(A) D = Outside diameter of the pipe, in. (mm);

(B) h = Crest-to-trough height of the ripple, in. (mm); and

(C) S = Maximum operating hoop stress, psi (S/145, MPa).

■ 3. In § 192.7:
■ a. Revise paragraphs (a) and (c)(6);
■ b. Redesignate paragraph (h)(1) as paragraph (h)(4) and paragraph (h)(2) as paragraph (h)(1);
■ c. Add new paragraph (h)(2) and paragraph (h)(3); and
■ d. Revise newly redesignated paragraph (h)(4).

The revisions and additions read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–4046, *https://www.phmsa.dot.gov/pipeline/regs,* and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* It is also available from the sources in the following paragraphs of this section.

* * * * *

(c) * * *

(6) ASME/ANSI B31.8S–2004, ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines,'' approved January 14, 2005, (ASME/ANSI B31.8S), IBR approved for §§ 192.13(d); 192.714(c) and (d); 192.903 note to *potential impact radius;* 192.907 introductory text and (b); 192.911 introductory text, (i), and (k) through (m); 192.913(a) through (c); 192.917(a) through (e); 192.921(a); 192.923(b); 192.925(b); 192.927(b) and (c); 192.929(b); 192.933(c) and (d); 192.935(a) and (b); 192.937(c); 192.939(a); and 192.945(a).

* * * * *

(h) * * *

(2) NACE SP0204–2008, Standard Practice, ''Stress Corrosion Cracking (SCC) Direct Assessment Methodology,'' reaffirmed September 18, 2008, (NACE SP0204); IBR approved for §§ 192.923(b); 192.929(b) introductory text, (b)(1) through (3), (b)(5) introductory text, and (b)(5)(i).

(3) NACE SP0206–2006, Standard Practice, ''Internal Corrosion Direct Assessment Methodology for Pipelines Carrying Normally Dry Natural Gas (DG–ICDA),'' approved December 1, 2006, (NACE SP0206), IBR approved for §§ 192.923(b); 192.927(b), (c) introductory text, and (c)(1) through (4).

(4) ANSI/NACE SP0502–2010, Standard Practice, ''Pipeline External Corrosion Direct Assessment Methodology,'' revised June 24, 2010, (NACE SP0502), IBR approved for §§ 192.319(f); 192.461(h); 192.923(b); 192.925(b); 192.931(d); 192.935(b); and 192.939(a).

* * * * *

■ 4. In § 192.9, paragraphs (b), (c), (d)(1) and (2), and (e)(1)(i) and (ii) are revised to read as follows:

§ 192.9 What requirements apply to gathering pipelines?

* * * * *

(b) *Offshore lines.* An operator of an offshore gathering line must comply with requirements of this part applicable to transmission lines, except the requirements in §§ 192.13(d), 192.150, 192.285(e), 192.319(d) through (g), 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.478, 192.485(c), 192.493, 192.506, 192.607, 192.613(c), 192.619(e), 192.624, 192.710, 192.712, and 192.714 and in subpart O of this part.

(c) *Type A lines.* An operator of a Type A regulated onshore gathering line must comply with the requirements of this part applicable to transmission lines, except the requirements in §§ 192.13(d), 192.150, 192.285(e), 192.319(d) through (g), 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.478, 192.485(c) 192.493, 192.506, 192.607, 192.613(c), 192.619(e), 192.624, 192.710, 192.712, and 192.714 and in subpart O of this part. However, an operator of a Type A regulated onshore gathering line in a Class 2 location may demonstrate compliance with subpart N of this part by describing the processes it uses to determine the qualification of persons performing operations and maintenance tasks.

(d) * * *

(1) If a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection, and initial testing must be in accordance with requirements of this part applicable to transmission lines. Compliance with §§ 192.67, 192.127, 192.179(e) and (f), 192.205, 192.227(c), 192.285(e), 192.319(d) through (g), 192.506, 192.634, and 192.636 is not required;

(2) If the pipeline is metallic, control corrosion according to requirements of subpart I of this part applicable to transmission lines, except the requirements in §§ 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.478, 192.485(c), and 192.493;

* * * * *

(e) * * *

(1) * * *

(i) Except as provided in paragraph (h) of this section for pipe and components made with composite materials, the design, installation, construction, initial inspection, and initial testing of a new, replaced, relocated, or otherwise changed Type C gathering line, must be done in accordance with the requirements in subparts B through G and J of this part applicable to transmission lines. Compliance with §§ 192.67, 192.127, 192.179(e) and (f), 192.205, 192.227(c), 192.285(e), 192.319(d) through (g), 192.506, 192.634, and 192.636 is not required;

(ii) If the pipeline is metallic, control corrosion according to requirements of subpart I of this part applicable to transmission lines, except the requirements in §§ 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.478, 192.485(c), and 192.493;

* * * * *

■ 5. In § 192.13, paragraph (d) is added to read as follows:

§ 192.13 What general requirements apply to pipelines regulated under this part?

* * * * *

(d) Each operator of an onshore gas transmission pipeline must evaluate and mitigate, as necessary, significant changes that pose a risk to safety or the environment through a management of change process. Each operator of an onshore gas transmission pipeline must develop and follow a management of change process, as outlined in ASME/ANSI B31.8S, section 11 (incorporated by reference, *see* § 192.7), that addresses technical, design, physical, environmental, procedural, operational, maintenance, and organizational changes to the pipeline or processes, whether permanent or temporary. A management of change process must include the following: reason for change, authority for approving changes, analysis of implications, acquisition of required work permits, documentation, communication of change to affected parties, time limitations, and qualification of staff. For pipeline segments other than those covered in subpart O of this part, this management of change process must be implemented by February 26, 2024. The requirements of this paragraph (d) do not apply to gas gathering pipelines. Operators may request an extension of up to 1 year by submitting a notification to PHMSA at least 90 days before February 26, 2024, in accordance with § 192.18. The notification must include a reasonable and technically justified basis, an up-to-date plan for completing all actions required by this section, the reason for the requested extension, current safety or mitigation status of the pipeline segment, the proposed completion date, and any needed temporary safety measures to mitigate the impact on safety.

■ 6. In § 192.18, paragraph (c) is revised to read as follows:

§ 192.18 How to notify PHMSA.

* * * * *

(c) Unless otherwise specified, if an operator submits, pursuant to § 192.8, § 192.9, § 192.13, § 192.179, § 192.319, § 192.461, § 192.506, § 192.607, § 192.619, § 192.624, § 192.632, § 192.634, § 192.636, § 192.710, § 192.712, § 192.714, § 192.745, § 192.917, § 192.921, § 192.927, § 192.933, or § 192.937, a notification for use of a different integrity assessment method, analytical method, compliance period, sampling approach, pipeline material, or technique (*e.g.,* ''other technology'' or ''alternative equivalent technology'') than otherwise prescribed in those sections, that notification must be submitted to PHMSA for review at least 90 days in advance of using the other method, approach, compliance timeline, or technique. An operator may proceed to use the other method, approach, compliance timeline, or technique 91 days after submitting the notification unless it receives a letter from the Associate Administrator for Pipeline Safety informing the operator that PHMSA objects to the proposal or that PHMSA requires additional time and/or more information to conduct its review.

■ 7. In § 192.319, paragraphs (d) through (g) are added to read as follows:

§ 192.319 Installation of pipe in a ditch.

* * * * *

(d) Promptly after a ditch for an onshore steel transmission line is backfilled (if the construction project involves 1,000 feet or more of continuous backfill length along the

pipeline), but not later than 6 months after placing the pipeline in service, the operator must perform an assessment to assess any coating damage and ensure integrity of the coating using direct current voltage gradient (DCVG), alternating current voltage gradient (ACVG), or other technology that provides comparable information about the integrity of the coating. Coating surveys must be conducted, except in locations where effective coating surveys are precluded by geographical, technical, or safety reasons.

(e) An operator must notify PHMSA in accordance with § 192.18 at least 90 days in advance of using other technology to assess integrity of the coating under paragraph (d) of this section.

(f) An operator must repair any coating damage classified as severe (voltage drop greater than 60 percent for DCVG or 70 dBμV for ACVG) in accordance with section 4 of NACE SP0502 (incorporated by reference, *see* § 192.7) within 6 months after the pipeline is placed in service, or as soon as practicable after obtaining necessary permits, not to exceed 6 months after the receipt of permits.

(g) An operator of an onshore steel transmission pipeline must make and retain for the life of the pipeline records documenting the coating assessment findings and remedial actions performed under paragraphs (d) through (f) of this section.

■ 8. In § 192.461, paragraph (a)(4) is revised and paragraphs (f) through (i) are added to read as follows:

§ 192.461 External corrosion control: Protective coating.

(a) * * *

(4) Have sufficient strength to resist damage due to handling (including, but not limited to, transportation, installation, boring, and backfilling) and soil stress; and

* * * * *

(f) Promptly after the backfill of an onshore steel transmission pipeline ditch following repair or replacement (if the repair or replacement results in 1,000 feet or more of backfill length along the pipeline), but no later than 6 months after the backfill, the operator must perform an assessment to assess any coating damage and ensure integrity of the coating using direct current voltage gradient (DCVG), alternating current voltage gradient (ACVG), or other technology that provides comparable information about the integrity of the coating. Coating surveys must be conducted, except in locations where effective coating surveys are precluded by geographical, technical, or safety reasons.

(g) An operator must notify PHMSA in accordance with § 192.18 at least 90 days in advance of using other technology to assess integrity of the coating under paragraph (f) of this section.

(h) An operator of an onshore steel transmission pipeline must develop a remedial action plan and apply for any necessary permits within 6 months of completing the assessment that identified the deficiency. The operator must repair any coating damage classified as severe (voltage drop greater than 60 percent for DCVG or 70 dBμV for ACVG) in accordance with section 4 of NACE SP0502 (incorporated by reference, *see* § 192.7) within 6 months of the assessment, or as soon as practicable after obtaining necessary permits, not to exceed 6 months after the receipt of permits.

(i) An operator of an onshore steel transmission pipeline must make and retain for the life of the pipeline records documenting the coating assessment findings and remedial actions performed under paragraphs (f) through (h) of this section.

■ 9. In § 192.465, the section heading and paragraph (d) are revised and paragraph (f) is added to read as follows:

§ 192.465 External corrosion control: Monitoring and remediation.

* * * * *

(d) Each operator must promptly correct any deficiencies indicated by the inspection and testing required by paragraphs (a) through (c) of this section. For onshore gas transmission pipelines, each operator must develop a remedial action plan and apply for any necessary permits within 6 months of completing the inspection or testing that identified the deficiency. Remedial action must be completed promptly, but no later than the earliest of the following: prior to the next inspection or test interval required by this section; within 1 year, not to exceed 15 months, of the inspection or test that identified the deficiency; or as soon as practicable, not to exceed 6 months, after obtaining any necessary permits.

* * * * *

(f) An operator must determine the extent of the area with inadequate cathodic protection for onshore gas transmission pipelines where any annual test station reading (pipe-to-soil potential measurement) indicates cathodic protection levels below the required levels in appendix D to this part.

(1) Gas transmission pipeline operators must investigate and mitigate any non-systemic or location-specific causes.

(2) To address systemic causes, an operator must conduct close interval surveys in both directions from the test station with a low cathodic protection reading at a maximum interval of approximately 5 feet or less. An operator must conduct close interval surveys unless it is impractical based upon geographical, technical, or safety reasons. An operator must complete close interval surveys required by this section with the protective current interrupted unless it is impractical to do so for technical or safety reasons. An operator must remediate areas with insufficient cathodic protection levels, or areas where protective current is found to be leaving the pipeline, in accordance with paragraph (d) of this section. An operator must confirm the restoration of adequate cathodic protection following the implementation of remedial actions undertaken to mitigate systemic causes of external corrosion.

■ 10. In § 192.473, paragraph (c) is added to read as follows:

§ 192.473 External corrosion control: Interference currents.

* * * * *

(c) For onshore gas transmission pipelines, the program required by paragraph (a) of this section must include:

(1) Interference surveys for a pipeline system to detect the presence and level of any electrical stray current. Interference surveys must be conducted when potential monitoring indicates a significant increase in stray current, or when new potential stray current sources are introduced, such as through co-located pipelines, structures, or high voltage alternating current (HVAC) power lines, including from additional generation, a voltage up-rating, additional lines, new or enlarged power substations, or new pipelines or other structures;

(2) Analysis of the results of the survey to determine the cause of the interference and whether the level could cause significant corrosion, impede safe operation, or adversely affect the environment or public;

(3) Development of a remedial action plan to correct any instances where interference current is greater than or equal to 100 amps per meter squared or if it impedes the safe operation of a pipeline, or if it may cause a condition that would adversely impact the environment or the public; and

(4) Application for any necessary permits within 6 months of completing the interference survey that identified

the deficiency. An operator must complete remedial actions promptly, but no later than the earliest of the following: within 15 months after completing the interference survey that identified the deficiency; or as soon as practicable, but not to exceed 6 months, after obtaining any necessary permits.

■ 11. Section 192.478 is added to read as follows:

§ 192.478 Internal corrosion control: Onshore transmission monitoring and mitigation.

(a) Each operator of an onshore gas transmission pipeline with corrosive constituents in the gas being transported must develop and implement a monitoring and mitigation program to mitigate the corrosive effects, as necessary. Potentially corrosive constituents include, but are not limited to: carbon dioxide, hydrogen sulfide, sulfur, microbes, and liquid water, either by itself or in combination. An operator must evaluate the partial pressure of each corrosive constituent, where applicable, by itself or in combination, to evaluate the effect of the corrosive constituents on the internal corrosion of the pipe and implement mitigation measures as necessary.

(b) The monitoring and mitigation program described in paragraph (a) of this section must include:

(1) The use of gas-quality monitoring methods at points where gas with potentially corrosive contaminants enters the pipeline to determine the gas stream constituents.

(2) Technology to mitigate the potentially corrosive gas stream constituents. Such technologies may include product sampling, inhibitor injections, in-line cleaning pigging, separators, or other technology that mitigates potentially corrosive effects.

(3) An evaluation at least once each calendar year, at intervals not to exceed 15 months, to ensure that potentially corrosive gas stream constituents are effectively monitored and mitigated.

(c) An operator must review its monitoring and mitigation program at least once each calendar year, at intervals not to exceed 15 months, and based on the results of its monitoring and mitigation program, implement adjustments, as necessary.

■ 12. In § 192.485, paragraph (c) is revised to read as follows:

§ 192.485 Remedial measures: Transmission lines.

* * * * *

(c) *Calculating remaining strength.* Under paragraphs (a) and (b) of this section, the strength of pipe based on actual remaining wall thickness must be determined and documented in accordance with § 192.712.

■ 13. In § 192.613, paragraph (c) is added to read as follows:

§ 192.613 Continuing surveillance.

* * * * *

(c) Following an extreme weather event or natural disaster that has the likelihood of damage to pipeline facilities by the scouring or movement of the soil surrounding the pipeline or movement of the pipeline, such as a named tropical storm or hurricane; a flood that exceeds the river, shoreline, or creek high-water banks in the area of the pipeline; a landslide in the area of the pipeline; or an earthquake in the area of the pipeline, an operator must inspect all potentially affected onshore transmission pipeline facilities to detect conditions that could adversely affect the safe operation of that pipeline.

(1) An operator must assess the nature of the event and the physical characteristics, operating conditions, location, and prior history of the affected pipeline in determining the appropriate method for performing the initial inspection to determine the extent of any damage and the need for the additional assessments required under this paragraph (c)(1).

(2) An operator must commence the inspection required by paragraph (c) of this section within 72 hours after the point in time when the operator reasonably determines that the affected area can be safely accessed by personnel and equipment, and the personnel and equipment required to perform the inspection as determined by paragraph (c)(1) of this section are available. If an operator is unable to commence the inspection due to the unavailability of personnel or equipment, the operator must notify the appropriate PHMSA Region Director as soon as practicable.

(3) An operator must take prompt and appropriate remedial action to ensure the safe operation of a pipeline based on the information obtained as a result of performing the inspection required by paragraph (c) of this section. Such actions might include, but are not limited to:

(i) Reducing the operating pressure or shutting down the pipeline;

(ii) Modifying, repairing, or replacing any damaged pipeline facilities;

(iii) Preventing, mitigating, or eliminating any unsafe conditions in the pipeline right-of-way;

(iv) Performing additional patrols, surveys, tests, or inspections;

(v) Implementing emergency response activities with Federal, State, or local personnel; or

(vi) Notifying affected communities of the steps that can be taken to ensure public safety.

■ 14. In § 192.710, paragraph (f) is revised as follows:

§ 192.710 Transmission lines: Assessments outside of high consequence areas.

* * * * *

(f) *Remediation.* An operator must comply with the requirements in §§ 192.485, 192.711, 192.712, 192.713, and 192.714, where applicable, if a condition that could adversely affect the safe operation of a pipeline is discovered.

* * * * *

■ 15. In § 192.711, paragraph (b)(1) is revised to read as follows:

§ 192.711 Transmission lines: General requirements for repair procedures.

* * * * *

(b) * * *

(1)(i) Non-integrity management repairs for gathering lines and offshore transmission lines: For gathering lines subject to this section in accordance with § 192.9 and for offshore transmission lines, an operator must make permanent repairs as soon as feasible.

(ii) Non-integrity management repairs for onshore transmission lines: Except for gathering lines exempted from this section in accordance with § 192.9 and offshore transmission lines, after May 24, 2023, whenever an operator discovers any condition that could adversely affect the safe operation of a pipeline segment not covered by an integrity management program under subpart O of this part, it must correct the condition as prescribed in § 192.714.

* * * * *

■ 16. In § 192.712, the section heading and paragraph (b) are revised and paragraphs (c) and (h) are added to read as follows:

§ 192.712 Analysis of predicted failure pressure and critical strain level.

* * * * *

(b) *Corrosion metal loss.* When analyzing corrosion metal loss under this section, an operator must use a suitable remaining strength calculation method including, ASME/ANSI B31G (incorporated by reference, *see* § 192.7); R–STRENG (incorporated by reference, *see* § 192.7); or an alternative equivalent method of remaining strength calculation that will provide an equally conservative result.

(1) If an operator would choose to use a remaining strength calculation method that could provide a less conservative result than the methods listed in

paragraph (b) introductory text, the operator must notify PHMSA in advance in accordance with § 192.18(c).

(2) The notification provided for by paragraph (b)(1) of this section must include a comparison of its predicted failure pressures to R–STRENG or ASME/ANSI B31G, all burst pressure tests used, and any other technical reviews used to qualify the calculation method(s) for varying corrosion profiles.

(c) *Dents and other mechanical damage.* To evaluate dents and other mechanical damage that could result in a stress riser or other integrity impact, an operator must develop a procedure and perform an engineering critical assessment as follows:

(1) Identify and evaluate potential threats to the pipe segment in the vicinity of the anomaly or defect, including ground movement, external loading, fatigue, cracking, and corrosion.

(2) Review high-resolution magnetic flux leakage (HR–MFL) high-resolution deformation, inertial mapping, and crack detection inline inspection data for damage in the dent area and any associated weld region, including available data from previous inline inspections.

(3) Perform pipeline curvature-based strain analysis using recent HR-Deformation inspection data.

(4) Compare the dent profile between the most recent and previous in-line inspections to identify significant changes in dent depth and shape.

(5) Identify and quantify all previous and present significant loads acting on the dent.

(6) Evaluate the strain level associated with the anomaly or defect and any nearby welds using Finite Element Analysis, or other technology in accordance with this section. Using Finite Element Analysis to quantify the dent strain, and then estimating and evaluating the damage using the Strain Limit Damage (SLD) and Ductile Failure Damage Indicator (DFDI) at the dent, are appropriate evaluation methods.

(7) The analyses performed in accordance with this section must account for material property uncertainties, model inaccuracies, and inline inspection tool sizing tolerances.

(8) Dents with a depth greater than 10 percent of the pipe outside diameter or with geometric strain levels that exceed the lessor of 10 percent or exceed the critical strain for the pipe material properties must be remediated in accordance with § 192.713, § 192.714, or § 192.933, as applicable.

(9) Using operational pressure data, a valid fatigue life prediction model that is appropriate for the pipeline segment, and assuming a reassessment safety factor of 5 or greater for the assessment interval, estimate the fatigue life of the dent by Finite Element Analysis or other analytical technique that is technically appropriate for dent assessment and reassessment intervals in accordance with this section. Multiple dent or other fatigue models must be used for the evaluation as a part of the engineering critical assessment.

(10) If the dent or mechanical damage is suspected to have cracks, then a crack growth rate assessment is required to ensure adequate life for the dent with crack(s) until remediation or the dent with crack(s) must be evaluated and remediated in accordance with the criteria and timing requirements in § 192.713, § 192.714, or § 192.933, as applicable.

(11) An operator using an engineering critical assessment procedure, other technologies, or techniques to comply with paragraph (c) of this section must submit advance notification to PHMSA, with the relevant procedures, in accordance with § 192.18.

* * * * *

(h) *Reassessments.* If an operator uses an engineering critical assessment method in accordance with paragraphs (c) and (d) of this section to determine the maximum reevaluation intervals, the operator must reassess the anomalies as follows:

(1) If the anomaly is in an HCA, the operator must reassess the anomaly within a maximum of 7 years in accordance with § 192.939(a), unless the safety factor is expected to go below what is specified in paragraph (c) or (d) of this section.

(2) If the anomaly is outside of an HCA, the operator must perform a reassessment of the anomaly within a maximum of 10 years in accordance with § 192.710(b), unless the anomaly safety factor is expected to go below what is specified in paragraph (c) or (d) of this section.

■ 17. Section 192.714 is added to read as follows:

§ 192.714 Transmission lines: Repair criteria for onshore transmission pipelines.

(a) *Applicability.* This section applies to onshore transmission pipelines not subject to the repair criteria in subpart O of this part, and which do not operate under an alternative MAOP in accordance with §§ 192.112, 192.328, and 192.620. Pipeline segments that are located in high consequence areas, as defined in § 192.903, must comply with the applicable actions specified by the integrity management requirements in subpart O. Pipeline segments operating under an alternative MAOP in accordance with §§ 192.112, 192.328, and 192.620 must comply with § 192.620(d)(11).

(b) *General.* Each operator must, in repairing its pipeline systems, ensure that the repairs are made in a safe manner and are made to prevent damage to persons, property, and the environment. A pipeline segment's operating pressure must be less than the predicted failure pressure determined in accordance with § 192.712 during repair operations. Repairs performed in accordance with this section must use pipe and material properties that are documented in traceable, verifiable, and complete records. If documented data required for any analysis, including predicted failure pressure for determining MAOP, is not available, an operator must obtain the undocumented data through § 192.607.

(c) *Schedule for evaluation and remediation.* An operator must remediate conditions according to a schedule that prioritizes the conditions for evaluation and remediation. Unless paragraph (d) of this section provides a special requirement for remediating certain conditions, an operator must calculate the predicted failure pressure of anomalies or defects and follow the schedule in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 7, Figure 4. If an operator cannot meet the schedule for any condition, the operator must document the reasons why it cannot meet the schedule and how the changed schedule will not jeopardize public safety. Each condition that meets any of the repair criteria in paragraph (d) of this section in an onshore steel transmission pipeline must be—

(1) Removed by cutting out and replacing a cylindrical piece of pipe that will permanently restore the pipeline's MAOP based on the use of § 192.105 and the design factors for the class location in which it is located; or

(2) Repaired by a method, shown by technically proven engineering tests and analyses, that will permanently restore the pipeline's MAOP based upon the determined predicted failure pressure times the design factor for the class location in which it is located.

(d) *Remediation of certain conditions.* For onshore transmission pipelines not located in high consequence areas, an operator must remediate a listed condition according to the following criteria:

(1) *Immediate repair conditions.* An operator must repair the following conditions immediately upon discovery:

(i) Metal loss anomalies where a calculation of the remaining strength of the pipe at the location of the anomaly

shows a predicted failure pressure, determined in accordance with § 192.712(b), of less than or equal to 1.1 times the MAOP.

(ii) A dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) that has metal loss, cracking, or a stress riser, unless an engineering analysis performed in accordance with § 192.712(c) demonstrates critical strain levels are not exceeded.

(iii) Metal loss greater than 80 percent of nominal wall regardless of dimensions.

(iv) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency or high-frequency electric resistance welding, electric flash welding, or has a longitudinal joint factor less than 1.0, and the predicted failure pressure determined in accordance with § 192.712(d) is less than 1.25 times the MAOP.

(v) A crack or crack-like anomaly meeting any of the following criteria:

(A) Crack depth plus any metal loss is greater than 50 percent of pipe wall thickness;

(B) Crack depth plus any metal loss is greater than the inspection tool's maximum measurable depth; or

(C) The crack or crack-like anomaly has a predicted failure pressure, determined in accordance with § 192.712(d), that is less than 1.25 times the MAOP.

(vi) An indication or anomaly that, in the judgment of the person designated by the operator to evaluate the assessment results, requires immediate action.

(2) *Two-year conditions.* An operator must repair the following conditions within 2 years of discovery:

(i) A smooth dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12), unless an engineering analysis performed in accordance with § 192.712(c) demonstrates critical strain levels are not exceeded.

(ii) A dent with a depth greater than 2 percent of the pipeline diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or at a longitudinal or helical (spiral) seam weld, unless an engineering analysis performed in accordance with § 192.712(c) demonstrates critical strain levels are not exceeded.

(iii) A dent located between the 4 o'clock and 8 o'clock positions (lower ⅓ of the pipe) that has metal loss, cracking, or a stress riser, unless an engineering analysis performed in accordance with § 192.712(c) demonstrates critical strain levels are not exceeded.

(iv) For metal loss anomalies, a calculation of the remaining strength of the pipe shows a predicted failure pressure, determined in accordance with § 192.712(b) at the location of the anomaly, of less than 1.39 times the MAOP for Class 2 locations, or less than 1.50 times the MAOP for Class 3 and 4 locations. For metal loss anomalies in Class 1 locations with a predicted failure pressure greater than 1.1 times MAOP, an operator must follow the remediation schedule specified in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 7, Figure 4, as specified in paragraph (c) of this section.

(v) Metal loss that is located at a crossing of another pipeline, is in an area with widespread circumferential corrosion, or could affect a girth weld, and that has a predicted failure pressure, determined in accordance with § 192.712(b), less than 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or less than 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(vi) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency or high-frequency electric resistance welding, electric flash welding, or that has a longitudinal joint factor less than 1.0, and where the predicted failure pressure determined in accordance with § 192.712(d) is less than 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or less than 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(vii) A crack or crack-like anomaly that has a predicted failure pressure, determined in accordance with § 192.712(d), that is less than 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or less than 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(3) *Monitored conditions.* An operator must record and monitor the following conditions during subsequent risk assessments and integrity assessments for any change that may require remediation.

(i) A dent that is located between the 4 o'clock and 8 o'clock positions (bottom ⅓ of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12).

(ii) A dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12), and where an engineering analysis performed in accordance with § 192.712(c) determines that critical strain levels are not exceeded.

(iii) A dent with a depth greater than 2 percent of the pipeline diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or longitudinal or helical (spiral) seam weld, and where an engineering analysis of the dent and girth or seam weld, performed in accordance with § 192.712(c), demonstrates critical strain levels are not exceeded. These analyses must consider weld mechanical properties.

(iv) A dent that has metal loss, cracking, or a stress riser, and where an engineering analysis performed in accordance with § 192.712(c) demonstrates critical strain levels are not exceeded.

(v) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency or high-frequency electric resistance welding, electric flash welding, or that has a longitudinal joint factor less than 1.0, and where the predicted failure pressure, determined in accordance with § 192.712(d), is greater than or equal to 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or is greater than or equal to 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(vi) A crack or crack-like anomaly for which the predicted failure pressure, determined in accordance with § 192.712(d), is greater than or equal to 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or is greater than or equal to 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(e) *Temporary pressure reduction.* (1) Immediately upon discovery and until an operator remediates the condition specified in paragraph (d)(1) of this section, or upon a determination by an

operator that it is unable to respond within the time limits for the conditions specified in paragraph (d)(2) of this section, the operator must reduce the operating pressure of the affected pipeline to any one of the following based on safety considerations for the public and operating personnel:

(i) A level not exceeding 80 percent of the operating pressure at the time the condition was discovered;

(ii) A level not exceeding the predicted failure pressure times the design factor for the class location in which the affected pipeline is located; or

(iii) A level not exceeding the predicted failure pressure divided by 1.1.

(2) An operator must notify PHMSA in accordance with § 192.18 if it cannot meet the schedule for evaluation and remediation required under paragraph (c) or (d) of this section and cannot provide safety through a temporary reduction in operating pressure or other action. Notification to PHMSA does not alleviate an operator from the evaluation, remediation, or pressure reduction requirements in this section.

(3) When a pressure reduction, in accordance with paragraph (e) of this section, exceeds 365 days, an operator must notify PHMSA in accordance with § 192.18 and explain the reasons for the remediation delay. This notice must include a technical justification that the continued pressure reduction will not jeopardize the integrity of the pipeline.

(4) An operator must document and keep records of the calculations and decisions used to determine the reduced operating pressure and the implementation of the actual reduced operating pressure for a period of 5 years after the pipeline has been repaired.

(f) *Other conditions.* Unless another timeframe is specified in paragraph (d) of this section, an operator must take appropriate remedial action to correct any condition that could adversely affect the safe operation of a pipeline system in accordance with the criteria, schedules, and methods defined in the operator's operating and maintenance procedures.

(g) *In situ direct examination of crack defects.* Whenever an operator finds conditions that require the pipeline to be repaired, in accordance with this section, an operator must perform a direct examination of known locations of cracks or crack-like defects using technology that has been validated to detect tight cracks (equal to or less than 0.008 inches crack opening), such as inverse wave field extrapolation (IWEX), phased array ultrasonic testing (PAUT), ultrasonic testing (UT), or equivalent technology. ''In situ'' examination tools and procedures for crack assessments (length, depth, and volumetric) must have performance and evaluation standards, including pipe or weld surface cleanliness standards for the inspection, confirmed by subject matter experts qualified by knowledge, training, and experience in direct examination inspection for accuracy of the type of defects and pipe material being evaluated. The procedures must account for inaccuracies in evaluations and fracture mechanics models for failure pressure determinations.

(h) *Determining predicted failure pressures and critical strain levels.* An operator must perform all determinations of predicted failure pressures and critical strain levels required by this section in accordance with § 192.712.

■ 18. In § 192.911, paragraph (k) is revised to read as follows:

§ 192.911 What are the elements of an integrity management program?

* * * * *

(k) A management of change process as required by § 192.13(d).

* * * * *

■ 19. In § 192.917, paragraphs (a) through (d) are revised to read as follows:

§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?

(a) *Threat identification.* An operator must identify and evaluate all potential threats to each covered pipeline segment. Potential threats that an operator must consider include, but are not limited to, the threats listed in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 2, which are grouped under the following four threat categories:

(1) Time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking;

(2) Stable threats, such as manufacturing, welding, fabrication, or construction defects;

(3) Time independent threats, such as third party damage, mechanical damage, incorrect operational procedure, weather related and outside force damage, to include consideration of seismicity, geology, and soil stability of the area; and

(4) Human error, such as operational or maintenance mishaps, or design and construction mistakes.

(b) *Data gathering and integration.* To identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate existing data and information on the entire pipeline that could be relevant to the covered segment. In performing data gathering and integration, an operator must follow the requirements in ASME/ANSI B31.8S, section 4.

Operators must begin to integrate all pertinent data elements specified in this section starting on May 24, 2023, with all available attributes integrated by February 26, 2024. An operator may request an extension of up to 1 year by submitting a notification to PHMSA at least 90 days before February 26, 2024, in accordance with § 192.18. The notification must include a reasonable and technically justified basis, an up-to-date plan for completing all actions required by this paragraph (b), the reason for the requested extension, current safety or mitigation status of the pipeline segment, the proposed completion date, and any needed temporary safety measures to mitigate the impact on safety. An operator must gather and evaluate the set of data listed in paragraph (b)(1) of this section. The evaluation must analyze both the covered segment and similar non-covered segments, and it must:

(1) Integrate pertinent information about pipeline attributes to ensure safe operation and pipeline integrity, including information derived from operations and maintenance activities required under this part, and other relevant information, including, but not limited to:

(i) Pipe diameter, wall thickness, seam type, and joint factor;

(ii) Manufacturer and manufacturing date, including manufacturing data and records;

(iii) Material properties including, but not limited to, grade, specified minimum yield strength (SMYS), and ultimate tensile strength;

(iv) Equipment properties;

(v) Year of installation;

(vi) Bending method;

(vii) Joining method, including process and inspection results;

(viii) Depth of cover;

(ix) Crossings, casings (including if shorted), and locations of foreign line crossings and nearby high voltage power lines;

(x) Hydrostatic or other pressure test history, including test pressures and test leaks or failures, failure causes, and repairs;

(xi) Pipe coating methods (both manufactured and field applied), including the method or process used to apply girth weld coating, inspection reports, and coating repairs;

(xii) Soil, backfill;

(xiii) Construction inspection reports, including but not limited to:

(A) Post backfill coating surveys; and

(B) Coating inspection (''jeeping'' or ''holiday inspection'') reports;

(xiv) Cathodic protection installed, including, but not limited to, type and location;

(xv) Coating type;

(xvi) Gas quality;

(xvii) Flow rate;

(xviii) Normal maximum and minimum operating pressures, including maximum allowable operating pressure (MAOP);

(xix) Class location;

(xx) Leak and failure history, including any in-service ruptures or leaks from incident reports, abnormal operations, safety-related conditions (both reported and unreported) and failure investigations required by § 192.617, and their identified causes and consequences;

(xxi) Coating condition;

(xxii) Cathodic protection (CP) system performance;

(xxiii) Pipe wall temperature;

(xxiv) Pipe operational and maintenance inspection reports, including, but not limited to:

(A) Data gathered through integrity assessments required under this part, including, but not limited to, in-line inspections, pressure tests, direct assessments, guided wave ultrasonic testing, or other methods;

(B) Close interval survey (CIS) and electrical survey results;

(C) CP rectifier readings;

(D) CP test point survey readings and locations;

(E) Alternating current, direct current, and foreign structure interference surveys;

(F) Pipe coating surveys, including surveys to detect coating damage, disbonded coatings, or other conditions that compromise the effectiveness of corrosion protection, including, but not limited to, direct current voltage gradient or alternating current voltage gradient inspections;

(G) Results of examinations of exposed portions of buried pipelines (*e.g.,* pipe and pipe coating condition, *see* § 192.459), including the results of any non-destructive examinations of the pipe, seam, or girth weld (*i.e.* bell hole inspections);

(H) Stress corrosion cracking excavations and findings;

(I) Selective seam weld corrosion excavations and findings;

(J) Any indication of seam cracking; and

(K) Gas stream sampling and internal corrosion monitoring results, including cleaning pig sampling results;

(xxv) External and internal corrosion monitoring;

(xxvi) Operating pressure history and pressure fluctuations, including an analysis of effects of pressure cycling and instances of exceeding MAOP by any amount;

(xxvii) Performance of regulators, relief valves, pressure control devices, or any other device to control or limit operating pressure to less than MAOP;

(xxviii) Encroachments;

(xxix) Repairs;

(xxx) Vandalism;

(xxxi) External forces;

(xxxii) Audits and reviews;

(xxxiii) Industry experience for incident, leak, and failure history;

(xxxiv) Aerial photography; and

(xxxv) Exposure to natural forces in the area of the pipeline, including seismicity, geology, and soil stability of the area.

(2) Use validated information and data as inputs, to the maximum extent practicable. If input is obtained from subject matter experts (SME), an operator must employ adequate control measures to ensure consistency and accuracy of information. Control measures may include training of SMEs or the use of outside technical experts (independent expert reviews) to assess the quality of processes and the judgment of SMEs. An operator must document the names and qualifications of the individuals who approve SME inputs used in the current risk assessment.

(3) Identify and analyze spatial relationships among anomalous information (*e.g.,* corrosion coincident with foreign line crossings or evidence of pipeline damage where overhead imaging shows evidence of encroachment).

(4) Analyze the data for interrelationships among pipeline integrity threats, including combinations of applicable risk factors that increase the likelihood of incidents or increase the potential consequences of incidents.

(c) *Risk assessment.* An operator must conduct a risk assessment that follows ASME/ANSI B31.8S, section 5, and that analyzes the identified threats and potential consequences of an incident for each covered segment. An operator must ensure the validity of the methods used to conduct the risk assessment considering the incident, leak, and failure history of the pipeline segments and other historical information. Such a validation must ensure the risk assessment methods produce a risk characterization that is consistent with the operator's and industry experience, including evaluations of the cause of past incidents, as determined by root cause analysis or other equivalent means, and include sensitivity analysis of the factors used to characterize both the likelihood of loss of pipeline integrity and consequences of the postulated loss of pipeline integrity. An operator must use the risk assessment to determine additional preventive and mitigative measures needed for each covered segment in accordance with § 192.935 and periodically evaluate the integrity of each covered pipeline segment in accordance with § 192.937. Beginning February 26, 2024, the risk assessment must:

(1) Analyze how a potential failure could affect high consequence areas;

(2) Analyze the likelihood of failure due to each individual threat and each unique combination of threats that interact or simultaneously contribute to risk at a common location;

(3) Account for, and compensate for, uncertainties in the model and the data used in the risk assessment; and

(4) Evaluate the potential risk reduction associated with candidate risk reduction activities, such as preventive and mitigative measures, and reduced anomaly remediation and assessment intervals.

(5) In conjunction with § 192.917(b), an operator may request an extension of up to 1 year for the requirements of this paragraph by submitting a notification to PHMSA at least 90 days before February 26, 2024, in accordance with § 192.18. The notification must include a reasonable and technically justified basis, an up-to-date plan for completing all actions required by this paragraph (c)(5), the reason for the requested extension, current safety or mitigation status of the pipeline segment, the proposed completion date, and any needed temporary safety measures to mitigate the impact on safety.

(d) *Plastic transmission pipeline.* An operator of a plastic transmission pipeline must assess the threats to each covered segment using the information in sections 4 and 5 of ASME B31.8S and consider any threats unique to the integrity of plastic pipe, such as poor joint fusion practices, pipe with poor slow crack growth (SCG) resistance, brittle pipe, circumferential cracking, hydrocarbon softening of the pipe, internal and external loads, longitudinal or lateral loads, proximity to elevated heat sources, and point loading.

* * * * *

■ 20. In § 192.923, paragraphs (b)(2) and (3) are revised to read as follows:

§ 192.923 How is direct assessment used and for what threats?

* * * * *

(b) * * *

(2) Section 192.927 and NACE SP0206 (incorporated by reference, *see* § 192.7), if addressing internal corrosion (IC).

(3) Section 192.929 and NACE SP0204 (incorporated by reference, *see* § 192.7), if addressing stress corrosion cracking (SCC).

* * * * *

■ 21. In § 192.927, paragraphs (b) and (c) are revised to read as follows:

§ 192.927 What are the requirements for using Internal Corrosion Direct Assessment (ICDA)?

* * * * *

(b) *General requirements.* An operator using direct assessment as an assessment method to address internal corrosion in a covered pipeline segment must follow the requirements in this section and in NACE SP0206 (incorporated by reference, *see* § 192.7). The Dry Gas Internal Corrosion Direct Assessment (DG–ICDA) process described in this section applies only for a segment of pipe transporting normally dry natural gas (*see* § 192.3) and not for a segment with electrolytes normally present in the gas stream. If an operator uses ICDA to assess a covered segment operating with electrolytes present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to address internal corrosion effectively and must notify PHMSA in accordance with § 192.18. In the event of a conflict between this section and NACE SP0206, the requirements in this section control.

(c) *The ICDA plan.* An operator must develop and follow an ICDA plan that meets NACE SP0206 (incorporated by reference, *see* § 192.7) and that implements all four steps of the DG–ICDA process, including pre-assessment, indirect inspection, detailed examination at excavation locations, and post-assessment evaluation and monitoring. The plan must identify the locations of all ICDA regions within covered segments in the transmission system. An ICDA region is a continuous length of pipe (including weld joints), uninterrupted by any significant change in water or flow characteristics, that includes similar physical characteristics or operating history. An ICDA region extends from the location where liquid may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur until a new input introduces the possibility of water entering the pipeline. In cases where a single covered segment is partially located in two or more ICDA regions, the four-step ICDA process must be completed for each ICDA region in which the covered segment is partially located to complete the assessment of the covered segment.

(1) *Preassessment.* An operator must comply with NACE SP0206 (incorporated by reference, *see* § 192.7) in conducting the preassessment step of the ICDA process.

(2) *Indirect inspection.* An operator must comply with NACE SP0206 (incorporated by reference, *see* § 192.7), and the following additional requirements, in conducting the Indirect Inspection step of the ICDA process. An operator must explicitly document the results of its feasibility assessment as required by NACE SP0206, section 3.3 (incorporated by reference, *see* § 192.7); if any condition that precludes the successful application of ICDA applies, then ICDA may not be used, and another assessment method must be selected. When performing the indirect inspection, the operator must use actual pipeline-specific data, exclusively. The use of assumed pipeline or operational data is prohibited. When calculating the critical inclination angle of liquid holdup and the inclination profile of the pipeline, the operator must consider the accuracy, reliability, and uncertainty of the data used to make those calculations, including, but not limited to, gas flow velocity (including during upset conditions), pipeline elevation profile survey data (including specific profile at features with inclinations such as road crossings, river crossings, drains, valves, drips, etc.), topographical data, and depth of cover. An operator must select locations for direct examination and establish the extent of pipe exposure needed (*i.e.,* the size of the bell hole), to account for these uncertainties and their cumulative effect on the precise location of predicted liquid dropout.

(3) *Detailed examination.* An operator must comply with NACE SP0206 (incorporated by reference, *see* § 192.7) in conducting the detailed examination step of the ICDA process. When an operator first uses ICDA for a covered segment, an operator must identify a minimum of two locations for excavation within each covered segment associated with the ICDA region and must perform a detailed examination for internal corrosion at each location using ultrasonic thickness measurements, radiography, or other generally accepted measurement techniques that can examine for internal corrosion or other threats that are being assessed. One location must be the low point (*e.g.,* sag, drip, valve, manifold, dead-leg) within the covered segment nearest to the beginning of the ICDA region. The second location must be further downstream, within the covered segment, near the end of the ICDA region. Whenever corrosion is found during ICDA at any location, the operator must:

(i) Evaluate the severity of the defect (remaining strength) and remediate the defect in accordance with § 192.933 if the condition is in a covered segment, or in accordance with §§ 192.485 and 192.714 if the condition is not in a covered segment;

(ii) Expand the detailed examination program to determine all locations that have internal corrosion within the ICDA region, and accurately characterize the nature, extent, and root cause of the internal corrosion. In cases where the internal corrosion was identified within the ICDA region but outside the covered segment, the expanded detailed examination program must also include at least two detailed examinations within each covered segment associated with the ICDA region, at the location within the covered segment(s) most likely to have internal corrosion. One location must be the low point (*e.g.,* sags, drips, valves, manifolds, dead-legs, traps) within the covered segment nearest to the beginning of the ICDA region. The second location must be further downstream, within the covered segment. In instances of first use of ICDA for a covered segment, where these locations have already been examined in accordance with paragraph (c)(3) of this section, two additional detailed examinations must be conducted within the covered segment; and

(iii) Expand the detailed examination program to evaluate the potential for internal corrosion in all pipeline segments (both covered and non-covered) in the operator's pipeline system with similar characteristics to the ICDA region in which the corrosion was found and remediate identified instances of internal corrosion in accordance with either § 192.933 or §§ 192.485 and 192.714, as appropriate.

(4) *Post-assessment evaluation and monitoring.* An operator must comply with NACE SP0206 (incorporated by reference, *see* § 192.7) in performing the post assessment step of the ICDA process. In addition to NACE SP0206, the evaluation and monitoring process must also include—

(i) An evaluation of the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those specified in § 192.939. An operator must carry out this evaluation within 1 year of conducting an ICDA;

(ii) Validation of the flow modeling calculations by comparison of actual locations of discovered internal corrosion with locations predicted by the model (if the flow model cannot be validated, then ICDA is not feasible for the segment); and

(iii) Continuous monitoring of each ICDA region that contains a covered segment where internal corrosion has been identified by using techniques such as coupons or ultrasonic (UT) sensors or electronic probes, and by periodically drawing off liquids at low points and chemically analyzing the liquids for the presence of corrosion products. An operator must base the frequency of the monitoring and liquid analysis on results from all integrity assessments that have been conducted in accordance with the requirements of this subpart and risk factors specific to the ICDA region.

At a minimum, the monitoring frequency must be two times each calendar year, but at intervals not exceeding 7½ months. If an operator finds any evidence of corrosion products in the ICDA region, the operator must take prompt action in accordance with one of the two following required actions, and remediate the conditions the operator finds in accordance with § 192.933 or §§ 192.485 and 192.714, as applicable.

(A) Conduct excavations of, and detailed examinations at, locations downstream from where the electrolytes might have entered the pipe to investigate and accurately characterize the nature, extent, and root cause of the corrosion, including the monitoring and mitigation requirements of § 192.478; or

(B) Assess the covered segment using another integrity assessment method allowed by this subpart.

(5) *Other requirements.* The ICDA plan must also include the following:

(i) Criteria an operator will apply in making key decisions (including, but not limited to, ICDA feasibility, definition of ICDA regions and sub-regions, and conditions requiring excavation) in implementing each stage of the ICDA process; and

(ii) Provisions that the analysis be carried out on the entire pipeline in which covered segments are present, except that application of the remediation criteria of § 192.933 may be limited to covered segments.

■ 22. Section 192.929 is revised to read as follows:

§ 192.929 What are the requirements for using Direct Assessment for Stress Corrosion Cracking?

(a) *Definition.* A Stress Corrosion Cracking Direct Assessment (SCCDA) is a process to assess a covered pipeline segment for the presence of stress corrosion cracking (SCC) by systematically gathering and analyzing excavation data from pipe having similar operational characteristics and residing in a similar physical environment.

(b) *General requirements.* An operator using direct assessment as an integrity assessment method for addressing SCC in a covered pipeline segment must develop and follow an SCCDA plan that meets NACE SP0204 (incorporated by reference, *see* § 192.7) and that implements all four steps of the SCCDA process, including pre-assessment, indirect inspection, detailed examination at excavation locations, and post-assessment evaluation and monitoring. As specified in NACE SP0204, SCCDA is complementary with other inspection methods for SCC, such as in-line inspection or hydrostatic testing with a spike test, and it is not necessarily an alternative or replacement for these methods in all instances. Additionally, the plan must provide for—

(1) *Data gathering and integration.* An operator's plan must provide for a systematic process to collect and evaluate data for all covered pipeline segments to identify whether the conditions for SCC are present and to prioritize the covered pipeline segments for assessment in accordance with NACE SP0204, sections 3 and 4, and Table 1 (incorporated by reference, *see* § 192.7). This process must also include gathering and evaluating data related to SCC at all sites an operator excavates while conducting its pipeline operations (both within and outside covered segments) where the criteria in NACE SP0204 (incorporated by reference, *see* § 192.7) indicate the potential for SCC. This data gathering process must be conducted in accordance with NACE SP0204, section 5.3 (incorporated by reference, *see* § 192.7), and must include, at a minimum, all data listed in NACE SP0204, Table 2 (incorporated by reference, *see* § 192.7). Further, the following factors must be analyzed as part of this evaluation:

(i) The effects of a carbonate-bicarbonate environment, including the implications of any factors that promote the production of a carbonate-bicarbonate environment, such as soil temperature, moisture, the presence or generation of carbon dioxide, or cathodic protection (CP);

(ii) The effects of cyclic loading conditions on the susceptibility and propagation of SCC in both high-pH and near-neutral-pH environments;

(iii) The effects of variations in applied CP, such as overprotection, CP loss for extended periods, and high negative potentials;

(iv) The effects of coatings that shield CP when disbonded from the pipe; and

(v) Other factors that affect the mechanistic properties associated with SCC, including, but not limited to, historical and present-day operating pressures, high tensile residual stresses, flowing product temperatures, and the presence of sulfides.

(2) *Indirect inspection.* In addition to NACE SP0204, the plan's procedures for indirect inspection must include provisions for conducting at least two above ground surveys using the complementary measurement tools most appropriate for the pipeline segment based on an evaluation of integrated data.

(3) *Direct examination.* In addition to NACE SP0204, the plan's procedures for direct examination must provide for an operator conducting a minimum of three direct examinations for SCC within the covered pipeline segment spaced at the locations determined to be the most likely for SCC to occur.

(4) *Remediation and mitigation.* If SCC is discovered in a covered pipeline segment, an operator must mitigate the threat in accordance with one of the following applicable methods:

(i) Removing the pipe with SCC; remediating the pipe with a Type B sleeve; performing hydrostatic testing in accordance with paragraph (b)(4)(ii) of this section; or by grinding out the SCC defect and repairing the pipe. If an operator uses grinding for repair, the operator must also perform the following as a part of the repair procedure: nondestructive testing for any remaining cracks or other defects; a measurement of the remaining wall thickness; and a determination of the remaining strength of the pipe at the repair location that is performed in accordance with § 192.712 and that meets the design requirements of §§ 192.111 and 192.112, as applicable. The pipe and material properties an operator uses in remaining strength calculations must be documented in traceable, verifiable, and complete records. If such records are not available, an operator must base the pipe and material properties used in the remaining strength calculations on properties determined and documented in accordance with § 192.607, if applicable.

(ii) Performing a spike pressure test in accordance with § 192.506 based upon the class location of the pipeline segment. The MAOP must be no greater than the test pressure specified in

§ 192.506(a) divided by: 1.39 for Class 1 locations and Class 2 locations that contain Class 1 pipe that has been uprated in accordance with § 192.611; and 1.50 for all other Class 2 locations and all Class 3 and Class 4 locations. An operator must repair any test failures due to SCC by replacing the pipe segment and re-testing the segment until the pipe passes the test without failures (such as pipe seam or gasket leaks, or a pipe rupture). At a minimum, an operator must repair pipe segments that pass the pressure test but have SCC present by grinding the segment in accordance with paragraph (b)(4)(i) of this section.

(5) *Post assessment.* An operator's procedures for post-assessment, in addition to the procedures listed in NACE SP0204, sections 6.3, ''periodic reassessment,'' and 6.4, ''effectiveness of SCCDA,'' must include the development of a reassessment plan based on the susceptibility of the operator's pipe to SCC as well as the mechanistic behavior of identified cracking. An operator's reassessment intervals must comply with § 192.939. The plan must include the following factors, in addition to any factors the operator determines appropriate:

(i) The evaluation of discovered crack clusters during the direct examination step in accordance with NACE SP0204, sections 5.3.5.7, 5.4, and 5.5 (incorporated by reference, *see* § 192.7);

(ii) Conditions conducive to the creation of a carbonate-bicarbonate environment;

(iii) Conditions in the application (or loss) of CP that can create or exacerbate SCC;

(iv) Operating temperature and pressure conditions, including operating stress levels on the pipe;

(v) Cyclic loading conditions;

(vi) Mechanistic conditions that influence crack initiation and growth rates;

(vii) The effects of interacting crack clusters;

(viii) The presence of sulfides; and

(ix) Disbonded coatings that shield CP from the pipe.

■ 23. In § 192.933, paragraphs (a) introductory text, (a)(1), (b), and (d) are revised and paragraph (e) is added read as follows:

§ 192.933 What actions must be taken to address integrity issues?

(a) *General requirements.* An operator must take prompt action to address all anomalous conditions the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. Repairs performed in accordance with this section must use pipe and material properties that are documented in traceable, verifiable, and complete records. If documented data required for any analysis is not available, an operator must obtain the undocumented data through § 192.607.

(1) *Temporary pressure reduction.* (i) If an operator is unable to respond within the time limits for certain conditions specified in this section, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. An operator must reduce the operating pressure to one of the following:

(A) A level not exceeding 80 percent of the operating pressure at the time the condition was discovered;

(B) A level not exceeding the predicted failure pressure times the design factor for the class location in which the affected pipeline is located; or

(C) A level not exceeding the predicted failure pressure divided by 1.1.

(ii) An operator must determine the predicted failure pressure in accordance with § 192.712. An operator must notify PHMSA in accordance with § 192.18 if it cannot meet the schedule for evaluation and remediation required under paragraph (c) or (d) of this section and cannot provide safety through a temporary reduction in operating pressure or other action. The operator must document and keep records of the calculations and decisions used to determine the reduced operating pressure, and the implementation of the actual reduced operating pressure, for a period of 5 years after the pipeline has been remediated.

* * * * *

(b) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about a condition to determine that the condition presents a potential threat to the integrity of the pipeline. For the purposes of this section, a condition that presents a potential threat includes, but is not limited to, those conditions that require remediation or monitoring listed under paragraphs (d)(1) through (3) of this section. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable. In cases where a determination is not made within the 180-day period, the operator must notify PHMSA, in accordance with § 192.18, and provide an expected date when adequate information will become available. Notification to PHMSA does not alleviate an operator from the discovery requirements of this paragraph (b).

* * * * *

(d) *Special requirements for scheduling remediation*—(1) *Immediate repair conditions.* An operator's evaluation and remediation schedule must follow ASME/ANSI B31.8S, section 7 (incorporated by reference, *see* § 192.7) in providing for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure in accordance with paragraph (a) of this section or shut down the pipeline until the operator completes the repair of these conditions. An operator must treat the following conditions as immediate repair conditions:

(i) A metal loss anomaly where a calculation of the remaining strength of the pipe shows a predicted failure pressure determined in accordance with § 192.712(b) less than or equal to 1.1 times the MAOP at the location of the anomaly.

(ii) A dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) that has metal loss, cracking, or a stress riser, unless engineering analyses performed in accordance with § 192.712(c) demonstrate critical strain levels are not exceeded.

(iii) Metal loss greater than 80 percent of nominal wall regardless of dimensions.

(iv) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency or high-frequency electric resistance welding, electric flash welding, or with a longitudinal joint factor less than 1.0, and where the predicted failure pressure determined in accordance with § 192.712(d) is less than 1.25 times the MAOP.

(v) A crack or crack-like anomaly meeting any of the following criteria:

(A) Crack depth plus any metal loss is greater than 50 percent of pipe wall thickness;

(B) Crack depth plus any metal loss is greater than the inspection tool's maximum measurable depth; or

(C) The crack or crack-like anomaly has a predicted failure pressure,

determined in accordance with § 192.712(d), that is less than 1.25 times the MAOP.

(vi) An indication or anomaly that, in the judgment of the person designated by the operator to evaluate the assessment results, requires immediate action.

(2) *One-year conditions.* Except for conditions listed in paragraphs (d)(1) and (3) of this section, an operator must remediate any of the following within 1 year of discovery of the condition:

(i) A smooth dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12), unless engineering analyses performed in accordance with § 192.712(c) demonstrate critical strain levels are not exceeded.

(ii) A dent with a depth greater than 2 percent of the pipeline diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or at a longitudinal or helical (spiral) seam weld, unless engineering analyses performed in accordance with § 192.712(c) demonstrate critical strain levels are not exceeded.

(iii) A dent located between the 4 o'clock and 8 o'clock positions (lower ⅓ of the pipe) that has metal loss, cracking, or a stress riser, unless engineering analyses performed in accordance with § 192.712(c) demonstrate critical strain levels are not exceeded.

(iv) Metal loss anomalies where a calculation of the remaining strength of the pipe at the location of the anomaly shows a predicted failure pressure, determined in accordance with § 192.712(b), less than 1.39 times the MAOP for Class 2 locations, and less than 1.50 times the MAOP for Class 3 and 4 locations. For metal loss anomalies in Class 1 locations with a predicted failure pressure greater than 1.1 times MAOP, an operator must follow the remediation schedule specified in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 7, Figure 4, in accordance with paragraph (c) of this section.

(v) Metal loss that is located at a crossing of another pipeline, or is in an area with widespread circumferential corrosion, or could affect a girth weld, that has a predicted failure pressure, determined in accordance with § 192.712(b), of less than 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or less than 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(vi) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency or high-frequency electric resistance welding, electric flash welding, or with a longitudinal joint factor less than 1.0, and where the predicted failure pressure, determined in accordance with § 192.712(d), is less than 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or less than 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(vii) A crack or crack-like anomaly that has a predicted failure pressure, determined in accordance with § 192.712(d), that is less than 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or less than 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(3) *Monitored conditions.* An operator is not required by this section to schedule remediation of the following less severe conditions but must record and monitor the conditions during subsequent risk assessments and integrity assessments for any change that may require remediation. Monitored indications are the least severe and do not require an operator to examine and evaluate them until the next scheduled integrity assessment interval, but if an anomaly is expected to grow to dimensions or have a predicted failure pressure (with a safety factor) meeting a 1-year condition prior to the next scheduled assessment, then the operator must repair the condition:

(i) A dent with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12), located between the 4 o'clock position and the 8 o'clock position (bottom ⅓ of the pipe), and for which engineering analyses of the dent, performed in accordance with § 192.712(c), demonstrate critical strain levels are not exceeded.

(ii) A dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12), and for which engineering analyses of the dent, performed in accordance with § 192.712(c), demonstrate critical strain levels are not exceeded.

(iii) A dent with a depth greater than 2 percent of the pipeline diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or longitudinal or helical (spiral) seam weld, and for which engineering analyses, performed in accordance with § 192.712(c), of the dent and girth or seam weld demonstrate that critical strain levels are not exceeded.

(iv) A dent that has metal loss, cracking, or a stress riser, and where engineering analyses performed in accordance with § 192.712(c) demonstrate critical strain levels are not exceeded.

(v) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency or high-frequency electric resistance welding, electric flash welding, or with a longitudinal joint factor less than 1.0, and where the predicted failure pressure, determined in accordance with § 192.712(d), is greater than or equal to 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or greater than or equal to 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(vi) A crack or crack-like anomaly for which the predicted failure pressure, determined in accordance with § 192.712(d), is greater than or equal to 1.39 times the MAOP for Class 1 locations or where Class 2 locations contain Class 1 pipe that has been uprated in accordance with § 192.611, or greater than or equal to 1.50 times the MAOP for all other Class 2 locations and all Class 3 and 4 locations.

(e) *In situ direct examination of crack defects.* Whenever an operator finds conditions that require the pipeline to be repaired, in accordance with this section, an operator must perform a direct examination of known locations of cracks or crack-like defects using technology that has been validated to detect tight cracks (equal to or less than 0.008 inches crack opening), such as inverse wave field extrapolation (IWEX), phased array ultrasonic testing (PAUT), ultrasonic testing (UT), or equivalent technology. ''In situ'' examination tools and procedures for crack assessments (length, depth, and volumetric) must have performance and evaluation standards, including pipe or weld surface cleanliness standards for the inspection, confirmed by subject matter experts qualified by knowledge, training, and experience in direct examination inspection for accuracy of the type of defects and pipe material being evaluated. The procedures must account for inaccuracies in evaluations

and fracture mechanics models for failure pressure determinations.

■ 24. In § 192.935, paragraphs (a) and (d)(3) are revised to read as follows:

§ 192.935 What additional preventive and mitigative measures must an operator take?

(a) *General requirements.* (1) An operator must take additional measures beyond those already required by this part to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. Such additional measures must be based on the risk analyses required by § 192.917. Measures that operators must consider in the analysis, if necessary, to prevent or mitigate the consequences of a pipeline failure include, but are not limited to:

(i) Correcting the root causes of past incidents to prevent recurrence;

(ii) Establishing and implementing adequate operations and maintenance processes that could increase safety;

(iii) Establishing and deploying adequate resources for the successful execution of preventive and mitigative measures;

(iv) Installing automatic shut-off valves or remote-control valves;

(v) Installing pressure transmitters on both sides of automatic shut-off valves and remote-control valves that communicate with the pipeline control center;

(vi) Installing computerized monitoring and leak detection systems;

(vii) Replacing pipe segments with pipe of heavier wall thickness or higher strength;

(viii) Conducting additional right-of-way patrols;

(ix) Conducting hydrostatic tests in areas where pipe material has quality issues or lost records;

(x) Testing to determine material mechanical and chemical properties for unknown properties that are needed to assure integrity or substantiate MAOP evaluations, including material property tests from removed pipe that is representative of the in-service pipeline;

(xi) Re-coating damaged, poorly performing, or disbonded coatings;

(xii) Performing additional depth-of-cover surveys at roads, streams, and rivers;

(xiii) Remediating inadequate depth-of-cover;

(xiv) Providing additional training to personnel on response procedures and conducting drills with local emergency responders; and

(xv) Implementing additional inspection and maintenance programs.

(2) Operators must document the risk analysis, the preventive and mitigative measures considered, and the basis for implementing or not implementing any preventive and mitigative measures considered, in accordance with § 192.947(d).

* * * * *

(d) * * *

(3) Perform instrumented leak surveys using leak detector equipment at least twice each calendar year, at intervals not exceeding 7 ½ months. For unprotected pipelines or cathodically protected pipe where electrical surveys are impractical, instrumented leak surveys must be performed at least four times each calendar year, at intervals not exceeding 4 ½ months. Electrical surveys are indirect assessments that include close interval surveys, alternating current voltage gradient surveys, direct current voltage gradient surveys, or their equivalent.

* * * * *

■ 25. In § 192.941, paragraph (b)(1) and the introductory text of paragraph (b)(2) are revised to read as follows:

§ 192.941 What is a low stress reassessment?

* * * * *

(b) * * *

(1) *Cathodically protected pipe.* To address the threat of external corrosion on cathodically protected pipe in a covered segment, an operator must perform an indirect assessment on the covered segment at least once every 7 calendar years. The indirect assessment must be conducted using one of the following means: indirect examination method, such as a close interval survey; alternating current voltage gradient survey; direct current voltage gradient survey; or the equivalent of any of these methods. An operator must evaluate the cathodic protection and corrosion threat for the covered segment and include the results of each indirect assessment as part of the overall evaluation. This evaluation must also include, at a minimum, the leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

(2) *Unprotected pipe or cathodically protected pipe where external corrosion assessments are impractical.* If an external corrosion assessment is impractical on the covered segment an operator must—

* * * * *

Issued in Washington, DC, on August 3, 2022, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

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Part V

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Microwave Ovens; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0023]

RIN 1904–AE00

Energy Conservation Program: Energy Conservation Standards for Microwave Ovens

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including microwave ovens. EPCA also requires the U.S. Department of Energy (''DOE'' or ''the Department'') to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this supplemental notice of proposed rulemaking (''SNOPR''), DOE proposes amended energy conservation standards for microwave ovens, and requests comment on these proposed standards and associated analyses and results.

DATES: DOE will accept comments, data, and information regarding this SNOPR no later than October 24, 2022. See section VII, ''Public Participation,'' for details.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before September 23, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2017–BT–STD–0023. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0023, by any of the following methods:

(1) *Email: MWO2017STD0023@ee.doe.gov*. Include the docket number EERE–2017–BT–STD–0023 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 VII of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2017-BT-STD-0023*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through *www.regulations.gov*.

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this SNOPR.

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Proposed Rule

Title III, Part B [1] of EPCA,[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include kitchen ranges and ovens, which encompass microwave ovens, the subject of this rulemaking. (42 U.S.C. 6292(a)(10))

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for microwave ovens. The proposed standards, which are expressed in maximum allowable average standby power, as expressed in watts (''W''), are shown in Table I.1. These proposed standards, if adopted, would apply to all microwave ovens listed in Table I.1 manufactured in, or imported into, the United States starting on the date 3 years after the publication of the final rule for this rulemaking.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power (Watts)
PC 1: Microwave-Only Ovens and Countertop Convection Microwave Ovens	0.6 W
PC 2: Built-In and Over-the-Range Convection Microwave Ovens	1.0 W

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of microwave ovens, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of microwave ovens, which is estimated to be 10.6 years (*see* section IV.F.6 of this document).

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] 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.

[3] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (*see* section IV.F.8 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (*see* section IV.F.9 of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF MICROWAVE OVENS

Product class	Average LCC savings (2021$)	Simple payback period (years)
Microwave-Only Ovens and Countertop Convection Microwave Ovens	0.98	1.4
Built-In and Over-the-Range Convection Microwave Ovens	0.78	0.8

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2022–2055). Using a real discount rate of 8.5 percent, DOE estimates that the INPV for manufacturers of microwave ovens in the case without amended standards is $1.40 billion in 2021$. Under the proposed standards, the change in INPV is estimated to range from −$34.3 million, which represents a change of −2.5 percent, to no change in INPV. To bring products into compliance with amended standards, it is estimated that the industry would incur total conversion costs of approximately $46.1 million.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

C. National Benefits and Costs [4]

DOE's analyses indicate that the proposed energy conservation standards for microwave ovens would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for microwave ovens purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2026–2055) amount to 0.06 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 17.7 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the proposed standards for microwave ovens ranges from $0.15 billion (at a 7-percent discount rate) to $0.33 (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for microwave ovens purchased in 2026–2055.

In addition, the proposed standards for microwave ovens are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 1.86 million metric tons (''Mt'') [6] of carbon dioxide (''CO_2''), 0.84 thousand tons of sulfur dioxide (''SO_2''), 2.86 thousand tons of nitrogen oxides (''NO_X''), 12.54 thousand tons of methane (''CH_4''), 0.02 thousand tons of nitrous oxide (''N_2O''), and 0.005 tons of mercury (''Hg'').[7]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (''GHG'') using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of GHG (''SC–GHG''). DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[8] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.09 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.[9]

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions also discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be $0.07 billion using a 7-percent discount rate, and $0.16 billion using a 3-percent discount rate.[10] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.3 summarizes the economic benefits and costs expected to result from the proposed standards for microwave ovens. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

[4] All monetary values in this document are expressed in 2021 dollars.

[5] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2 of this document.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (''*AEO 2022*''). *AEO 2022* represents current Federal and State legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of *AEO 2022* assumptions that effect air pollutant emissions.

[8] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021, *available at www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[9] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

[10] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

TABLE I.3—SUMMARY OF MONETIZED ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS (TSL 2)

	Billion $2021
3% discount rate	
Consumer Operating Cost Savings	0.42
Climate Benefits*	0.09
Health Benefits**	0.16
Total Benefits†	0.67
Consumer Incremental Product Costs‡	0.09
Net Benefits	0.59
7% discount rate	
Consumer Operating Cost Savings	0.20
Climate Benefits* (3% discount rate)	0.09
Health Benefits**	0.07
Total Benefits†	0.36
Consumer Incremental Product Costs‡	0.05
Net Benefits	0.31

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026 − 2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026 − 2055.

* Climate benefits are calculated using four different estimates of the SC–CO2, SC–CH4 and SC–N2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of of climate and health benefits of emission reduction, all annualized.[11]

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of microwave ovens shipped in 2026–2055. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of microwave ovens shipped in 2026–2055. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section V.B.8 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $4.8 million per year in increased product costs, while the estimated annual benefits are $19.3 million in reduced product operating costs, $5.2 million in climate benefits, and $6.8 million in health benefits. In this case, the net benefit would amount to $26.5 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $4.8 million per year in increased product costs, while the estimated annual benefits are $23.3 million in reduced operating costs, $5.2 million in climate benefits, and $9.1 million in health benefits. In this case, the net benefit would amount to $32.7 million per year.

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2021, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2021. The calculation uses discount rates of 3 and 7 percent for all costs and benefits. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, yielding the same present value.

TABLE I.4—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS (TSL 2)

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	23.3	22.0	24.8
Climate Benefits*	5.2	5.0	5.3
Health Benefits**	9.1	8.9	9.3
Total Benefits†	37.6	36.0	39.4
Consumer Incremental Product Costs‡	4.8	4.9	4.5
Net Benefits	32.7	31.1	34.9
7% discount rate			
Consumer Operating Cost Savings	19.3	18.4	20.3
Climate Benefits* (3% discount rate)	5.2	5.0	5.3
Health Benefits*	6.8	6.7	7.0
Total Benefits†	31.3	30.1	32.6
Consumer Incremental Product Costs‡	4.8	4.8	4.5
Net Benefits	26.5	25.3	28.1

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026 − 2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026 − 2055. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.1of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these standard levels are already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed the burdens of the proposed standards.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from NO_X and SO_2 reduction, and a 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the proposed standards for microwave ovens is $4.8 million per year in increased microwave oven costs, while the estimated annual benefits are $19.3 million in reduced equipment operating costs, $5.2 million in climate benefits, and $6.8 million in health benefits. The net benefit amounts to $26.5 million per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[12] For example, the United States rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing GHG emissions in order to limit the rise in mean global temperature. As such, energy savings that reduce GHG emissions have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and full-fuel cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and

[12] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the proposed standards would result in estimated national energy savings of 0.06 quads FFC, the equivalent of the electricity use of 1.6 million homes in one year. In addition, they are projected to reduce GHG emissions. Based on these findings, DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).[13] A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (''TSD'').

DOE also considered more-stringent energy efficiency levels as potential standards, and is still considering them in this proposed rulemaking. However, DOE has tentatively concluded that the potential benefits of the more-stringent energy efficiency levels would outweigh the projected burdens.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for microwave ovens.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include kitchen ranges and ovens, which include microwave ovens, the subject of this document. (42 U.S.C. 6292(a)(10)) EPCA prescribed energy conservation standards for these products, and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(h)(2)(A)–(B)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for microwave ovens appear at title 10 of the Code of Federal Regulations (''CFR'') part 430.23(i) and 10 CFR part 430, subpart B, appendix I (''appendix I'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including microwave ovens. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing

[13] See section III.D.2 of this document for further discussion of how DOE determines whether energy savings are ''significant'' within the context of the statute.

any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Publish Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for microwave ovens address standby mode and off mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards that it may adopt.

B. Background

1. Current Standards

In a final rule published on June 17, 2013 (''June 2013 Final Rule''), DOE prescribed the current energy conservation standards for microwave ovens manufactured on and after June 17, 2016. 78 FR 36316. These standards are set forth in DOE's regulations at 10 CFR 430.32(j)(3) and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power
Microwave-Only Ovens and Countertop Convection Microwave Ovens	1.0 W
Built-In and Over-the-Range Convection Microwave Ovens	2.2 W

2. History of Standards Rulemaking for Microwave Ovens

EPCA prescribed an energy conservation standard for kitchen ranges and ovens, and directed DOE to conduct two cycles of rulemakings to determine whether to amend standards for these products. (42 U.S.C. 6295(h)(2)(A)–(B)) DOE completed the first of these rulemaking cycles by publishing a final rule on September 8, 1998, that codified the prescriptive design standard for gas cooking products established in EPCA, but found that no standards were justified for electric cooking products, including microwave ovens, at that time. 63 FR 48038, 48053–48054. DOE completed the second rulemaking cycle and published a final rule on April 8, 2009, in which it determined, among other things, that standards for microwave oven active mode energy use were not economically justified. 74 FR 16040 (''April 2009 Final Rule'').

Most recently, DOE published the June 2013 Final Rule, adopting energy conservation standards for microwave ovens. 78 FR 36316. In the June 2013 Final Rule, DOE maintained its prior determination that active mode standards are not warranted for microwave ovens and prescribed energy conservation standards that address the standby and off mode energy use of microwave ovens. 78 FR 36316, 36317.

In support of the present review of the microwave oven energy conservation standards, DOE published an early assessment request for information (''RFI'') on August 13, 2019 (''August 2019 RFI''), which identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 84 FR 39980.

DOE subsequently published a notice of proposed determination (''NOPD'') on August 12, 2021, in which DOE initially determined that current standards for microwave ovens do not need to be amended. 86 FR 44298. (''August 2021 NOPD'') In the August 2021 NOPD, DOE tentatively determined that there are technology options that would improve the efficiency of microwave ovens. 86 FR 44298, 44310. Based on the analysis conducted for the August 2021 NOPD, DOE estimated that amended standards for microwave oven standby power at the maximum technologically feasible (''max-tech'') level would result in 0.1 quads of energy saved over a 30-year period (representing an estimated 8 percent reduction in site energy use of microwave ovens). 86 FR 44298, 44310.

After the publication of the NOPD, DOE conducted investigative testing and manufacturer discussions, and updated the engineering analysis accordingly for this SNOPR. As a result, DOE revised the efficiency levels, manufacturer selling price (''MSP'')-efficiency relationships, and LCC and PBP analyses to evaluate the economic impacts of potential energy conservation standards for microwave ovens on individual consumers. Updates to the shipments and NIA analyses from the NOPD include the market shares of both product classes, historical shipments, shipment projections, the standard year, no-new-standards case efficiency distribution, and FFC conversion rates.

In evaluating the significance of the estimated energy savings for the August 2021 NOPD, DOE applied a two-part numeric threshold test that was then applicable under section 6(b) of appendix A to 10 CFR part 430 subpart C (Jan. 1, 2021 edition). Specifically, the

threshold required that an energy conservation standard result in a 0.30 quads reduction in site energy use over a 30-year analysis period or a 10-percent reduction in site energy use over that same period. *See* 85 FR 8626, 8670 (Feb. 14, 2020). In the August 2021 NOPD, DOE stated that the estimated site energy savings at the max-tech level was under the 0.3-quads/10-percent threshold and tentatively determined that amended energy conservation standards for microwave oven standby power would not result in significant conservation of energy. 86 FR 44298, 44310. DOE also noted that the two-part numeric threshold was under reconsideration. 86 FR 44298, 44302.

DOE held a public meeting on September 13, 2021, to solicit feedback from stakeholders concerning the August 2021 NOPD, and received comments in response from the interested parties listed in Table II.2.

TABLE II.2—AUGUST 2021 NOPD WRITTEN COMMENTS FOR MICROWAVE OVENS

Commenter(s)	Reference in this SNOPR	Commenter type
Association of Home Appliance Manufacturers	AHAM	Industry Association.
Institute for Policy Integrity (NYU School of Law)	IPI	Consumer Advocate.
Pacific Gas and Electric Company (''PG&E''), San Diego Gas and Electric (''SDG&E''), and Southern California Edison (''SCE'').	CA IOUs	Investor Owned Utility Association.
Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficiency Economy (ACEEE), Consumer Federation of America (CFA), Natural Resources Defense Council (NRDC), Northwest Energy Efficiency Alliance (NEEA).	ASAP, ACEEE, CFA, NRDC, NEEA.	Efficiency Organizations.
Natural Resources Defense Council (NRDC), Appliance Standards Awareness Project (ASAP), Pacific Gas and Electric Company (''PG&E''), San Diego Gas and Electric (''SDG&E''), and Southern California Edison (''SCE'').	NRDC, ASAP, CA IOUs.	Efficiency Organizations.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[14]

On December 13, 2021, DOE published in the **Federal Register**, a final rule that amended appendix A to 10 CFR part 430 subpart C (''appendix A''). 86 FR 70892 (the ''December 2021 Final Rule''). The December 2021 Final Rule, in part, removed the numeric threshold in section 6(b) of appendix A for determining when the significant energy savings criterion is met, reverting to DOE's prior practice of making such determinations on a case-by-case basis. 86 FR 70892.

C. Deviation From Appendix A

In accordance with section 3(a) of appendix A, DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking (after initiating the rulemaking process through an early assessment), the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (''ANOPR'').

DOE is deviating from this provision by proposing amended standards without first issuing a framework document and preliminary analysis or an ANOPR. As discussed previously, DOE proposed in the August 2021 NOPD that standards for microwave ovens did not need to be amended. 86 FR 44298. The August 2021 NOPD contained analyses that DOE generally conducts as part of a preliminary analysis, including a market and technology assessment, screening analysis, engineering analysis, and national impacts analysis (''NIA''). DOE provided a 60-day comment period for the August 2021 NOPD. As such, DOE believes it is appropriate to proceed with this SNOPR without once again conducting the pre-NOPR stages of a rulemaking.

Section 6(f)(2) of appendix A provides that the length of the public comment period for a notice of proposed rulemaking to amend an energy conservation standard will be at least 75 days. As stated previously, DOE requested comment on the analytical approach taken in the August 2021 NOPD and provided stakeholders with a 60-day comment period. Given that this supplemental notice relies largely on the same analytical approach taken in that NOPD, DOE believes a 60-day comment period is appropriate and will provide interested parties with a meaningful opportunity to comment on the proposed rule.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information submitted by stakeholders. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) The microwave oven product classes for this SNOPR are discussed in further detail in section IV.A.1 of this document. This proposal covers microwave ovens defined as household cooking appliances consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven components of a combined cooking product. 10 CFR 430.2. The scope of coverage is discussed in further detail in section IV.A.1 of this document.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to

[14] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for microwave ovens. (Docket No. EERE–2017–BT–STD–0023, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

quantify the efficiency of their product. DOE's current energy conservation standards for microwave ovens are expressed in terms of average watts of standby mode power consumption. *See* 10 CFR 430.23(j)(3). DOE originally established test procedures for microwave ovens in an October 3, 1997 final rule that addressed active mode energy use only. 62 FR 51976. Those procedures were based on the International Electrotechnical Commission (''IEC'') Standard 705–Second Edition 1998 and Amendment 2–1993, ''Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes'' (''IEC Standard 705''). On July 22, 2010, DOE published in the **Federal Register** a final rule for the microwave oven test procedures (''July 2010 Repeal Final Rule''), in which it repealed the regulatory test procedures for measuring the cooking efficiency of microwave ovens. 75 FR 42579. In the July 2010 Repeal Final Rule, DOE determined that the existing microwave oven test procedure did not produce representative and repeatable test results. 75 FR 42579, 42580. DOE stated at that time that it was unaware of any test procedures that had been developed that address these concerns. 75 FR 42579, 42581.

In response to the August 2021 NOPD, AHAM stated that active mode standards are not justified because the current test procedure does not measure active mode power and an active mode measurement would be unduly burdensome. (AHAM, No. 14 at p. 3) DOE is not currently proposing active mode standards because it has not identified a method for capturing active mode energy performance in a repeatable and representative manner.

On March 9, 2011, DOE published an interim final rule establishing test procedures for microwave ovens regarding the measurement of the average standby mode and average off mode power consumption that incorporated by reference specific clauses from the IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06. 76 FR 12825. On January 18, 2013, DOE published a final rule amending the microwave oven test procedure to incorporate by reference certain provisions of the revised IEC Standard 62301 Edition 2.0 2011–01, along with clarifying language for the measurement of standby mode and off mode energy use. 78 FR 4015.

On December 16, 2016, DOE published a final rule (''December 2016 TP Final Rule'') amending the cooking products test procedure to, in part, incorporate methods for calculating the annual standby mode and off mode energy consumption of the microwave oven component of a combined cooking product by allocating a portion of the combined low-power mode energy consumption measured for the combined cooking product to the microwave oven component using the estimated annual cooking hours for the given components comprising the combined cooking product. 81 FR 91418, 91438–91439. That final rule, which resulted in the most recent version of the microwave oven test procedure, was codified in the CFR at appendix I.

On January 18, 2018, DOE published an RFI (''January 2018 RFI'') initiating a data collection process to assist in its evaluation of the test procedure for microwave ovens. 83 FR 2366. On November 14, 2019, DOE published a NOPR (''November 2019 TP NOPR'') proposing amendments to the existing test procedure with requirements for both the clock display and network functionality when testing standby mode and off mode power consumption and certain technical corrections. 84 FR 61836. DOE subsequently published an SNOPR on August 3, 2021 (''the August 2021 TP SNOPR'') providing additional clarification on the requirements for testing microwave ovens with network functionality. 86 FR 41759. On March 30, 2022, DOE published a final rule amending the microwave oven test procedure as proposed in the August 2021 TP SNOPR. 87 FR 18261.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or product that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A to 10 CFR part 430 subpart C.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(ii)–(v) and 7(b)(2)–(5). Section IV.B of this document discusses the results of the screening analysis for microwave ovens, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the SNOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in energy efficiency for microwave ovens, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this proposed rule and in chapter 5 of the SNOPR TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to microwave ovens purchased in the 30-year period that begins in the year of compliance with the proposed standards (2026–2055).[15] The savings are measured over the entire lifetime of microwave ovens purchased in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely

[15] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this SNOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

evolve in the absence of amended energy conservation standards.

DOE used its NIA spreadsheet model to estimate NES from potential amended or new standards for microwave ovens. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[16] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or product. For more information on FFC energy savings, see section IV.H.2 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

In response to the August 2021 NOPD, IPI suggested that DOE re-consider its tentative determination regarding the significance of energy conservation in light of the amendments to appendix A that DOE had recently proposed in a separate rulemaking, which included changes to the definition of ''significant energy savings.'' (IPI, No. 15 at p. 1) CA IOUs requested DOE consider the proposed appendix A changes to the quantitative significant savings of energy threshold, economic justification, and technological feasibility of the proposed standard levels. (CA IOUs, No. 17 at p. 2)

AHAM stated that amended standards are not justified for microwave ovens regardless of whether DOE continues to use the then-current appendix A's definition of ''significant conservation of energy'' or relies on the previous definition of ''merely trivial.'' (AHAM, No. 14 at p. 2)

As discussed, the numeric threshold for determining the significance of energy savings was subsequently eliminated in the December 2021 Final Rule and DOE has reverted to its longstanding practice of evaluating the significance of energy savings on a case-by-case basis. 86 FR 70892.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[17] For example, the United States recently rejoined the Paris Agreement and will exert leadership in confronting the climate crisis. These actions have placed an increased emphasis on the importance of energy savings that reduce greenhouse gas emissions and help mitigate the climate crisis. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Lastly, in evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis. As stated, the proposed standards would result in estimated national energy savings of 0.04 quads, the equivalent of the electricity use of 1 million homes in one year. DOE has initially determined the energy savings for the TSL proposed in this rulemaking are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

E. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this SNOPR.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC

[16] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[17] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and GHGs associated with energy production and use. As part of the analysis of the need for national energy and water conservation, DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.9 of this proposed rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking regarding microwave ovens. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections.

Additionally, this second spreadsheet calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/48.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*''), a widely known energy projection for the United States, for the emissions and utility impact analyses.

Stakeholders asked that DOE publish the analysis used in the NOPD. (ASAP, NRDC, CA IOUs, No. 14 at p. 1; CA IOUs, No. 17 at p. 1)

DOE has provided spreadsheet models in the docket to support the SNOPR analyses. The LCC spreadsheet model used to support the SNOPR analysis had not been developed for the NOPD analyses. The shipments and NIA spreadsheet models used in the NOPD analyses now have updated values. Primary and FFC energy savings in the NOPD Table V.2 Cumulative National Energy Savings for Microwave Ovens can be found in the NIA's Input and Summary worksheet.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of microwave ovens. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the SNOPR TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

In this analysis, DOE relies on the definition of microwave ovens in 10 CFR 430.2, which defines ''microwave oven'' as a category of cooking products which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven(s) component of a combined cooking product. Any product meeting the definition of microwave oven is included in DOE's scope of coverage.

For this proposal, DOE considered the two product classes of microwave ovens prescribed in the current energy conservation standards: (1) Microwave-Only Ovens and Countertop Convection Microwave Ovens, and (2) Built-In and Over-the-Range Convection Microwave Ovens.

For these two classes of microwave ovens, DOE's current test procedure measures the energy consumption in standby mode and off mode only. Consequently, DOE's current energy conservation standards for microwave ovens are also expressed in terms of standby mode and off mode power. There are currently no active mode energy conservation standards nor a prescribed test procedure for measuring the active mode energy use or efficiency (*e.g.,* cooking efficiency) of microwave ovens.

2. Technology Options

In the preliminary market analysis and technology assessment, DOE identified four technology options that would be expected to improve the efficiency of microwave ovens, as measured by the DOE test procedure:

TABLE IV.1—MICROWAVE OVEN TECHNOLOGY OPTIONS

Mode	Technology option
Standby	Lower-power display technologies.
Standby	Cooking sensors with no standby power requirement.
Standby	More efficient power supply and control board options.
Standby	Automatic power-down of most power-consuming components, including the clock display.

CA IOUs stated that microwave ovens are available on the market that do not appear to use automatic power-down functionality, but achieve lower standby power than the DOE-stated max-tech standby power levels. They requested that DOE review and revise the max-tech levels based on the knowledge of market-ready models. (CA IOUs, No. 17 at p. 4) ASAP stated that there are additional potential efficiency levels between the level associated with automatic power down and the current baseline standards (1.0 W for microwave-only ovens and countertop convection microwave ovens and 2.2 W for built-in and over-the-range convection microwave ovens). ASAP further stated DOE's Compliance Certification (''CCMS'') database lists microwave oven models with standby power levels significantly below 0.84 W without automatic power-down. (ASAP, ACEEE, CFA, NRDC, NEEA, No. 16 at p. 1) For the SNOPR, DOE purchased and tested 33 microwave ovens representing the two product classes, and the results confirm that microwave oven models currently on the market are able to achieve standby power consumption values between that of automatic power-down and the proposed levels. Further, DOE's testing suggested that microwave ovens are frequently rated conservatively, such that their certified standby power level is higher than actual values obtained when tested in accordance with appendix I. Therefore, DOE was unable to accurately assess the relationship between specific standby power levels and utilized technology options based on data from the CCMS database. Instead, DOE used the measured standby power levels of microwave oven models in its test sample as a proxy to determine the representative distribution of standby power levels among microwave ovens on the market, as shown in Table IV.2. Details of the methodology and results from DOE's investigative testing are included in chapter 3 and chapter 5 of the SNOPR TSD.

TABLE IV.2—ESTIMATED MARKET DISTRIBUTION OF MICROWAVE OVENS

Standby power (W)	Market share (%)
Microwave-Only Ovens and Countertop Convection Microwave Ovens	
1	15
0.8	45
0.6	29
0.4	11
Built-in and Over-The-Range Convection Microwave Ovens	
2.2	0
1.5	36
1	59
0.5	5

DOE subsequently tore down all 33 microwave ovens but was unable to isolate a unique set of technology options associated with each standby power level. As such, DOE tentatively concludes that models demonstrating lower standby power consumption than the current energy conservation standards are not implementing specific technology options, but rather incorporate a comprehensive system-level control board redesign that prioritizes standby power performance from the ground up. Examples of possible redesign strategies include the use of modern microcontrollers that demonstrate significantly lower quiescent current comsumption and firmware that emphasizes the shutting down of all subassemblies that are not in use while idle. DOE tentatively estimates that while these improvements would not contribute to the incremental manufacturer production cost (''MPC'') of a control board, the redesign would result in significant conversion costs for manufacturers as they attempt to bring their microwave oven models into compliance with any proposed standards. See section IV.J.2.a of this document.

DOE requests feedback on its tentative conclusion that reducing the standby power consumption of microwave ovens would require full redesigns of control boards, and that while such redesigns would not result in increased MPCs, manufacturers would incur significant one-time conversation costs.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

In response to the August 2021 NOPD, AHAM stated that there are no available technology options to improve standby power energy consumption without impacting functionality for consumers. (AHAM, No. 14 at p. 2)

As discussed in section IV.A.2 of this document, DOE has identified microwave ovens on the market that have standby energy consumption lower than the maximum currently required, indicating that there are potential technology options to improve standby power consumption. DOE's initial testing results and review of the CCMS database show that the majority of microwave ovens in both product classes are performing better than the current standards.

1. Screened-Out Technologies

As discussed, DOE considers whether a technology option will adversely impact consumer utility and product availability. In response to the August 2021 NOPD, IPI stated that DOE should reconsider all technology options (*e.g.,* auto power-down), since allowing an undefined loss of consumer utility to bar consideration of an otherwise feasible technology option distorts the statute's careful balancing of factors. (IPI, No. 15 at p. 1)

DOE has previously stated it is uncertain the extent to which consumers value the function of a continuous display clock, but that loss of such function may result in significant loss of consumer utility. 78 FR 36316, 36362. Consistent with this prior concern, DOE has screened out ''automatic power-down'' as a technology option due to its impact on consumer utility.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 of this document meet all five screening criteria to be examined further as design options in DOE's SNOPR analysis. In summary, DOE did not screen out the following technology options:

(1) Lower-power display technologies;

(2) Cooking sensors with no standby power requirement; and

(3) More efficient power supply and control board options

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, unique-pathway proprietary technologies). For additional details, see chapter 4 of the SNOPR TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of microwave ovens. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency

microwave ovens, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design-option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In this rulemaking, DOE applied the efficiency-level approach. As discussed, DOE was unable to use the design-option approach because it did not identify specific design options associated with each standby power level.

a. Baseline Efficiency

For each product/product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product/product class represents the characteristics of a product/product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

For microwave-only ovens and countertop convection microwave ovens (''Product Class 1''), the baseline standby power level, EL 0, is equal to the current standard of 1.0 W. For the built-in and over-the-range convection microwave ovens product class (''Product Class 2''), the baseline standby power consumption used for the analysis at EL 0 is equal to the current standard of 2.2 W. This maximum allowable average standby power consumption for Product Class 2 microwave ovens is higher than that allowed for Product Class 1 microwave ovens because, in the June 2013 Final Rule, DOE had concluded that built-in and over-the-range convection microwave ovens require a larger power supply to support additional features such as an exhaust fan, additional relays, and additional lights, and that the larger power supply contributes to a higher standby power consumption. 78 FR 36316, 36328. Nonetheless, DOE expects that certain available design options for reducing standby power consumption for Product Class 2 microwave ovens would be similar to those for Product Class 1 microwave ovens.

b. Higher Efficiency Levels

Using the efficiency-level approach, the higher efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). As noted in section IV.A.2 of this document, DOE's testing suggests that microwave ovens are frequently rated conservatively, such that their certified standby power level is higher than actual values obtained when tested in accordance with appendix I. DOE therefore used the measured standby power levels of microwave oven models in its test sample as a proxy to determine the representative distribution of standby power levels among microwave ovens currently on the market, as shown in Table IV.2 of this document.

According to this efficiency distribution, 85 percent of Product Class 1 microwave ovens achieve a standby power consumption lower than the current standard of 1.0 W, with 45 percent of the market estimated to be achieving 0.8 W, 29 percent achieving 0.6 W, and 11 percent achieving 0.4 W, all without the use of automatic powerdown. For Product Class 1, therefore, DOE analyzed three efficiency levels (''ELs'') above the baseline which correspond to these three standby power levels, as shown in Table IV.3 of this document.

The test results also showed that all of the Product Class 2 test units achieved a standby power consumption in the range of 0.5 W to 1.5 W, lower than the current standard of 2.2 W. As such, DOE analyzed higher efficiency levels for this product class at standby power values evenly distributed within that range: EL 1 at 1.5 W, EL 2 at 1.0 W and EL 3 (max-tech) at 0.5 W. DOE estimates that there are currently no built-in and over-the-range convection microwave ovens in the market at the baseline standby power consumption of 2.2 W.

DOE requests feedback on the efficiency levels analyzed for each product class in this proposal.

In summary, DOE analyzed the following efficiency levels for this proposal:

TABLE IV.3—ANALYZED EFFICIENCY LEVELS FOR MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)
Baseline	1.00
1	0.8
2	0.6
3 (Max-Tech)	0.4

TABLE IV.4—ANALYZED EFFICIENCY LEVELS FOR BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)
Baseline	2.2
1	1.5
2	1.0
3 (Max-Tech)	0.5

2. Manufacturer Production Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the

product on the market. The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

For microwave ovens, DOE attempted to estimate the MPC of attaining each efficiency level using the physical teardowns approach described previously. As stated in section IV.A.2 of this document, DOE tore down all 33 microwave ovens in its test sample but was unable to isolate a unique set of technology options associated with each standby power level. As such, DOE tentatively concluded that models demonstrating lower standby power consumption than the current energy conservation standards are not implementing specific technology options, but rather incorporate a comprehensive system-level control board redesign that prioritizes standby power performance from the ground up. Examples of possible redesign strategies include the replacement of microcontrollers and switch mode controllers with modern ones that demonstrate significantly lower quiescent current comsumption at no additional cost compared to those found in inefficient systems and firmware that emphasizes the shutting down of all subassemblies that are not in use while idle. DOE tentatively estimates that while these improvements would not contribute to an increase in the MPC of a control board (*i.e.* incremental MPC of $0), the redesign would result in conversion costs for manufacturers as they attempt to bring their microwave oven models into compliance with any proposed standards. See section IV.J.2.a of this document.

DOE requests comment on its tentative conclusion that improvements in standby performance are the result of system-level control board redesigns that require conversion costs but would not result in increases to the manufacturing product cost compared to a control board at baseline.

3. Manufacturer Production Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of MPC (in dollars) versus standby power consumption (in W). For the reasons discussed in sections IV.A.2 and IV.C.2 of this document, DOE estimated an incremental MPC of $0 at all higher efficiency levels, compared to the baseline MPC, for both of the the product classes, as shown in Table IV.5 and Table IV.6 of this document. See chapter 5 of the SNOPR TSD for additional detail on the engineering analysis.

DOE requests comment on the incremental MPCs from the SNOPR engineering analysis.

TABLE IV.5—ANALYZED EFFICIENCY LEVELS AND INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)	Incremental MPC (*2021$*)
Baseline	1.00	.....
1	0.8	$0.0
2	0.6	0.0
3	0.4	0.0

TABLE IV.6—ANALYZED EFFICIENCY LEVELS AND INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)	Incremental MPC (*2021$*)
Baseline	2.20	.....
1	1.5	$0.0
2	1.00	0.0
3	0.5	0.0

4. Manufacturer Selling Price

DOE developed a manufacturer markup to convert MPCs to MSPs. The MSP includes direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* selling, general, and administrative expenses (''SG&A''), research and development (''R&D''), and interest), along with profit. To calculate the MSPs, DOE applied the manufacturer markup to the MPCs estimated in section IV.C.3 of this document for each product class and efficiency level.

DOE estimated the manufacturer markup based on publicly available information from publicly traded microwave oven manufacturers and the manufacturer markup that was used in the June 2013 Final Rule.[18] DOE continued to use a manufacturer markup value of 1.298, the same manufacturer markup that was used in the June 2013 Final Rule, for this SNOPR analysis.

Typically, DOE uses the same manufacturer markups in the consumer analyses (*e.g.,* LCC analysis, PBP analysis, and NIA) in both the no-new-standards case and the standards cases. However, given that the engineering

[18] 78 FR 36316.

analysis estimated an incremental MPC of $0 at all efficiency levels, compared to the baseline MPC, DOE developed higher manufacturer markups in the standards cases as DOE expects microwave oven manufacturers to recover at least some of the conversion costs that manufacturers would incur as a result of the analyzed energy conservation standards. Depending on the competitive environment for microwave ovens, some or all of the increased conversion costs may be passed from manufacturers to retailers and then eventually to consumers in the form of higher purchase prices. DOE conservatively used a manufacturer markup in the standards cases that would allow microwave oven manufacturers to fully recover the conversion cost they incur to redesign non-compliant models into compliant models. This increased manufacturer markup was applied to the models that microwave oven manufacturers would need to redesign due to energy conservation standards.

DOE first estimated the conversion costs associated with redesigning non-compliant microwave oven models at each efficiency level for both product classes. These conversion costs include capital conversion costs (*i.e.,* investments in property, plant, equipment, and tooling necessary to adapt or change existing production facilities such that new product designs can be fabricated and assembled) and product conversion costs (*i.e.,* investments in R&D, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards). See section IV.J.2.c of this document for a complete description of the conversion cost estimates.

DOE then calibrated the manufacturer markups for each product class at each TSL to result in microwave oven manufacturers to be able to fully recover these conversion costs. DOE conservatively calibrated these increased manufacturer markups to result in the INPV in the standards cases to be equal to the INPV in the no-new-standards case. INPV is the sum of the microwave oven manufacturers' industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital. Therefore, DOE estimates that if manufacturers were able to increase their manufacturer markups by the values shown in Table IV.7, microwave oven manufacturers would not be any worse off, as measured by INPV, due to standards compared to the no-new-standards case (*i.e.,* if DOE did not amend energy conservation standards for microwave ovens).

The increase in manufacturer markups in the standards cases results in an increase in the MSP, despite no incremental increase in MPC. Table IV.7 displays the increase in manufacturer markups and the incremental increase in MSP applied to non-compliant models that are redesigned due to the analyzed energy conservation standards.

TABLE IV.7—MANUFACTURER MARKUP AND INCREMENTAL MANUFACTURER SELLING PRICE BY PRODUCT CLASS AND EFFICIENCY LEVEL

Efficiency level	PC 1: Microwave-only ovens and countertop convection microwave ovens		PC 2: Built-in and over-the-range convection microwave ovens	
	Manufacturer markup	Incremental MSP	Manufacturer markup	Incremental MSP
Baseline	1.2980	.....	1.2980	.....
EL 1	1.3007	$0.34	1.2980	$0.00
EL 2	1.3035	0.70	1.3058	2.14
EL 3	1.3061	1.04	1.3112	3.63

DOE requests comment on the estimated increased manufacturer markups and incremental MSPs that result from the analyzed energy conservation standards from the SNOPR engineering analysis.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

For microwave ovens, DOE further developed baseline and incremental markups for each link in the distribution chain (after the product leaves the manufacturer). Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[19]

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups. Specifically, DOE used the 2017 Annual Retail Trade Survey for the ''electronics and appliance stores'' sector to develop retailer markups.[20]

Chapter 6 of the SNOPR TSD provides additional detail on DOE's development of the baseline and incremental retail markups.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of microwave ovens at different efficiencies in representative U.S. single-family homes, multi-family residences, and mobile homes, and to assess the energy savings potential of increased microwave ovens efficiency. The energy use analysis estimates the range of energy use of microwave ovens in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed,

[19] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[20] U.S. Census Bureau, *Annual Retail Trade Survey.* 2017. *www.census.gov/programs-surveys/arts.html.*

particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

For this SNOPR, DOE used the same methodology as that described in section IV.D of the August 2021 NOPD. In the June 2013 Final Rule, DOE determined the average hours of operation for microwaves to be 44.9 hours per year.[21] [22] To calibrate the average annual operating hours, DOE primarily used data from the Energy Information Administration (''EIA'')'s *Residential Energy Consumption Survey* (''*RECS*'') 2015.[23] *RECS 2015* provides information on the frequency of microwave oven usage per week for each household. DOE calculated the *RECS* microwave oven usage factor for each household in the sample by dividing the weighted-average usage based on the entire *RECS* samples. DOE then multiplied usage factor by the annual operating hours (*i.e.,* 44.9 hours) for each household in the *RECS*. DOE subtracted field microwave ovens operating hours from the total number of hours in a year and multiplied that difference by the standby mode power usage at each efficiency level to determine annual standby mode and off mode energy consumption.

Chapter 7 of the SNOPR TSD provides details on DOE's energy use analysis for microwave ovens.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for microwave ovens. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

(1) The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

(2) The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of microwave ovens in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the *RECS 2015*.[24] For each sample household, DOE determined the energy consumption for the microwave ovens and the appropriate energy price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of microwave ovens.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and microwave ovens user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[25] The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of microwave ovens as if each were to purchase a new product in the expected year of compliance with new or amended standards. Amended standards would apply to microwave ovens manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(g)(10)(B)) At this time, DOE estimates publication of a final rule in 2022. Therefore, for purposes of its analysis, DOE used 2026 as the first year of compliance with any amended standards for microwave ovens.

Table IV.8 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the SNOPR TSD and its appendices.

[21] Uniform Test Method for Measuring the Energy Consumption of Cooking Products. 10 CFR part 430, subpart B, appendix I, *www.law.cornell.edu/cfr/text/10/appendix-I_to_subpart_B_of_part_430*.

[22] Williams, *et al.* 2012. Surveys of Microwave Ovens in U.S. Homes. LBNL–5947E *www.osti.gov/biblio/1172657*.

[23] U.S. Department of Energy–Energy Information Administration, Residential Energy Consumption Survey, 2015 Public Use Microdata Files, 2015. Washington, DC. Available online at: *www.eia.doe.gov/emeu/recs/recspubuse15/pubuse15.html*. DOE will update all the 2015 RECS data to 2020 RECS if it is available prior to the final rule.

[24] DOE will update all the *RECS 2015* data to *RECS 2020* if they are available prior to the final rule.

[25] Crystal Ball™ is commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed October 22, 2021).

TABLE IV.8—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs.
Installation Costs	Assumed no change in installation costs with efficiency level.
Annual Energy Use	The standby wattage multiplied by the hours per year in standby mode. Average number of hours based on *RECS 2015* data and the Cooking Test Procedure. Variability: Based on the *RECS 2015.*
Energy Prices	Electricity: Based on EEI 2021. Variability: Regional energy prices determined for 9 regions.
Energy Price Trends	Based on *AEO 2022* price projections.
Repair and Maintenance Costs.	Assumed no change with efficiency level.
Product Lifetime	Average: 10.65 years.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2026.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the SNOPR TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products because DOE applied an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. An experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level. To derive the learning rate parameter for microwave ovens, DOE obtained historical Producer Price Index (''PPI'') data for microwave ovens from the Bureau of Labor Statistics (''BLS''). A PPI for ''Household Cooking Appliance Manufacturing: Electric (Including Microwave) Household Ranges, Ovens, Surface Cooking Units, and Equipment'' was available for the time period between 1972 and 2020.[26] Inflation-adjusted price indices were calculated by dividing the PPI series by the gross domestic product index from Bureau of Economic Analysis for the same years. Using data from 1972–2020, the estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 10.7 percent.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a microwave ovens at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

Because it captures the incremental savings associated with a change in energy use from higher efficiency, a marginal electricity price more accurately represents an incremental change in consumer costs than would average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2021 using data from Edison Electric Institute (''EEI'') Typical Bills and Average Rates reports.[27] DOE used the EEI data to define a marginal price as the ratio of the change in the bill to the change in energy consumption.

To estimate energy prices in future years, DOE multiplied the 2021 energy prices by a projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO 2022. AEO 2022* has an end year of 2050.[28] To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2035 through 2050.

5. Maintenance and Repair Costs

Maintenance costs are associated with maintaining the operation of the product; repair costs are associated with repairing or replacing product components that have failed in an appliance. Typically, small incremental increases in product efficiency produce no, or only minor, changes in maintenance and repair costs compared to baseline efficiency products. In this SNOPR analysis, DOE included no changes in maintenance or repair costs for microwave ovens that exceed baseline efficiency.

6. Product Lifetime

For microwave ovens, DOE developed a distribution of lifetimes from which specific values are assigned to the appliances in the samples. DOE conducted an analysis of actual lifetime in the field using a combination of historical shipments data, the stock of the considered appliances in the *American Housing Survey,* and responses in *RECS* on the age of the appliances in the homes. The data allowed DOE to estimate a survival function, which provides an average appliance lifetime. This analysis yielded a lifetime probability distribution with an average lifetime for microwave ovens of approximately 10.6 years. See chapter 8 of the SNOPR TSD for further details.

[26] U.S. Bureau of Labor Statistics, PPI Industry Data, Major household appliance manufacturers, Product series ID: PCU 33522033522011. Data series available at: *www.bls.gov/ppi/.*

[27] Edison Electric Institute. Typical Bills and Average Rates Report. 2020. Winter 2020, Summer 2020: Washington, DC.

[28] EIA. *Annual Energy Outlook 2021 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed October 28, 2021).

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for microwave ovens based on the opportunity cost of consumer funds.

DOE applies weighted-average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[29] DOE notes that the LCC does not analyze the appliance purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this lifetime scale into account. Given the 30-year analysis period modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances [30] (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent. See chapter 8 of the SNOPR TSD for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of microwave ovens for 2026, DOE used data from the engineering analysis. The estimated market shares for the no-new-standards case for microwave ovens are shown in Table IV.9 and reflect no efficiency shift. See chapter 8 of the SNOPR TSD for further information.

TABLE IV.9—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR MICROWAVE OVENS IN 2026

TSL	Product class 1: microwave-only and countertop convection microwave ovens		Product class 2: built-in and over-the-range convection microwave ovens	
	Standby power (W)	Market share (%)	Standby power (W)	Market share (%)
Baseline	1.00	15	2.20	0
1	0.8	45	1.5	36
2	0.6	29	1.0	59
3	0.4	11	0.5	5

DOE requests feedback on its approach to projecting the efficiency distribution in 2026.

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product signify that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

ASAP, ACEEE, and the CA IOUs commented that efficiency levels presented in the NOPD have payback periods below the average lifetime of the product, which shows economic justification for amended standards. (ASAP, ACEEE, No. 15 at p. 1 and CA IOUs, No. 17 at p. 1)

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

[29] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

[30] U.S. Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. (Last accessed August 20, 2021.) *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[31] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

Total shipments for microwave ovens are developed by considering the demand from replacements for units in stock that fail and the demand from new installations in newly constructed homes. DOE calculated shipments due to replacements using the retirement function developed for the LCC analysis and historical data from AHAM. DOE calculated shipments due to new installations using estimates from microwave oven saturation rate in new homes in *RECS 2015* and projections of new housing starts from *AEO 2022.* See chapter 9 of the SNOPR TSD for details.

For this SNOPR analysis, DOE used data from a market research report and estimated the market share for built-in and over-the-range convection microwave ovens at 4 percent.[32]

DOE considers the impacts on shipments from changes in product purchase price and operating cost associated with higher energy efficiency levels using a price elasticity and an efficiency elasticity. DOE employs a 0.2-percent efficiency elasticity rate and a price elasticity of –0.45 in its shipments model.[33] The market impact is defined as the difference between the product of price elasticity of demand and the change in price due to a standard level, and the product of the efficiency elasticity and the change in operating costs due to a standard level.

DOE requests comment on its methodology for estimating shipments. DOE also requests comment on its approach to estimate the market share for built-in and over-the-range convection microwave ovens.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[34] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the TSLs considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of microwave ovens sold from 2026 through 2055.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses point values (as opposed to probability distributions) as inputs.

Table IV.10 summarizes the inputs and methods DOE used for the NIA analysis for the SNOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the SNOPR TSD for further details.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2026.
Efficiency Trends	Standards cases: ''Roll up'' equipment to meet potential efficiency level.
Annual Energy Consumption per Unit	Calculated for no-new-standards case and each TSL based on inputs from energy use analysis.
Total Installed Cost per Unit	Calculated for no-new-standards case and each TSL based on inputs from the LCC analysis.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Price Trends	*AEO 2022* projections (to 2050) and extrapolation using a fixed annual rate of price change between 2035 and 2050 thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO 2022.*
Discount Rate	3 percent and 7 percent.
Present Year	2022.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year

[31] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

[32] Euromonitor International. 2021. *Air treatment products in the U.S.* December.

[33] Fujita, K. (2015) Estimating Price Elasticity using Market-Level Appliance Data. Lawrence Berkeley National Laboratory, LBNL–188289.

[34] The NIA accounts for impacts in the 50 states.

of anticipated compliance with an amended or new standard.

ASAP, NRDC, and the CA IOUs commented that in the public meeting held on September 13, 2021, DOE included an assumption that unit efficiencies will improve by 0.25 percent between 2019 and 2053 and requested how the assumption is derived and how it is integrated into the energy savings evaluation. (ASAP, NRDC, CA IOUs, No. 12 at p. 1)

To project the trend in efficiency absent amended standards for microwave ovens over the entire shipments projection period, DOE used the shipments-weighted standby power (''SWSP'') as a starting point. DOE assumed that the shipment-weighted efficiency would not increase annually for the microwave oven product classes.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective in 2026. In the year of compliance, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each TSL and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2022.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is occasionally associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to microwave ovens.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [35] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the SNOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed microwave oven price trends based on historical PPI data. DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2055, which is the end date of the projection period, the average microwave oven price is projected to drop 11 percent relative to 2021. DOE's projection of product prices is described in appendix 10C of the SNOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for microwave ovens. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a low price decline case based on the ''electric household cooking products'' PPI series from 1972 to 1992 and (2) a high price decline scenario based on the same PPI series from 1993 to 2021, which shows a faster price decline than the full time series between 1972–2021. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the SNOPR TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference case from *AEO 2022,* which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2035 through 2050. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO 2022* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10D of the SNOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this SNOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[36] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts

[35] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/forecasts/aeo/* (last accessed October 22, 2021).

[36] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *www.whitehouse.gov/omb/memoranda/m03-21.html* (last accessed October 15, 2021).

future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this SNOPR, DOE analyzed the impacts of the considered standard levels on two subgroups: (1) low-income households and (2) senior-only households. The analysis used subsets of the *RECS 2015* sample composed of households that meet the criteria for the two subgroups and shows the percentages of those both negatively and positively impacted. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the SNOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of microwave ovens and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows; the INPV; investments in R&D and manufacturing capital; and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, MPCs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM output is the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV between a no-new-standards case and the various standards cases (TSLs). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the SNOPR TSD.

DOE prepared a profile of the microwave oven manufacturing industry based on the market and technology assessment and information from the June 2013 Final Rule.[37] This included a top-down analysis of microwave oven manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; SG&A; and R&D expenses).

Additionally, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, ''Review under the Regulatory Flexibility Act,'' and in chapter 12 of the SNOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2022 (the reference year of the analysis) and continuing to 2055. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of microwave ovens, DOE used a real discount rate of 8.5 percent, which was the same real discount rate used in the June 2013 Final Rule and that was verified during manufacturer interviews for that rulemakings analysis.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, and information used in the June 2013 Final Rule. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the SNOPR TSD.

a. Manufacturer Production Costs

Manufacturing a more efficient product is typically more expensive than manufacturing a baseline product due to the use of more complex

[37] 78 FR 36316.

components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. As previously stated in the engineering analysis in section IV.C.3 of this document, DOE estimated an incremental MPC of $0 at all efficiency levels, compared to the baseline MPC.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2022 (the reference year) to 2055 (the end year of the analysis period). See chapter 9 of the SNOPR TSD for additional details.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards. Capital conversion costs are investments in property, plant, and product necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

DOE used a bottom-up cost estimate to arrive at a total industry conversion cost at each EL for both product classes. First DOE estimated the investments manufacturers are likely to incur to resdesign a single microwave oven control board to be able to meet the analyzed energy conservation standards. These per-board conversion costs were based on manufacturer interviews and include both a per-board capital conversion costs (*e.g.,* investments in machinery and tooling) as well as product conversion costs (*e.g.,* investments in R&D and testing). Based on manufacturer feedback, DOE assigned a smaller level of investments necessary to achieve lower ELs and a larger level of investment to achieve higher ELs.

Next, based on engineering teardowns and market research, DOE estimated the total number of unique control boards used across all covered microwave ovens. DOE used the percent of unique microwave oven models for each product class that were certified in DOE's publicly available Compliance Certification Database (''CCD'') [38] to estimate the number of unique control boards for each product class. Then DOE used the efficiency distribution from the shipments analysis to estimate the number of unique control boards specific to each efficiency level, for each product class. Once DOE estimated the number of unique control boards, DOE used the per-board redesign costs specific to achieve each analyzed efficiency level to arrive at the total industry conversion costs.

d. Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. In the no-new-standards case, DOE used a manufacturer markup of 1.298 for both product classes. This is the same manufacturer markup that was used in the June 2013 Final Rule.[39]

For the MIA, DOE modeled two standards case manufacturer markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a conversion cost recovery markup scenario and (2) a constant price scenario. These scenarios lead to different manufacturer markup values at each TSL that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the conversion cost recovery markup scenario, DOE modeled a scenario where manufacturers increase their manufacturer markups in response to amended energy conservation standards. Because DOE's engineering analysis assumed there were no increases in the MPCs at higher ELs, compared to the baseline MPCs, and that microwave oven manufacturers would incur conversion costs to redesign non-compliant models, DOE modeled a manufacturer markup scenario where microwave oven manufacturers attempt to recover these investment through an increase in their manufacturer markup. Therefore, in the standards cases the manufacturer markup of models that would need to be re-designed is a value larger than the 1.298 manufacturer markup used in the no-new-standards case. DOE calibrated these manufacturer markups for each product class at each EL to cause manufacturer INPV in the standards cases to be equal to the INPV in the no-new-standards case. This represents the upper-bound of manufacturer profitability, as in this manufacturer markup scenario, microwave oven manufacturers are no worse off, as measured by INPV, with energy conservation standards than in the no-new-standards case (*i.e.,* if DOE did not amend energy conservation standards).

Under the constant price scenario, DOE applied the same manufacturer markup, 1.298, for all efficiency levels in the no-new-standards case and the standards cases. Because DOE's engineering analysis assumed there were no increases in the MPCs at higher ELs and that microwave oven manufacturers would incur conversion costs to redesign non-compliant models, microwave oven manufacturers do not earn any additional revenue in the standards cases than in the no-new-standards case, despite incurring conversion costs to redesign non-compliant microwave oven models. This represents the lower-bound of manufacturer profitability, as microwave oven manufacturers incur conversion costs but do not receive any additional revenue from these redesign efforts.

A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

3. Discussion of MIA Comments

In response to the August 2021 NOPD, AHAM stated that if DOE decides to amend the microwave oven standards, it should conduct manufacturer interviews to better understand the challenges with existing technology options and what the costs associated with energy efficiency improvements would be. (AHAM, No. 14 at p. 2) In response to AHAM's comment, DOE conducted interviews with manufacturers to discuss the potential impacts of energy conservation standards for microwave ovens to manufacturers. DOE included

[38] *www.regulations.doe.gov/certification-data.*

[39] 78 FR 36316.

conversion cost estimates associated with redesigning microwave ovens to be able to achieve energy efficiency improvements as part of the MIA conducted for this SNOPR.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of power sector emissions of CO_2, NO_X, SO_2, and Hg uses marginal emissions factors that were derived from data in *AEO 2022,* as described in section IV.K of this document. Details of the methodology are described in the appendices to chapters 13 and 15 of the SNOPR TSD.

Power sector emissions of CO_2, CH_4, and N_2O are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (''EPA'').[40] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the SNOPR TSD. The upstream emissions include both emissions from extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per megawatt-hours (''MWh'') or million British thermal units (''MMBtu'') of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO 2022,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2022* generally represents current legislation and environmental regulations, including recent government actions that were in place at the time of preparation of *AEO 2022,* including the emissions control programs discussed in the following paragraphs.[41]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (D.C.). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions; it went into effect in 2015 and has been subsequently updated.[42] *AEO 2022* incorporates implementation of CSAPR, including the Revised CSAPR Update issued in 2021. Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for states subject to SO_2 emissions limits under CSAPR, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

Beginning in 2016, SO_2 emissions began to fall as a result of implementation of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (''HAP''), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO 2022.*

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NO_X emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2022,* which incorporates the MATS.

[40] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

[41] For further information, see the Assumptions to *AEO 2022* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed October 15, 2021).

[42] CSAPR requires states to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter ($PM_{2.5}$) pollution, in order to address the interstate transport of pollution by attaining and maintaining compliance with he 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain states to address the ozone season (May-September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule). In 2021, EPA finalized a Revised CSAPR Update to address emissions reductions of NO_X from power plants in 12 states. 86 FR 23054 (April 30, 2021). A Petition for Review was filed in the Court of Appeals for the D.C. Circuit calling for the Revised CSAPR Update to be vacated; oral arguments are scheduled for September 2022. *Midwest Ozone Group* v. *EPA,* No. 21–1146 (D.C. Cir. 2021).

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this SNOPR.

On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law. DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

1. Monetization of Greenhouse Gas Emissions

DOE estimated the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the social cost (''SC'') of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive Orders, and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases, including the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions (*i.e.,* SC–GHGs) using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 published in February 2021 by the IWG. The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC–GHGs estimates presented here were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, that included DOE and other executive branch agencies and offices, was established to ensure that agencies were using the best available science and to promote consistency in the SC–CO_2 values used across agencies. The IWG published SC–CO_2 estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (''IAMs'') that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016 the IWG published estimates of the SC–CH_4 and SC–N_2O using methodologies that are consistent with the methodology underlying the SC–CO_2 estimates. The modeling approach that extends the IWG SC–CO2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC–CH_4 and SC–N_2O estimates were developed by Marten *et al.*[43] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017).[44] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus

[43] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH4 and N2O mitigation benefits consistent with the US Government's SC–CO2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[44] National Academies of Sciences, Engineering, and Medicine. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide.* 2017. The National Academies Press: Washington, DC.

international impacts and the consideration of appropriate discount rates'' (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021, specifically the SC–CH_4 estimates, are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the United States and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the United States because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,[45] and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3 percent and 7 percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits . . . at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the

[45] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. (Last accessed April 15, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf;* Interagency Working Group on Social Cost of Carbon. *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* 2013. (Last accessed April 15, 2022.) *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf* ; Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.*

academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7-percent discount rate is not appropriate to apply to value the social cost of greenhouse gases. In this analysis, to calculate the present and annualized values of climate benefits, DOE instead uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC–GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5 percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs with other cost and benefits estimates that may use different discount rates.'' The National Academies reviewed ''several options,'' including ''presenting all discount rate combinations of other costs and benefits with [SC–GHG] estimates.''

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue.

While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3-percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[46] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO_2 estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this proposed rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–GHG (*i.e.,* SC–CO_2, SC–N_2O, and SC–CH_4) values used for this SNOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these pollutants are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this SNOPR were generated using the values presented in the 2021 update from the IWG's February 2021 TSD. Table IV.11 shows the updated sets of SC–CO_2 estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the SNOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate include all four sets of SC–CO_2 values, as recommended by the IWG.[47]

TABLE IV.11—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ Per metric ton CO_2]

Year	Discount rate			
	5% Average	3% Average	2.5% Average	3% 95th percentile
2020	14	51	76	152
2026	17	56	83	169

[46] Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. Available at: *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.*

[47] For example, the February 2021 TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

TABLE IV.11—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050—Continued

[2020$ Per metric ton CO_2]

Year	Discount rate			
	5% Average	3% Average	2.5% Average	3% 95th percentile
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

In calculating the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the February 2021 SC–GHG TSD, adjusted to 2020$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. DOE derived values from 2051 to 2070 based on estimates published by EPA.[48] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case. See chapter 13 of the SNOPR TSD for the annual emissions reduction. See appendix 14A of the SNOPR TSD for the annual SC–CO_2 values.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this SNOPR were generated using the values presented in the 2021 update from the IWG. [49] Table IV.12 shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the SNOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

TABLE IV.12—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ Per metric ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th percentile	5% Average	3% Average	2.5% Average	3% 95th percentile
2020	670	1500	2000	3900	5800	18000	27000	48000
2026	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case. See chapter 13 of the SNOPR TSD for the annual emissions reduction. See appendix 14A of the SNOPR TSD for the annual SC–CH_4 and SC–N_2O values.

2. Monetization of Other Air Pollutants

For the SNOPR, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using the latest benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[50] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2026, 2030, 2035, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2026 to 2040 period; for years beyond 2040 the values are held constant. DOE derived values specific to the sector for microwave ovens using a method described in appendix 14B of the SNOPR TSD.

DOE multiplied the emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

[48] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at: *www.epa.gov/system/files/documents/2021-12/420r21028.pdf* (last accessed January 13, 2022.

[49] Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021. *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[50] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors. www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors*

The SCoC Commenters presented reasons why DOE should, as it has in the past, monetize the full climate benefits of greenhouse gas emissions reductions, using the best available estimates, which were derived by the Interagency Working Group on the Social Cost of Greenhouse Gases. The SCoC Commenters also stated that DOE should factor these benefits into its choice of the maximum efficiency level that is economically justified, consistent with its statutory requirement to assess the national need to conserve energy under the Energy Policy and Conservation Act. (SCoC, No. 21 at p. 1)

As discussed, on March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO 2022*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO 2022* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the SNOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of production and non-production employees of manufacturers of the products subject to standards.[51] The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's BLS. BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[52] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this SNOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[53] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the SNOPR TSD.

[51] As defined in the U.S. Census Bureau's 2016 *Annual Survey of Manufactures,* production workers include ''Workers (up through the line-supervisor level) engaged in fabricating, processing, assembling, inspecting, receiving, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial, guard services, product development, auxiliary production for plant's own use (*e.g.,* power plant), record keeping, and other closely associated services (including truck drivers delivering ready-mixed concrete)'' Non-production workers are defined as ''Supervision above line-supervisor level, sales (including a driver salesperson), sales delivery (truck drivers and helpers), advertising, credit, collection, installation, and servicing of own products, clerical and routine office functions, executive, purchasing, finance, legal, personnel (including cafeteria, *etc.*), professional and technical.''

[52] See U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf* (last accessed October 21, 2021).

[53] Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for microwave ovens. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for microwave ovens, and the standards levels that DOE is proposing to adopt in this SNOPR. Additional details regarding DOE's analyses are contained in the SNOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the product classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set. DOE analyzed the benefits and burdens of three TSLs for microwave ovens. DOE developed TSLs that combine efficiency levels for each analyzed product class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the SNOPR TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for microwave ovens. TSL 3 represents the max-tech energy efficiency for all product classes and corresponds to EL 3 for both product classes. TSL 2 and TSL 1 represent interim energy efficiency levels between the current standard level and the max-tech energy efficiency level.

TABLE V.1—TRIAL STANDARD LEVELS FOR MICROWAVE OVENS

Product class	TSL 1	TSL 2	TSL 3
	Maximum allowable average standby power (W)		
PC 1: Microwave-Only and Countertop Convection	0.8	0.6	0.4
PC 2: Built-In and Over-the-Range Convection	1.5	1.0	0.5

DOE constructed the TSLs for this SNOPR to include ELs representative of ELs with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative ELs provided for greater distinction between the TSLs. While representative ELs were included in the TSLs, DOE considered all efficiency levels as part of its analysis and included the efficiency levels with positive LCC savings in the TSLs.[54]

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on microwave ovens consumers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the SNOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the default case LCC and PBP results for the TSLs considered for both product classes. The LCC and PBP results based on the incremental MPC sensitivity cases are presented in appendix 8D of the SNOPR TSD. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second of each pair of tables, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR PC 1: MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

EL	TSL	Standby power (W)	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0			$254.16	$1.26	$11.37	$265.53	—	10.65
1	1	0.8	254.25	1.02	9.18	263.43	0.3	10.65
2	2	0.6	254.82	0.77	7.00	261.82	1.4	10.65

[54] Efficiency levels that were analyzed for this SNOPR are discussed in section IV.C.3 of this document. Results by efficiency level are presented in the SNOPR TSD chapters 8, 10, and 12.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR PC 1: MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS—Continued

EL	TSL	Standby power (W)	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
3	3	0.4	255.62	0.53	4.82	260.44	2.0	10.65

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The simple PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PC 1: MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

EL	TSL	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost (%)
1	1	$0.25	0%
2	2	0.98	5
3	3	2.13	13

* The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR PC 2: BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

EL	TSL	SPB W	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0			$546.12	$2.73	$24.73	$570.75		10.65
1	1	1.5	546.12	1.89	17.09	563.21	0.0	10.65
2	2	1.0	547.32	1.29	11.63	558.95	0.8	10.65
3	3	0.5	551.53	0.68	6.17	557.70	2.6	10.65

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The simple PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PC 2: BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

EL	TSL	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost (%)
1	1	$0.00	0%
2	2	0.78	8
3	3	1.78	44

* The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households and senior-only households. Table V.6 and Table V.7 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for both product classes. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the SNOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.6—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PC 1: MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

EL	Average life-cycle cost savings * (2021$)			Simple payback period (years)		
	Low-income households ‡	Senior-only households §	All households	Low-income households	Senior-only households	All households
1	$0.25	$0.25	$0.25	0.3	0.3	0.3
2	0.97	0.97	0.98	1.4	1.4	1.4
3	2.11	2.10	2.13	2.0	2.0	2.0

* The savings represent the average LCC for affected consumers.
‡ Low-income households represent 15.5 percent of all households for this product class.
§ Senior-only households represent 25.5 percent of all households for this product class.

TABLE V.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PC 2: BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

EL	Average life-cycle cost savings * (2021$)			Simple payback period (years)		
	Low-income households ‡	Senior-only households §	All households	Low-income households	Senior-only households	All households
1	$0.00	$0.00	$0.00	0.0	0.0	0.0
2	$0.77	$0.74	$0.78	0.8	0.8	0.8
3	$1.74	$1.69	$1.78	2.6	2.7	2.6

* The savings represent the average LCC for affected consumers.
‡ Low-income households represent 15.5 percent of all households for this product class.
§ Senior-only households represent 25.5 percent of all households for this product class.

c. Rebuttable Presumption Payback

As discussed in section III.E.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for microwave ovens. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.8 presents the rebuttable-presumption payback periods for the considered TSLs for microwave ovens. While DOE examined the rebuttable-presumption criterion, it also considered whether the standard levels considered for the SNOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.8—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Product class	1	2	3
	(years)		
PC 1: Microwave-Only and Countertop Convection	2.2	2.3	2.2
PC 2: Built-In and Over-the-Range Convection	0.0	2.3	2.8

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of microwave ovens. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the SNOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from amended energy conservation standards. The following tables illustrate the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of microwave ovens, as well as the conversion costs that DOE estimates manufacturers of microwave ovens would incur at each TSL. To evaluate the range of cash-flow impacts on the microwave oven industry, DOE modeled two manufacturer markup scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) the conversion cost recovery markup scenario and (2) the constant price scenario.

To assess the less severe end of the range of potential impacts, DOE

modeled a conversion cost recovery markup scenario which manufacturers are able to increase their manufacturer markups in response to amended energy conservation standards. To assess the more severe end of the range of potential impacts, DOE modeled a constant price scenario which manufacturers incur conversion costs but do not receive any additional revenue from these redesign efforts.

As noted in the MIA methodology discussion (see section IV.J of this document), in addition to manufacturer markup scenarios, the MPCs, shipments, and conversion cost assumptions also affect INPV results.

The results in Table V.9 and Table V.10 present potential INPV impacts for microwave oven manufacturers. Table V.9 reflects the less severe set of potential impacts (conversion cost recovery markup scenario), and Table V.10 represents the more severe set of potential impacts (constant price scenario). In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case that results from the sum of discounted cash flows from 2022 (the reference year) through 2055 (the end of the analysis period).

TABLE V.9—MANUFACTURER IMPACT ANALYSIS RESULTS—CONVERSION COST RECOVERY MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level *		
			1	2	3
INPV	*2021$ millions*	1,397	1,397	1,397	1,397
Change in INPV	*2021$ millions*				
	%				
Product Conversion Costs	*2021$ millions*		2.8	23.6	55.0
Capital Conversion Costs	*2021$ millions*		2.5	22.5	53.3
Total Conversion Costs	*2021$ millions*		5.3	46.1	108.3

* Parentheses indicate negative values. Numbers may not sum exactly due to rounding.

TABLE V.10—MANUFACTURER IMPACT ANALYSIS RESULTS—CONSTANT PRICE SCENARIO

	Units	No-new-standards case	Trial standard level *		
			1	2	3
INPV	*2021$ millions*	1,397	1,393	1,363	1,316
Change in INPV	*2021$ millions*		(3.9)	(34.3)	(80.7)
	%		(0.3)	(2.5)	(5.8)
Product Conversion Costs	*2021$ millions*		2.8	23.6	55.0
Capital Conversion Costs	*2021$ millions*		2.5	22.5	53.3
Total Conversion Costs	*2021$ millions*		5.3	46.1	108.3

* Parentheses indicate negative values. Numbers may not sum exactly due to rounding.

At TSL 1, DOE estimates impacts on INPV will range from −$3.9 million, which represents a change of −0.3 percent, to no change in INPV. At TSL 1, industry free cash-flow decrease to $99 million, which represents a decrese of approximately 2.1 percent, compared to the no-new-standards case value of $101 million.

TSL 1 would set the energy conservation standard for both product classes at EL 1. DOE estimates that 85 percent of Product Class 1 shipments and 100 percent of Product Class 2 shipments would already meet or exceed the efficiency levels required at TSL 1. DOE expects microwave oven manufacturers to incur approximately $2.8 million in product conversion costs to redesign and re-test non-compliant models and approximately $2.5 million in capital conversion costs to purchase new tooling and equipment necessary to produce these redesigned models.

At TSL 2, DOE estimates impacts on INPV will range from −$34.3 million, which represents a change of −2.5 percent, to no change in INPV. At TSL 2, industry free cash-flow decrease to $83 million, which represents a decrese of approximately 18.3 percent, compared to the no-new-standards case value of $101 million.

TSL 2 would set the energy conservation standard for both product classes at EL 2. DOE estimates that 40 percent of Product Class 1 shipments and 64 percent of Product Class 2 shipments would already meet or exceed the efficiency levels required at TSL 2. DOE expects microwave oven manufacturers to incur approximately $23.6 million in product conversion costs to redesign and re-test non-compliant models and approximately $22.5 million in capital conversion costs to purchase new tooling and equipment necessary to produce these redesigned models.

At TSL 3, DOE estimates impacts on INPV will range from −$80.7 million, which represents a change of −5.8 percent, to no change in INPV. At TSL 3, industry free cash-flow decrease to $58 million, which represents a decrese of approximately 42.9 percent, compared to the no-new-standards case value of $101 million.

TSL 3 would set the energy conservation standard for both product classes at EL 3. DOE estimates that 11 percent of Product Class 1 shipments and 5 percent of Product Class 2 shipments would already meet the efficiency levels required at TSL 3. DOE expects microwave oven manufacturers to incur approximately $55.0 million in product conversion costs to redesign and re-test non-compliant models and approximately $53.3 million in capital conversion costs to purchase new tooling and equipment necessary to produce these redesigned models.

b. Direct Impacts on Employment

DOE estimates that over 95 percent of microwave oven manufacturing occurs outside of the United States. Furthermore, all of the analzyed efficiency levels do not require additional labor and would not impact current manufacturing labor practices.

Therefore, DOE estimates that there will be no direct impacts on domestic employment at any of the analyzed TSLs.

c. Impacts on Manufacturing Capacity

As previously mentioned, DOE's proposed amended energy conservation standards for microwave ovens requires a control board re-design. As such, DOE does not estimate significant impacts on manufacturing capacity at any of the analyzed TSLs. Furthermore, given the compliance period, and taking into account that manufacturers currently make products that meet the proposed efficiency levels, DOE expects manufacturers to have sufficient time to incorporate the improved control boards and re-test those models.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions developed for an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For the microwave oven industry, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup—small manufacturers. The Small Business Administration (''SBA'') defines a ''small business'' as having 1,500 employees or fewer for the North American Industry Classification System (''NAICS'') code 335220, ''Major Household Appliance Manufacturing.'' Based on this definition, DOE identified two small, domestic manufacturers of the covered products that would be subject to amended energy conservation standards.

For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VI.B of this document and chapter 12 of the SNOPR TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or product. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

DOE evaluates product-specific regulations that will take effect approximately 3 years before or after the estimated 2026 compliance date of any amended energy conservation standards for microwave ovens. This information is presented in Table V.11.

TABLE V.11—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING MICROWAVE OVEN MANUFACTURERS

Federal energy conservation standard	Number of manufacturers *	Number of manufacturers affected from today's rule **	Approx. standards year	Industry conversion costs *(millions$)*	Industry conversion costs/product revenue *** (%)
Room Air Conditioners 87 FR 20608 (Apr. 7, 2022)	8	3	2026	$22.8 (2020$)	0.5
Portable Air Conditioners 85 FR 1378 (Jan. 10, 2020)	11	2	2025	$320.9 (2015$)	6.7

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of manufacturers producing microwave ovens that are also listed as manufacturers in the listed energy conservation standard contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

In addition to the rulemakings listed in Table V.11, DOE has ongoing rulemakings for other products or equipment that microwave oven manufacturers produce, including dehumidifiers; [55] dishwashers; [56] consumer refrigerators, refrigerator-freezers, and freezers; [57] miscellaneous refrigeration products; [58] consumer clothes washers; [59] and residential/consumer clothes dryers.[60] If DOE proposes or finalizes any energy conservation standards for these products or equipment prior to finalizing energy conservation standards for microwave ovens, DOE will include the energy conservation standards for these other products or equipment as part of the cumulative regulatory burden for this microwave ovens rulemaking.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for microwave ovens, DOE compared their energy consumption under the no-new-standards case to

[55] *www.regulations.gov/docket/EERE-2019-BT-STD-0043.*

[56] *www.regulations.gov/docket/EERE-2018-BT-STD-0005.*

[57] *www.regulations.gov/docket/EERE-2017-BT-STD-0003.*

[58] *www.regulations.gov/docket/EERE-2020-BT-STD-0039.*

[59] *www.regulations.gov/docket/EERE-2017-BT-STD-0014.*

[60] *www.regulations.gov/docket/EERE-2014-BT-STD-0058.*

their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2026–2055). Table V.12 presents DOE's projections of the national energy savings for each TSL considered for microwave ovens. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.12—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MICROWAVE OVENS; 30 YEARS OF SHIPMENTS
[2026–2055]

	Trial standard level		
	1	2	3
	quads		
Source energy	0.010	0.053	0.119
FFC energy	0.011	0.055	0.124

OMB Circular A–4 [61] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[62] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to microwave ovens. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.13. The impacts are counted over the lifetime of microwave ovens purchased in 2026–2034.

TABLE V.13—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MICROWAVE OVENS; 9 YEARS OF SHIPMENTS
[2026–2034]

	Trial standard level		
	1	2	3
	quads		
Source energy	0.003	0.014	0.033
FFC energy	0.003	0.015	0.035

The energy savings in the SNOPR analyses differ from the energy savings in the NOPD primarily due to the updated product class market share distribution. In the NOPD, national energy savings were estimated by using the same product class market share as presented in the June 2013 Final Rule TSD.[63] For these SNOPR analyses, DOE updated market share distribution using historical shipments data from available literature.[64] The market share for Product Class 2 increased from 1 percent, used in the NOPD analyses, to 4 percent, used in the SNOPR analyses. Additionally, DOE updated historical shipments using data from AHAM's Major Appliance Annual Trends 1989–2020 and updated shipment projections using *AEO* values to 2022 from 2019.

In response to the August 2021 NOPD, IPI stated that the decision not to pursue any efficiency improvements due to falling just short of what it asserted was an arbitrary threshold for ''significance'' is troubling given that, for Product Class 2 EL 1 microwave ovens, DOE's initial analysis suggests that some level of efficiency improvement could be achieved at ''$0'' incremental costs. (IPI, No. 15 at p. 1) ASAP, ACEEE, CFA, NRDC, and NEEA urged DOE to adopt the efficiency levels evaluated for the NOPD if DOE does not evaluate any additional efficiency levels, since the max-tech levels would result in an incremental manufacturing cost of $0.16 for energy savings of 8 percent over the 30-year analysis period. (ASAP, ACEEE, CFA, NRDC, NEEA, No. 16 at p. 2)

As discussed, DOE updated its analysis, including efficiency levels, based on more current information regarding shipments of microwave ovens, resulting in energy savings of around 0.06 quads over 30 years. Further, as also discussed in section III.D of this document, DOE recently

[61] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed November 2, 2021).

[62] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[63] U.S. Department of Energy (DOE), 2013–06–17 Energy Conservation Program: Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens; Final Rule. *www.regulations.gov/document?D=EERE-2011-BT-STD-0048-0027.*

[64] Euromonitor International, *Sales of Major Appliances by Category and Built-in/Freestanding Split,* December 2021.

eliminated the numerical threshold for determining significance of energy savings, reverting to its earlier approach of doing so on a case-by-case basis. See 86 FR 70892. In this SNOPR, DOE proposes to adopt the energy conservation standards for microwave ovens at TSL 2 and refers stakeholders to section V.C of this document where costs and benefits of the proposal are weighed.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for microwave ovens. In accordance with OMB's guidelines on regulatory analysis,[65] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.14 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2026–2055.

TABLE V.14—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR MICROWAVE OVENS; 30 YEARS OF SHIPMENTS

[2026–2055]

Discount rate	Trial standard level		
	1	2	3
	billion 2021		
3 percent	0.08	0.33	0.65
7 percent	0.04	0.15	0.28

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.15. The impacts are counted over the lifetime of products purchased in 2026–2033. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.15—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR MICROWAVE OVENS; 9 YEARS OF SHIPMENTS

[2026–2034]

Discount rate	Trial standard level		
	1	2	3
	billion 2021$		
3 percent	0.03	0.12	0.24
7 percent	0.02	0.07	0.14

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for microwave ovens would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframe (2026–2031), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the SNOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section III.E.1.d of this document, DOE has tentatively concluded that the standards proposed in this SNOPR would not lessen the utility or performance of the microwave ovens under consideration in this proposed rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this SNOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to

[65] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *www.whitehouse.gov/omb/circulars_a004_a-4/* (last accessed October 28, 2021).

result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the SNOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this proposed rulemaking.

Energy conservation resulting from potential energy conservation standards for microwave ovens is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.16 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section III.D of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the SNOPR TSD.

TABLE V.16—CUMULATIVE EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

Savings	TSL		
	1	2	3
Power Sector Emissions			
CO_2 *(million metric tons)*	0.33	1.73	3.89
CH_4 *(thousand tons)*	0.03	0.13	0.30
N_2O *(thousand tons)*	0.00	0.02	0.04
NO_X *(thousand tons)*	0.17	0.87	1.97
SO_2 *(thousand tons)*	0.16	0.83	1.87
Hg *(tons)*	0.00	0.01	0.01
Upstream Emissions			
CO_2 *(million metric tons)*	0.03	0.13	0.30
CH_4 *(thousand tons)*	2.37	12.41	27.93
N_2O *(thousand tons)*	0.00	0.00	0.00
NO_X *(thousand tons)*	0.38	1.99	4.48
SO_2 *(thousand tons)*	0.00	0.01	0.02
Hg *(tons)*	0.00	0.00	0.00
Total FFC Emissions			
CO_2 *(million metric tons)*	0.35	1.86	4.18
CH_4 *(thousand tons)*	2.40	12.54	28.23
N_2O *(thousand tons)*	0.00	0.02	0.04
NO_X *(thousand tons)*	0.55	2.86	6.44
SO_2 *(thousand tons)*	0.16	0.84	1.90
Hg *(tons)*	0.00	0.01	0.01

As part of the analysis for this rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for microwave ovens. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.17 presents the value of CO_2 emissions reduction at each TSL. The time-series of annual values is presented for the proposed TSL in chapter 14 of the SNOPR TSD.

TABLE V.17—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	SC–CO_2 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(Million 2021$)			
1	3.43	14.62	22.81	44.45
2	17.94	76.51	119.38	232.60
3	40.39	172.24	268.77	523.67

As discussed in section IV.L.2 of this document, DOE estimated monetary benefits likely to result from the reduced emissions of CH_4 and N_2O that DOE estimated for each of the considered TSLs for microwave ovens. Table V.18 presents the value of the CH_4 emissions reduction at each TSL, and Table V.19 presents the value of the N_2O emissions reduction at each TSL.

TABLE V.18—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	SC–CH_4 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(Million 2021$)			
1	1.05	3.10	4.31	8.20
2	5.50	16.21	22.58	42.91
3	12.37	36.50	50.83	96.61

TABLE V.19—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	SC–N_2O case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(Million 2021$)			
1	0.01	0.05	0.08	0.14
2	0.07	0.28	0.44	0.75
3	0.16	0.64	0.99	1.69

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. Thus, any value placed on reduced GHG emissions in this proposed rulemaking is subject to change. That said, because of omitted damages, DOE agrees with the IWG that these estimates most likely underestimate the climate benefits of greenhouse gas reductions. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with SO_2 emissions reductions anticipated to result from the considered TSLs for microwave ovens. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.20 presents the present value for SO_2 emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.20—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	7% Discount rate	3% Discount rate
	(Million 2021$)	
1	3.86	8.92
2	20.20	46.66
3	45.47	105.06

DOE also estimated the monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for microwave ovens. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.21 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.21—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	7% Discount rate	3% Discount rate
	(Million 2021$)	
1	9.36	22.33
2	48.98	116.83
3	110.27	263.02

The benefits of reduced CO_2, CH_4, and N_2O emissions are collectively referred to as climate benefits. The benefits of reduced SO_2 and NO_X emissions are collectively referred to as health benefits. For the time series of estimated monetary values of reduced emissions, see chapter 14 of the SNOPR TSD.

DOE has not considered the monetary benefits of the reduction of Hg for this SNOPR. Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of Hg, direct PM, and other co-pollutants may be significant.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.22 presents the NPV values that result from adding the monetized estimates of the potential economic, climate, and health benefits resulting from reduced GHG, SO_2, and NO_X emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered microwave ovens, and are measured for the lifetime of products shipped in 2026–2055. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of microwave ovens shipped in 2026–2055. The climate benefits associated with four SC–GHG estimates are shown. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

TABLE V.22—NPV OF CONSUMER BENEFITS COMBINED WITH MONETIZED CLIMATE AND HEALTH BENEFITS FROM EMISSIONS REDUCTIONS

[Billions 2021$]

Category	TSL 1	TSL 2	TSL 3
3% discount rate for NPV of Consumer and Health Benefits (billion 2021$)			
5% d.r., Average SC–GHG case	0.1	0.5	1.1
3% d.r., Average SC–GHG case	0.1	0.6	1.2
2.5% d.r., Average SC–GHG case	0.1	0.6	1.3
3% d.r., 95th percentile SC–GHG case	0.2	0.8	1.6
7% discount rate for NPV of Consumer and Health Benefits (billion 2021$)			
5% d.r., Average SC–GHG case	0.1	0.2	0.5
3% d.r., Average SC–GHG case	0.1	0.3	0.6
2.5% d.r., Average SC–GHG case	0.1	0.4	0.8
3% d.r., 95th percentile SC–GHG case	0.1	0.5	1.1

The national operating cost savings are domestic U.S. monetary savings that occur as a result of purchasing the covered microwave ovens, and are measured for the lifetime of products shipped in 2026–2055. The benefits associated with reduced GHG emissions achieved as a result of the adopted standards are also calculated based on the lifetime of microwave ovens shipped in 2026–2055.

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this SNOPR, DOE considered the impacts of amended standards for microwave ovens at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy. DOE refers to this process as the ''walk-down'' analysis.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the

quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the SNOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[66]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[67] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Microwave Ovens Standards

Table V.23 and Table V.24 summarize the quantitative impacts estimated for each TSL for microwave ovens. The national impacts are measured over the lifetime of microwave ovens purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2026–2055). The energy savings, emissions reductions, and value of emissions reductions refer to FFC results. DOE exercises its own judgment in presenting monetized climate benefits as recommended in applicable Executive Orders, and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.23—SUMMARY OF ANALYTICAL RESULTS FOR MICROWAVE OVEN TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3
Cumulative FFC National Energy Savings (quads)			
Quads	0.01	0.06	0.12
Cumulative FFC Emissions Reduction (Total FFC Emissions)			
CO_2 *(million metric tons)*	0.35	1.86	4.18
CH_4 *(thousand tons)*	2.40	12.54	28.23
N_2O *(thousand tons)*	0.00	0.02	0.04
NO_X *(thousand tons)*	0.55	2.86	6.44
SO_2 *(thousand tons)*	0.16	0.84	1.90
Hg *(tons)*	0.00	0.005	0.01
Present Value of Monetized Benefits and Costs (3% discount rate, billion 2021$)			
Consumer Operating Cost Savings	0.08	0.42	0.94
Climate Benefits *	0.02	0.09	0.21
Health Benefits **	0.03	0.16	0.37
Total Benefits †	0.13	0.67	1.52
Consumer Incremental Product Costs ‡	0.00	0.09	0.29
Consumer Net Benefits	0.08	0.33	0.65

[66] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: *10.1111/0034–6527.00354.*

[67] Sanstad, A.H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (last accessed October 28, 2021).

TABLE V.23—SUMMARY OF ANALYTICAL RESULTS FOR MICROWAVE OVEN TSLS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3
Total Net Benefits	0.13	0.59	1.23
Present Value of Monetized Benefits and Costs (7% discount rate, billion 2021$)			
Consumer Operating Cost Savings	0.04	0.20	0.44
Climate Benefits*	0.02	0.09	0.21
Health Benefits**	0.01	0.07	0.16
Total Benefits†	0.07	0.36	0.80
Consumer Incremental Product Costs‡	0.00	0.05	0.16
Consumer Net Benefits	0.04	0.15	0.28
Total Net Benefits	0.07	0.31	0.64

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026 − 2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026 − 2055.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

‡ Costs include incremental equipment costs as well as installation costs.

TABLE V.24—SUMMARY OF ANALYTICAL RESULTS FOR MICROWAVE OVEN TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3
Manufacturer Impacts			
Industry NPV (*million 2021$*) (No-new-standards case INPV = $1,397)	1,393–1,397	1,363–1,397	1,316–1,397
Industry NPV *(% change)*	(0.3)–0.0	(2.5)–0.0	(5.8)–0.0
Consumer Average LCC Savings (2021$)			
PC 1	0.25	0.98	2.13
PC 2	0.00	0.78	1.78
Shipment-Weighted Average*	0.24	0.97	2.12
Consumer Simple PBP (years)			
PC 1	0.3	1.4	2.0
PC 2	0.0	0.8	2.6
Shipment-Weighted Average*	0.3	1.3	2.0
Percent of Consumers that Experience a Net Cost			
PC 1	0	5	13
PC 2	0	8	44
Shipment-Weighted Average*	0	6	14

DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save an estimated 0.12 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $0.28 billion using a discount rate of 7 percent, and $0.65 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 4.18 Mt of CO_2, 1.90 thousand tons of SO_2, 6.44 thousand tons of NO_X, 0.01 tons of Hg, 28.23 thousand tons of CH_4, and 0.04 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $0.21 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions reduction at TSL 3 is $0.16 billion using a 7-percent discount rate and $0.37 billion using a 3-percent discount rate.

At TSL 3, the average LCC impact is a savings of $2.13 for PC 1 and $1.78 for

PC 2. The simple payback period is 2.0 years for PC 1 and 2.6 years for PC 2. Based on these numbers, there is a rebuttable presumption that TSL 3 is economically justified. (42 U.S.C. 6295(o)(2)(B)(iii)) The fraction of consumers experiencing a net LCC cost is 13 percent for PC 1 and 44 percent for PC 2.

At TSL 3, the projected change in manufacturer INPV ranges from a decrease of approximately $80.7 million, which corresponds to a decrease of approximately 5.8 percent, to no change in INPV. At this TSL, free cash flow is estimated to decrease by 42.9 percent compared to the no-new-standards case value in the year before the compliance year. DOE estimates manufacturers will incur approximately $108.3 million in conversion costs at this TSL.

TSL 3 represents commercially available microwave ovens that have a standby power level of no more than 0.4 W for PC 1 and 0.5 W for PC 2.

The Secretary tentatively concludes that, while TSL 3 for microwave ovens meets the criteria for establishing a rebuttable presumption of economic justification, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the climate and health benefits would be outweighed by the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a reduction in INPV, and the percentage of consumers in PC 2 that would experience a net LCC cost. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which would save an estimate 0.06 quads of energy, an amount that DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.15 billion using a discount rate of 7 percent, and $0.33 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 1.86 Mt of CO_2, 0.84 thousand tons of SO_2, 2.86 thousand tons of NO_X, 0.005 tons of Hg, 12.54 thousand tons of CH_4, and 0.02 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 2 is 0.09 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions reduction at TSL 2 is $0.07 billion using a 7-percent discount rate and $0.16 billion using a 3-percent discount rate.

At TSL 2, the average LCC impact is a savings of $0.98 for PC 1 and $0.78 for PC 2. The simple payback period is 1.4 years for PC 1 and 0.8 years for PC 2. The fraction of consumers experiencing a net LCC cost is 5 percent for PC 1 and 8 percent for PC 2.

At TSL 2, the projected change in manufacturer INPV ranges from a decrease of approximately $34.3 million, which corresponds to a decrease of approximately 2.5 percent, to no change in INPV. At this TSL, free cash flow is estimated to decrease by 18.5 percent compared to the no-new-standards case value in the year before the compliance year. DOE estimates manufacturers will incur approximately $46.1 million in conversion costs at this TSL.

The estimated cost of the proposed standards for microwave ovens is $4.8 million per year in increased product costs, while the estimated net benefits are $32.7 million per year. After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that a standard set at TSL 2 for microwave ovens would be economically justified. At this TSL, the average LCC savings for microwave oven consumers is positive. An estimated 6 percent of microwave oven consumers would experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 2, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over 4 times higher than the maximum estimated manufacturers' loss in INPV. The positive LCC savings—a different way of quantifying consumer benefits—reinforces this conclusion. The standard levels at TSL 2 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $0.16 billion (using a 3-percent discount rate) or $0.07 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

Accordingly, the Secretary has tentatively concluded that TSL 2 would offer the maximum improvement in efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. Although results are presented here in terms of TSLs, DOE analyzes and evaluates all possible ELs for each product class in its analysis.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for microwave ovens at TSL 2. The proposed amended energy conservation standards for microwave ovens, which are expressed as watts, are shown in Table V.25.

TABLE V.25—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power, (watts)
PC 1: Microwave-Only Ovens and Countertop Convection Microwave Ovens	0.6 W
PC 2: Built-In and Over-the-Range Convection Microwave Ovens	1.0 W

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the benefits of GHGs, NO_X, and SO_2 emission reductions.

Table V.26 shows the annualized values for microwave ovens under TSL 2, expressed in 2021$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced SO_2 and NO_X and a 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the proposed standards for microwave

ovens is $4.8 million per year in increased product costs, while the estimated annual benefits are $19.3 million from reduced product operating costs, and $5.2 million in climate benefits, and $6.8 million in monetized health benefits. In this case, the net benefit amounts to $26.5 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for microwave ovens is $4.8 million per year in increased product costs, while the estimated annual benefits are $23.3 million in reduced operating costs, $5.2 million in climate benefits, and $9.1 million in monetized health benefits. In this case, the net benefit amounts to $32.7 million per year.

TABLE V.26—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

[TSL 2]

Category	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	23.3	22.0	24.8
Climate Benefits *	5.2	5.0	5.3
Health Benefit **	9.1	8.9	9.3
Total Benefits †	37.6	36.0	39.4
Consumer Incremental Product Costs ‡	4.8	4.9	4.5
Net Benefits	32.7	31.1	34.9
7% discount rate			
Consumer Operating Cost Savings	19.3	18.4	20.3
Climate Benefits *	5.2	5.0	5.3
Health Benefit **	6.8	6.7	7.0
Total Benefits †	31.3	30.1	32.6
Consumer Incremental Product Costs ‡	4.8	4.8	4.5
Net Benefits	26.5	25.3	28.1

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026 − 2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026 − 2055. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.1 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

‡ Costs include incremental equipment costs as well as installation costs.

VI. 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 required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the 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*).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

For manufacturers of microwave ovens, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The product covered by this rule is classified under NAICS code 335220,[68] ''Major Household Appliance Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category. DOE identified manufacturers using CCD,[69] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[70] and prior microwave oven rulemakings. DOE used the publicly available information and subscription-based market research tools (*e.g.,* reports from DB Hoovers [71]) to identify 37 companies that sell microwave ovens covered by this rulemaking in the United States. Of these 37 companies that sell microwaves in the United States, 19 are private labelers. These private labelers out-source the manufacturing of the microwave ovens to other companies. Therefore, DOE estimates there are 18 original equipment manufacturers (''OEMs'') that manufacture microwave ovens covered by this rulemaking. Of the 18 OEMs, DOE was not able to identify any OEMs of microwave ovens covered by this rulemaking with fewer than 1,500 total employees (including parent companies and subsidiaries), and that are domestically located. Therefore, DOE did not identify any companies that meet SBA's definition of a ''small business.''

Based on the initial finding that there are no microwave oven manufacturers who would qualify as small businesses, DOE certifies that the proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities and has not prepared an IRFA for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b). DOE requests comment on its initial conclusion that there are no small business manufacturers.

C. Review Under the Paperwork Reduction Act

Manufacturers of microwave ovens must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for microwave ovens, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial product, including microwave ovens. 76 FR 12422 (Mar. 7, 2011); 80 FR 5099 (Jan. 30, 2015). 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.

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

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial product. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial product, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory

[68] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (Last updated on May 2, 2022).

[69] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (last accessed June 16, 2022).

[70] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (Last accessed June 16, 2022).

[71] Dun & Bradstreet reports can be accessed at: *app.dnbhoovers.com.*

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 tentatively 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 microwave ovens that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (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 section 3(a) and section 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, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by microwave ovens manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency microwave ovens, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this SNOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. In accordance with the statutory provisions discussed in this document, this proposed rule would amend energy conservation standards for microwave ovens that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 42 U.S.C. 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

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 proposal, if finalized as proposed, would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule, if finalized as proposed, would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations

Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf*. DOE has reviewed this SNOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under 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.

DOE has tentatively concluded that this regulatory action, which proposes amended energy conservation standards for microwave ovens, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[72] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present rulemaking. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. Further evaluation under that process is expected to continue in 2022.

VII. Public Participation

DOE invites public participation in this process through participation in the submission of written comments and information. After the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses.

[72] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed July 19, 2022).

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment 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.

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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*

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Include contact information each time you submit comments, data, documents, and other information to DOE. 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 that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE'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).

B. 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 feedback on its tentative conclusion that reducing the standby power consumption of microwave ovens would require full redesigns of control boards, and that while such redesigns would not result in increased MPCs, manufacturers would incur significant one-time conversation costs.

(2) DOE requests feedback on the efficiency levels analyzed for each product class in this proposal.

(3) DOE requests comment on its tentative conclusion that improvements in standby performance are the result of system-level control board redesigns that require conversion costs but would not result in increases to the manufacturing product cost compared to a control board at baseline.

(4) DOE requests comment on the incremental MPCs from the SNOPR engineering analysis.

(5) DOE requests comment on the estimated increased manufacturer markups and incremental MSPs that result from the analyed energy conservation standards from the SNOPR engineering analysis.

(6) DOE requests feedback on its approach to projecting the efficiency distribution in 2026.

(7) DOE requests comment on its methodology for estimating shipments. DOE also requests comment on its approach to estimate the market share for built-in and over-the-range convection microwave ovens.

(8) DOE requests comment on its initial findings that there are not any manufacturers of microwave ovens covered by this rulemaking that meet SBA's definition of a ''small business.''

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking and request for comment.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on August 14, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary, 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 August 16, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraph (j)(3) and adding paragraph (4) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(j) * * *

(3) Microwave-only ovens and countertop convection microwave ovens manufactured on or after June 17, 2016 and before [*date 3 years after date of publication of the final rule*] shall have an average standby power not more than 1.0 watt. Built-in and over-the-range convection microwave ovens manufactured on or after June 17, 2016 and before [*date 3 years after date of publication of the final rule*] shall have an average standby power not more than 2.2 watts.

(4) Microwave-only ovens and countertop convection microwave ovens manufactured on or after [*date 3 years after date of publication of the final rule*] shall have an average standby power not more than 0.6 watts. Built-in and over-the-range convection microwave ovens manufactured on or after [*date 3 years after date of publication of the final rule*] shall have an average standby power not more than 1.0 watt.

* * * * *

[FR Doc. 2022–17924 Filed 8–23–22; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, AUGUST

46883–47092 1
47093–47330 2
47331–47620 3
47621–47920 4
47921–48078 5
48079–48430 8
48431–48600 9
48601–49504 10
49505–49766 11
49767–49974 12
49975–50234 15
50235–50552 16
50553–50762 17
50763–50924 18
50925–51236 19
51237–51582 22
51583–51858 23
51859–52328 24

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10428 48601
10429 51859

Executive Orders:
14079 49505

Administrative Orders:
Memorandums:
Memorandum of August 1, 2022 48599
Memorandum of August 8, 2022 51231
Memorandum of August 9, 2022 50233
Memorandum of August 12, 2022 51233
Notices:
Notice of August 4, 2022 48077
Presidential Determinations:
No. 2022–20 of August 12, 2022 51235

6 CFR

126 48431

7 CFR

210 47331
215 47331
220 47331
226 47331
932 50763

Proposed Rules:
51 48091
205 48562
981 51270
983 51006
3555 47646

8 CFR

Proposed Rules:
274a 50786

9 CFR

317 50553
381 50553
439 51861

Proposed Rules:
201 48091

10 CFR

429 50396
430 ..... 50396, 51199, 51492
707 49975

Proposed Rules:
30 47947
70 47947
430 ..... 51734, 52282
431 49537
626 47652

12 CFR

Ch. X 50556
201 48441
204 48442
338 ..... 48079, 49767
343 ..... 48079, 49767

Proposed Rules:
1282 50794

13 CFR

115 48080
120 46883
125 50925
129 50925

14 CFR

25 ..... 47332, 48084
39 ..... 47093, 47334, 47337, 49509, 49515, 50235, 50560, 51583, 51585, 51588, 51590
71 ..... 47097, 47098, 47342, 49519, 49767, 49768, 49769, 49979, 50237, 50239, 50563, 50565, 50566, 50928, 51237, 51238, 51239, 51241, 51242, 51243, 51245, 51246, 51248, 51592, 51867, 51868, 51870
89 49520
93 47921
95 51594
97 ..... 48086, 48087, 51871, 51873

Proposed Rules:
25 46892
39 ..... 46903, 46906, 47141, 47144, 49554, 49556, 49773, 49776, 49779, 50005, 50009, 50588, 51271, 51617
71 ..... 47146, 47149, 47150, 49781, 49783, 50011, 50015, 50018, 50019, 50021, 50023, 50590, 50592, 51620, 51621, 51623
121 46892
259 51550
260 51550
399 51550
1212 46908

15 CFR

744 51876
772 49979
774 49979

16 CFR

1228 50929

Proposed Rules:
Ch. I 47947, 51273

17 CFR

50 52182

Proposed Rules:
Ch. I 48092

39.....49559
240.....49930, 51812

18 CFR

Proposed Rules:
1d.....49784
35.....48118

19 CFR

4.....50934

20 CFR

Proposed Rules:
404.....51933

21 CFR

118.....49521
573.....47343
800.....50568, 50598
801.....50568, 50598
808.....50568, 50598
874.....50568, 50598
1141.....50765

22 CFR

135.....48444

23 CFR

655.....47921

25 CFR

Proposed Rules:
502.....48613
556.....48613
558.....48613
585.....48615

26 CFR

1.....47931
301.....50240

27 CFR

9.....49986
24.....51880
478.....51249
479.....51249

29 CFR

1956.....50766

Proposed Rules:
1910.....50803
1926.....50803
1952.....50025
2570.....51299

30 CFR

870.....51904
872.....51904

31 CFR

285.....50246, 51611
542.....47932
560.....47932
587.....47344, 47347, 47348, 50570
589.....47621
591.....47932, 50572
594.....47932

32 CFR

199.....46884
310.....51611

33 CFR

3.....48444
100.....47348, 49522, 49990, 49991, 50250, 50252, 51250, 51908
117.....49991
165.....46887, 47350, 47352, 47624, 47626, 47935, 47937, 47938, 48444, 49523, 49993, 49994, 49997, 50252, 50253, 50255, 50776, 50935, 51251, 51253, 51257, 51909, 51911
334.....46888

Proposed Rules:
117.....49793, 50276
165.....47381, 47659, 47661, 47949, 48125, 49568, 50278

34 CFR

Ch. II.....50937

Proposed Rules:
Ch. II.....47152, 47159,

36 CFR

2.....47296

38 CFR

17.....47099
38.....50574

Proposed Rules:
17.....51625
61.....46909

39 CFR

Proposed Rules:
3030.....50027
3050.....48127

40 CFR

52.....46890, 47101, 47354, 47630, 47632, 49524, 49526, 49528, 49530, 49997, 50257, 50260, 50261, 50263, 50267, 50778, 50945, 51259, 51262, 51265
60.....48603, 50952
62.....50269
63.....48603
81.....49997, 51262, 51265
141.....50575
171.....50953
180.....47634, 51911
300.....50584
372.....47102
721.....47103
723.....47103

Proposed Rules:
52.....46916, 47663, 47666, 49570, 50028, 50030, 50280, 50593, 50594, 51006, 51016, 51041, 51300, 51631, 51933, 51941, 51944, 51946
60.....49795
63.....49795, 49796
81.....50030
180.....47167
300.....50596
372.....48128

41 CFR

102–81.....51915

42 CFR

410.....48609
412.....47038, 48780
413.....47502, 48780
414.....48609
482.....48780
483.....47502
485.....48780
495.....48780

Proposed Rules:
Ch. IV.....46918
433.....51303
437.....51303
438.....47824
440.....47824
457.....51303
460.....47824

43 CFR

49.....47296
8360.....47296

Proposed Rules:
8360.....47669

44 CFR

206.....47359

45 CFR

1330.....50000

Proposed Rules:
80.....47824
84.....47824
86.....47824
91.....47824
92.....47824
147.....47824
155.....47824
156.....47824

47 CFR

64.....47103, 51267, 51920
73.....49769
76.....51267
95.....49771

Proposed Rules:
51.....47673
61.....47673
69.....47673

48 CFR

Ch. 1.....49502, 49503
4.....49502
13.....49502
17.....49502
23.....49502
51.....49502
52.....49502
Ch. 28.....47116

Proposed Rules:
1.....51044
7.....51044
22.....51044
36.....51044
52.....51044

49 CFR

173.....50271
192.....52224
541.....51614
1002.....51922
1249.....47637

Proposed Rules:
40.....47951
385.....48141
391.....50282

50 CFR

17.....51925, 51928
20.....50965
27.....47296
300.....47939, 47944, 48447
622.....48610
635.....49532
648.....47644, 48447, 48449, 50273
660.....49534
679.....48449, 48611, 50274, 51004, 51932

Proposed Rules:
17.....50804, 51635
18.....50041
218.....49656
224.....46921
648.....47177, 47181, 48617, 49573, 49796, 51955
660.....50824

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 19, 2022

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